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THE STATE OF BAIL RIGHT ENFORCEMENT IN ETHIOPIA: THE LAW AND PRACTICE

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June, 2021

ADDIS ABABA

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**A thesis submitted in partial fulfillment of the requirements for the Award of
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**June, 2021
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DECLARATION OF ORIGINALITY

I, **Ruta Tsegay Hailu** hereby declare that the thesis entitled as **The state of bail right enforcement in Ethiopia: the law and practice** my original work and that it has not been submitted for any degree or examination in any other university. Reference materials employed under this paper have been duly acknowledged.

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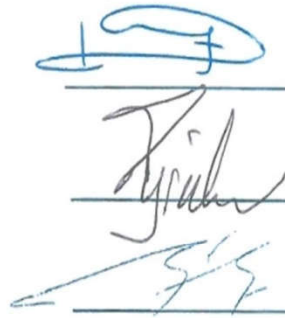
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ACRONYMS

FDRE	Federal Democratic Republic of Ethiopia
CC	Criminal Code
CPC	Criminal Procedure Code
BARD	Beyond a Reasonable Doubt
AU	African Union
UN	United Nation
UDHR	Universal Declaration on Human Rights
ICCPR	International Convention on Civil and Political Rights
HRC	Human Right Committee
ACHPR	African Charter on Human People's Rights
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FGD	Focus Group Discussion
KII Key	Informant Interview
Art.	Article
P.	page
Para.	Paragraph

ABSTRACT

Under criminal justice system, bail is one of the fundamental human rights of an accused for the applicability of liberty right. As it is formulated to balance the two interests namely the liberty of an accused and the public security, its enforcement seems to always be challenged by these tensions. The study found that the insufficiency of investigation process and the complicity of law to the unlimited number of orders of remand are two of the essential component undermining bail right in Ethiopia. Moreover, in addition to the denial of enforcing court orders by police or public prosecutors, the court's lack of independence, impartiality and a system for the enforcement of its decisions plays the highest role in the weakening of bail enforcement in the nation. The challenges that tend to frustrate bail enforcement also pose formidable challenges to the protection of other fundamental human rights of an accused namely liberty right, presumption of innocence, access to speedy trial and justice.

CHAPTER ONE

INTRODUCTION

1.1. Background

The concept of bail is one of the very important aspects of pre-trial undertakings in criminal justice system. Even though there are various meanings given for the word “bail”, the most common definition of bail can be described as “procedural device through which an accused or defendant promises to secure his appearance before a court of law on the date fixed there by means of depositing some amount of money or its equivalent property so that he will be able to be released from jail during a pre-trial stage.”¹ Similarly, the Black’s Law Dictionary (9th Ed) defines the term bail as “a security such as cash or a bond; esp., security required by law a court for the release of an accused.” According to these definitions, the main purpose of bail is to grant the liberty of an accused before facing a trial.²

Bail can be traced back to ancient Rome, although the modern conception of bail right developed in the common law legal system,³ especially during the medieval justice system of English law.⁴ At that time the concept and purpose of bail was interpreted in one aspect only i.e. for the assurance of a defendant to appear to the next trial.⁵ In other words, bail was denied if a flight risk was established.

Usually, a criminal justice system is interpreted through the exercises of duties of state actors. The arrangement of these institutions shall be organized independently with the motto of harmonization among them in order to contribute for the success of the criminal justice system of a nation. In order to uphold the criminal justice system, police, public prosecutors and courts shall exercise rule of law and coordination to gain justice in protecting the society from crime on

¹FirehiwotTeklu, “Comparing Bail Right to the Crimes of Rape and Corruption,” A Thesis Submitted in Partial Fulfilment of the Requirements for the Bachelors Degree of Law (LL.B) at the Faculty of Laws, St. Mary’s University College, 2008. <http://repository.smuc.edu.et/bitstream/123456789/525/1/FIREHIWOT%20TEKLU.pdf>

²ShimaBaradarnBaughamn, The bail book: A comprehensive look at bail in America’s criminal justice system ,University of Utah, pp.2-4

³Timothy R. Schnacke, “Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform,” National Institute of Corrections, 2008. p.21

⁴ShimaBaradaran Baughman, “The History of Misdemeanor Bail,” **Boston University Law Review**, Vol.98, (2018). p.857. <https://www.bu.edu/bulawreview/files/2018/06/BAUGHMAN.pdf>

⁵ Ibid

one hand and to grant respect of human rights of the accused on the other. In this case, a police officer who is the main actor in the criminal justice system shall commence necessary investigations before arresting a person as an accused.⁶ Due to lack of adequate investigation system or the exercise of abuse of power by police, unnecessary detentions could take place.⁷ Furthermore, the prosecutor shall be satisfied with the evidence to proceed with the process. Finally yet importantly, a court of law shall rule on the bases of ‘beyond reasonable doubt’, not on the mere fact that a case is presented by police and/or prosecutors.⁸

In Ethiopia, bail right was first recognized under the 1955 Constitution.⁹ The Revised Constitution incorporated the right to presumption of innocence, due process of law, right to liberty, the right to access to justice, and other related rights having legal significance for the protection of the right to bail.¹⁰ In 1961, the Criminal Procedure Code that contains many procedural safeguards including the right to bail was promulgated in the *NegaritGazzeta*, the official News Paper of laws.¹¹ The current FDRE constitution that is the supreme law of the nation¹² acknowledges the ratified international treaties as part of the law of the land and above all most provisions of the Constitution urge for the promotion and protection of human rights. However, as far as bail right is concerned, there are provisions that limit the discretionary power of a court. In addition, experience has shown the non-enforcement of court decisions on the release of an accused on bail.

Therefore, the research will explore the human right of an accused regarding bail, by scrutinizing the problems on institutional, legal and practical situations. Furthermore, it will forward potential solutions that will help in averting violations of the universal human right of a criminal suspect.

⁶SimenehKirosAssefa, principles, rules and practice, USA 2009, p.1

⁷MadhurimaDhanuk, *undertrial prisoners and the criminal justice system*, Commonwealth Human Rights Initiative (CHRI) 2010, p.4. This is evident in the criminal justice system of Ethiopia in which there are number of cases that a court freed an accused person from a crime he/she was convicted for the reason of lack of adequate evidence. However, the accused may stay in prison for a long time and that constitutes an irreparable damage to the accused directly or indirectly.

⁸Supra note 6, SimenehKirosAssefa, p. xxi.,

⁹KelaliKiros, “The Bail Justice in Ethiopia: Challenges of Its Administration,” A Thesis Submitted to the School of Law of Addis Ababa University in Partial Fulfilment of the Requirement of Master Degree in Constitutional and Public Law, 2011. p.21. <https://chilot.files.wordpress.com/2013/01/the-bail-justice-in-ethiopia-challenges-of-its-administration.pdf>

¹⁰ Ibid.

¹¹ Ibid.

¹² FDRE constitution, August 21, 1995, Art 9(1)

1.2. Statement of the problem

The 1995 FDRE Constitution explicitly recognizes bail as a right of arrested persons.¹³ It further provides that bail may be denied or an adequate guarantee for conditional release may be granted by a court in exceptional circumstances prescribed by law. This aligns with the second sentence of Article 9(3) of the International Covenant on Civil and Political Rights which reads as follows:

“It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear trial, at any other stage of the judicial proceedings, and should occasion arise, for the execution of the judgment.”¹⁴

Despite the recognition of bail as a constitutional right and prescription of bail procedure, there is a problem in interpretation, particularly dealing with denial of bail. Indeed, this problem is inherent in the sense that some of the grounds that entail denial of bail are subjective. For instance, one of the grounds to deny bail, i.e. “danger to public safety”, is established on a case by case basis which, in turn, results in the non-uniform application on the ground.

Some legal provisions of Ethiopia tend to give broader right to police in arresting an accused and have extended the chance of bail denial. Having said that, there is no ground of law in legitimating the act of a police officer to restrict or refuse to enforce the decision of a court. After a court grants bail by specifying surety on the assurance of appearance to the next trial, the police shall enforce the decision of the court instantly. Nevertheless, in contemporary practice of criminal legal justice of Ethiopia, there are certain cases that police refrain from fulfilling their duty by forwarding unjustified and unlawful excuses for the action.¹⁵

In addition to this, the enforcement of bail rights is worsened by other problems. These problems, among others, include deficiency in institutional competence, judicial independence,

¹³Id , Art 19(6)

¹⁴International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution on 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, Art 9(3)

¹⁵ Interview with AtoLidetuAyalew, Ethiopian politician, Addis Ababa, February 18, 2021

adequate policy on judicial appointment, court management system, coordination, and case follow-up system.¹⁶

This research is intended to examine and scrutinize the challenges and limitations that hinder bail right of an accused especially after a court of law grants the right.

1.3. Objectives of the study

1.3.1. General objectives

The general objective of the study is to assess the substantive and procedural laws dealing with bail rights in Ethiopia and their implementation in practical cases.

1.3.2. Specific objectives

The specific objectives of the research are to:

- Identify gaps in the provisions of the law with respect to the enforcement of bail rights;
- Identify practical challenges with respect to the enforcement of bail rights.
- To assess the impact of denial of bail in line with physical and psychological wellbeing for the accused and their family.

1.4. Research questions

In light of the general and specific objectives of the research, the research will address the following questions:

1. How bail is right enforced under the provisions of the applicable laws of Ethiopia?
2. What are the gaps in the provisions of the law with respect to the enforcement of bail rights in Ethiopia?
3. What are the practical challenges with respect to the enforcement of bail right in Ethiopia?

1.5. Limitation of the study

As the primary data of the research was gathered from government officials like police, public prosecutors and judges, it was difficult to convince them to participate in the process in which they believe the issue is politically sensitive. Even those who were convinced to contribute, they

¹⁶Haile Abraha Mehari, the working of the Ethiopian Federal judiciary, Tuscaloosa Alabama, 2009, p.143

were very reserved in some issues, which are very essential to the thesis. For that reason, it was challenging for the researcher in making sure of the accuracy of the response of some interviewees. Besides this, the current pandemic covid-19 has created an obstacle in the process of the research especially in conducting the focus group discussion.

1.6. Significance of the study

As the research aims to assess the legal and practical issues pertaining to the enforcement of bail in the Ethiopian context, it is believed to give a detailed assessment of the subject matter. Hence, it may serve as a reference to legal practitioners including judges, prosecutors, and attorneys.

This research is particularly significant as there is very little research conducted on the contemporary enforcement of bail right. Most of the existing literature assesses the provisions dealing with bail in light of the 1960's Criminal Procedure Code. This research, however, attempts to assess the right in light of the current and new draft Criminal Procedure Code. Thus, the research is believed to update the literature on the enforcement of bail rights with an emphasis on the new Draft Criminal Procedure Code.

The research further attempts to generate qualitative data regarding in the enforcement of bail right in Ethiopia. Policy-makers and legislators are likely to find these data and evidence useful.

1.7. Methodology

This research is doctrinal research as it deals with a matter of the law. The research is further qualitative research as it deals with the enforcement of bail right that has an empirical and qualitative component. Hence, the research has utilized qualitative research methodology. The qualitative research methodology has involved the collection of data through Key informant interviews, Focus Group Discussions, and case stories.

The key informant interviews targeted judges, legal attorneys, academicians, police officers and persons whose bail right have been restrained. The number of KIIs that was conducted has been determined in the course of the research based on the required data.

The KII with judges was aimed at exploring how the provisions of the law are practically applied and identifying legal gaps and practical challenges based on their experience. This was conducted in both Lideta Criminal High Court and Federal Supreme Court (criminal session

appellate court). The KII with attorneys aimed at exploring the legal gaps and the practice of enforcement of bail rights in the Ethiopian context was conducted in Addama city with lawyers of Oromia region. Furthermore, for the federal attorneys, it was conducted in Addis Ababa. The KII with academicians aimed at exploring the legal discourses in the enforcement of bail rights in the Ethiopian context. The KII with a person whose bail rights have been denied was to grasp the challenges encountered by accused persons in the enforcement of their bail right.

The FGD was conducted with eight public prosecutors at Lideta Federal Attorney General's office. The FGD aimed at gathering information starting from the practical criminal investigation process by the prosecutors and the enforcement of bail rights. Furthermore, the discussion has covered the contentious issues pertaining to the subject matter.

The key informants were selected purposively. Judges and attorneys were selected based on their years of experience. The judges were selected from Federal High Court and Federal Supreme Court criminal benches. The KII with judges in the federal high court will focus on exploring the manner in which bail petitions are entertained. The KII with a judge in the federal Supreme Court will attempt to assess how bail petitions are entertained at the appellate level. In addition to the KIIs and case stories, the researcher has analyzed laws including the 1995 FDRE Constitution, Ethiopian criminal procedure of 1960 and the new draft, Anti-corruption proclamation 434/2005 with its amendment proclamation number 882/2015 and other related legislations. Apart from that, the researcher tried to formulate the subject matter with international and regional frame works.

In order to show the practice of bail enforcement in Ethiopia, the research has reviewed court cases directly related to the enforcement of bail and the applicability of court decision. These court cases are collected from Federal courts and Regional courts mainly Oromia Regional court. The case study aimed at exploring the practical situation in the enforcement of bail right of an accused and further indicates the experience of accused persons whose bail entitlement are restricted by a police.

In addition to the primary data sources, the researcher has reviewed secondary data sources to supplement the analysis of the primary data. To this effect, secondary data sources include books, journals, and articles.

1.8. Scope of the thesis

The scope of this thesis is limited to the pre-trial stage in which most bail cases are associated to this stage. Due to time and resource limitations, the researcher has administered the court cases of Federal (Addis Ababa) and regional Oromia. In Addis Ababa city, decisions of High Court and Supreme Court have been analyzed and for Oromia, cases submitted to Bishoftu Town District Court and East Shewa Zone High Court has been scrutinized.

1.9. Organization of the Study

The study is organized into five chapters. Chapter one constitutes background, statement of the problem, objectives of the study, research questions, limitation of the study, significance of the study, methodology, scope of the study and organization of the study. The second chapter intends to cover the definitions and concepts of bail right in line with other related rights like right to liberty, presumption of innocence, right to speedy trial (investigation process and time), access to justice and the principle of beyond reasonable doubt. Chapter three will examine national, regional and international frame works pertaining to the right. This scrutiny will mainly focus on Ethiopia's legislations, policies and procedures to show the gaps of the legislator in promoting and protecting the right. In addition, this chapter will show bail right under the arena of the regional and international frame works as well as the commitment of implementation by Ethiopian government to the ratified instruments. The fourth chapter will show the practical limitations in the enforcement of bail right in Ethiopia and its impact inline to the basic human right of the accused. This analysis will be based on the data collected directly from court cases and it will show the practical situation in the implementation process of the right. Finally yet importantly, chapter five will forward the conclusion and recommendations in order to avert the practical problem at hand.

CHAPTER TWO

CONCEPTS OF BAIL RIGHT IN LIGHT OF FUNDAMENTAL HUMAN RIGHTS OF THE ACCUSED

2.1. Criminal justice system

In the exercise of political power through law making, enforcing and interpreting, the criminal justice system paves a way for the achievement of justice and equity in a society.¹⁷ Criminal justice system usually is classified into substantive and procedural dimensions. The former refers to the norms of law making and the latter implies to the formalities that are fulfilled to enforce and interpret the law. The ideologies and process are usually referred as due process. Such process mainly focuses on the prevention of coercion and persecution of suspects by restricting illegal and unfair detention, excessive bail and unduly long pre-trial detention, unlawful search and seizure, self-incrimination, double jeopardy, cruel and unusual punishment and so on.¹⁸

In criminal justice system, bail is an essential proceeding for human rights of an accused person. As restriction of liberty for a suspect and sentenced person inflict same consequence, it is not proper for an accused to experience punishment in which the person could be innocent at the end of a trial. A pre-trial detention constitutes irreversible impact upon the detainee and/or his/her family at large. The main goal of the presiding of criminal justice system is to uphold justice and equity in a society. Promoting and protecting the fundamental human rights of a human person is one of the critical stages that a presiding must accommodate. In other words, without promoting and protecting of fundamental human rights of an individual it's impossible to acquire justice and equity in a certain society. Due to that fact, in order to prevent such impact, the institutions of criminal justice got to play an important role especially in upholding the right to ball of an accused person in line to the fundamental human right principles.

Human rights are entitlements acquired by the mere fact of humanity. As the former secretary general of the United Nations (UN) states "*Human rights are foreign to no culture and native*

¹⁷African Human Security initiative, the theory and practice of criminal justice in Africa, Monograph 161 June 2009, p. 12

¹⁸ Id, pp.12-17

to all nations; they are universal.” Human rights are universal in which they infer to the dignity of every individual person irrespective of color, sex, ethnic or social origin, religion, language, nationality, age, sexual orientation, disability or any other distinguishing characteristic. In addition to that human rights are inalienable, indivisible and interdependent.¹⁹

2.2. Historical background of bail

The history of bail shows the existence of bail right is not a recent phenomenon rather it traced to 399B.C when Plato refers for freedom of Socrates in demand of bail bond.²⁰

As bail can be traced back to ancient Rome, although the modern conception of bail right developed in the common law legal system,²¹ especially during the medieval justice system of English law.²² The concept of bail back then was slightly different from its modern conception. One slight difference is that, from the beginning, the purpose of bail was to ensure that a defendant would return for his/her court appearance.²³ In other words, bail was rejected if a flight risk was established.

Essentially all non-capital crimes were bailable under the old English Common Law.²⁴ The most notable English laws are the Bill of Rights, the Habeas Corpus Act, and the Petition of Rights.²⁵ When individuals were charged with noncapital crimes including misdemeanors/young offenders they had the right to release.²⁶ Capital crimes under the English common law were significant felonies, like murder, arson, and serious theft, and would not allow release where there was strong evidence against the defendant.²⁷ This was also similar to the US Federal Judiciary Act of 1789 that established that non-capital crimes should be bailable, while in capital cases the courts had the discretion to decide whether to fix bail.²⁸

¹⁹ United Nations office of high Commissioner, Human Rights, hand book for parliamentarians, 2016, p21

²⁰ Dr. NilanchalaSethy, right to bail: A jurisprudential approach, International journal of humanities and social science invention, vol 9(3), 2020, p.6

²¹ Supra note 3, Timothy R. Schnacke(2008), p.21

²² Supra note 4, ShimaBaradaran Baughman (2018), p.857.

²³ Ibid.

²⁴ Id, p. 859.

²⁵ Alexa Van Brunt and Locke E. Bowman, “Toward a Just Model of Pretrial Release: A History of Bail Reform and a Prescription for What’s Next,” **Journal of Criminal Law and Criminology**, Vol.108, 2018. p.710. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7640&context=jclc>

²⁶ Ibid.

²⁷ Ibid.

²⁸ Supra note 4, ShimaBaradaran Baughman (2018), p.868.

In the US, the passage of the District of Columbia Court Reform and Criminal Procedure Act of 1970 was the first sharp departure from the limited purpose of bail to serve as a mechanism to prevent the flight of the accused.²⁹ Under the D.C. Court Reform Act, judges were allowed to institute widespread preventive detention for “the safety of any person or the community.”³⁰ Although financial provisions were not to be used to ensure public safety, both risk of flight and public safety concerns could justify pre-trial imprisonment without the imposition of a money bond.³¹ In particular, defendants charged with certain “dangerous” crimes, crimes of violence, or threatening or intimidating witnesses or jurors could be detained without bond, as long as judges employed specific due process protections in the decision-making process.³²

2.3. Concepts and definitions of bail

The word bail is believed to be derived from old French verb “bailer” which refers to “give” or “deliver”. On the other hand some tend to suggest it is derived from a Latin word “bajulare” which implies to “bear a burden”. From the references of these words, bail could be understood as a grant of liberty on a basis of an obligation.³³

The black’s law dictionary (Eighth edition) defines bail in its noun form as “a security such as cash or a bond especially security required by a court for the release of a prisoner who must appear at a future time” on the other hand the dictionary also forwarded the definition of bail in its verb form as “to obtain the release of oneself or another by providing security for future appearance”.³⁴

Bail bond refers to a contract made between the accused and a state on a basis of surety in which an accused is obliged to accomplish as a grantee of his/her appearance to a next trail and as per Blackstone’s definition recognizance is:

“... an obligation of records, which a man enters into before some court of magistrate duly authorized, with condition to do some particular act, as to appear at the assizes, to keep the peace, to pay a debt, or the like.”³⁵

²⁹Supra note 25, Brunt and Bowman, , p.731.

³⁰ Ibid.

³¹Ibid.

³²Ibid.

³³ Supra note 20, Dr. NilanchalaSethy, p.5

³⁴Bryan A. Garner, Black’s law dictionary deluxe eighth edition, 2004, p.150

³⁵ James V. Hayes, Contracts to Indemnify Bail in Criminal Cases, 6 Fordham L. Rev, 1937, p387

The concept and practice of bail has existed as early as the Roman law (449B.C). At that era it was the obligation of the Proconsul to regulate the proceedings of criminal justice system for instance in determining whether an accused person sent to prison or freed in the precondition of surety by scrutinizing the nature of the crime for which the defendant is accused, his/her rank and reputation in the community, wealth and so on. The main concept for that was for the accused person not to suffer the consequences of punishment before the accomplishment of guilt.³⁶

The bail process traces two major concept in any criminal justice system of a nation; the human right of an accused to exercise the right of liberty and the interest of the public that could be affected if the released accused didn't show up to a next trail on the bases of his/her surety.³⁷

Basically, pre-trial detention is the restriction of freedom of liberty of a person by a police on the assumption of committing a crime. As the concept of bail protects the accused person from being restricted his/her normal life of living and urges to mingle them to their community until conviction, it tends to outline a precondition that might be a grantee for the appearance of the accused to the next trail. Such grant fixed in the condition of surety or without is a means in upholding the promise furnished. Non appearance before the court would have the effect of losing the deposit that has been made in kind or in cash to the account of the government.³⁸

In general concept of ball, which is accepted throughout the world is, bail means the temporary release of an accused from a prison on the bases of bail bond/surety fixed by a court of law for assurance to the presence of an accused to a next trail. The presumption of a court in fixing a ball bond is that, the accused will appear before the trail for the reason of the surety that he/she adjusted. The ordered bail bond could be in the form of cash, property, a person or legally registered company.³⁹

From the very beginning the concept of bail arises from the desire of accuser to keep an accused in prison and the principle of presumption of every person innocent before proven guilty. The

³⁶Id, p388

³⁷ Supra note 20, Dr. NilanchalaSethy,, p.5

³⁸Luke Kelly, Bail conditions in the criminal justice systems in Kenya, Uganda, Rwanda and Tanzania, University of Manchester (2020), p2

³⁹Sri M. Sreenu: ball, anticipatory ball, mandatory ball and bail after conviction

pulling and pushing factors of these two interests generates the idea of bail for which no one shall test the effect of punishment in assumption of guilt. For that main reason, it is up to the litigant to show that an accused has committed a crime on the ground of evidence that assimilates beyond reasonable doubt.⁴⁰

2.3.1. Does bail mean jail for the poor?

As bail entitlement usually depends on monitorial surety, it is up to the accused person to purchase freedom. The ability to furnish the requirement is the main concern under the concept of bail i.e. this criteria mainly determines as to who become free and who will stay in prison after the bail has been granted by concerned authority. No accused can be freed without the accomplishment of the ordered surety. In some principles of law like that of the Eighth Amendment of the United States Constitution provides that bail bond “shall not be excessive”. Yet, there is no clarification as to how much is excessive or not-excessive in determining especially bail surety of a poor accused person.⁴¹Such kind of ambiguity creates a huge question mark behind the concept and practice of bail in the ground of equity and equality, as the practice possesses discrimination and unfairness to a poor accused person.⁴²

2.3.2. Affordability or guarantee of appearance

When the Eighth Amendment explains the amount imposed on bail, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted”⁴³ but as stated above the land mark for excessive bail is absent in the material. It just lays unclear explanations as to the amount of bail being excessive or not by pointing out the reasonability of the fixed amount of bail calculated to ensure the asserted governmental interest.⁴⁴ In this case the option that should be inferred is indication of legal scholars or the understanding/interpretation

⁴⁰ Supra note 20, Dr. NilanchalaSethy, , p.7

⁴¹ “The excessiveness of monitorial amount shall be determined through the financial status of a person i.e. the financial ability of a person to cover an obligation. It is immoral and unfair to deny a person’s liberty for the reason of his/her poverty” (Interview with GemechuGutama).

⁴² New York Senate Research Service, Accused and unconvicted: A brief on bail practices, Albany New York,1978,p .9

⁴³ Eighth Amendment, Further guarantees in criminal cases, p.1565 <https://www.govinfo.gov/content/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-9-9.pdf> accessed on 22/03/21

⁴⁴ Eighth Amendment, Further guarantees in criminal cases, p.1568 <https://www.govinfo.gov/content/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-9-9.pdf> accessed on 22/03/21

of courts to this matter. This kind of proposition is known as “wall of authority” and as far as bail excessiveness is concerned, it is believed that “Bail is not excessive merely because the defendant is unable to pay it”.⁴⁵ This asserts that if bail is denied by the mere fact of poverty of an accused the law doesn’t have any mechanism to avert that problem. In the practical interpretation of the phrase as per the 1973 court case between US and defendant called Wright the court stated:

*“The defendant urges his impecunious financial status as an essential criterion of excessiveness which the Eighth Amendment forbids. We point out, however, that the governing criterion to test the excessiveness of bail is not as the defendant suggests, but whether bail is set at a figure higher than an amount reasonably calculated to insure that the accused will stand trial.”*⁴⁶

In this case even though the defendant appeals to a higher court on a defense of violation to the eighth amendment prohibition of “excessive bail”, but as the appellate court examines excessive bail in line to the reasonability of the calculated amount of bail to insure the defendant’s appearance to next trials rather than affordability of the defendant to the fixed amount, it ruled against the defendant’s interest.⁴⁷

The bail system creates inequality in granting the right in which it has pre-condition i.e. in most cases monetary in nature. Such grant cannot be fulfilled by certain accused just because they could not furnish the requirement of the bail for the reason of poverty. However, an accused with no limitation of accomplishing the pre-condition, usually wealthier person can be granted to the right. The situation is true even when the fixed amount for bail is not that high because some accused persons are very poor that they couldn’t afford the requirement.⁴⁸

Generally, President Lyndon Johnson, at the signing of the Bail Reform Act of 1966 stated that,

⁴⁵ Colin Starger and Michael Bullock, Legitimacy, Authority and the Right to affordable bail, William and Mary Bill of right Journal, v26, 2018 p. 604

⁴⁶Id p, 606

⁴⁷Id8 p.607

⁴⁸ Supra note 7, Madhurima Dhanuka, p.3

*“He does not stay in jail because he is guilty,
He does not stay in jail because any sentence has been passed,
He does not stay in jail because he is any more likely to flee before trial,
He stays in jail for one reason only – because he is poor.”⁴⁹*

2.4. Bail and fundamental human rights

Human rights are necessary for human beings in order to live with dignity and equality. As human rights are interconnected and indivisible in nature, the breach of one right could constitute to violation of other rights. The same is true, bail right as a fundamental human right, it connects with other human rights of an accused. For instance, right to liberty, the right to be presumed innocent before proven guilty, the right to have access to justice and so on.

2.4.1. The right to liberty

The right to liberty refers to the protection of individuals from arrest and detention outside the law. Such call also restricts the arbitrary detention of an accused.⁵⁰

The Human Rights Committee In its general comment No.35 (2014), stated “Liberty and security of person are precious for their own sake, and also because deprivation of liberty and security of person have historically been principal means for impairing the enjoyment of other rights.” The Committee has defined liberty of an individual person as “freedom from confinement of the body, not a general freedom of action”. From these outlines, it’s clear to understand the principle of right to personal liberty in a sense of providing protection to a human being against arbitrary arrest and detention. The general principle of the entitlement, applies to any person in the exceptions of some laid grounds by law for example; for institutions of mental illness, vagrancy, institutional custody of children or for the purposes of immigration control.⁵¹

⁴⁹Id, p.1

⁵⁰HRs and discrimination commissioner ‘ACT HRs commission’
<file:///F:/AAU%20MA/Thesis%20materials/Right%20to%20Liberty/Section-18-Right-to-liberty-and-security.pdf>(accessed on 26/03/21)

⁵¹ United Nations HRs office of the high commission, Human Rights, Handbook for parliamentarian No. 26, p.135

2.4.2. Presumption of innocence

As a standard of fair proceeding in a criminal justice system, the presumption of innocence is recognized universally. It's evident that the presumption of innocence is widely recognized in the world, as human rights of a natural person on the sphere of criminal justice.⁵²

The European convention on human rights (ECHR) forwards that; 'everyone accused in a criminal offence shall be presumed innocent until proven guilty according to law'.⁵³ The same is true in the universal declaration of human rights (UDHR).⁵⁴ As to the concept of the presumption of innocence it is apparent in the case law of the European Court of Human Rights (ECtHR). Here, it always stands for a person who is accused in a criminal charge and it believes the convicted shall be treated as not having committed the alleged crime that he/she is convicted for. In this case for that principle to cease, the prosecuting authority shall present sufficient evidence to satisfy an independent and impartial tribunal that the suspect is guilty. Furthermore, the presumption of innocence forbids the prosecutors or members of the court "should not start with the preconceived idea that the accused has committed the offence charged".⁵⁵ The task of the prosecutor is to submit appropriate evidences to a tribunal with jurisdiction and a court has the power to decide on the guilt of the accused.⁵⁶ This principle protects pre-trial detentions in which the deprivation of liberty of a person who is not convicted is the same to deprivation of liberty to a person who is found guilty by an authorized tribunal. And in whatever level may be that is punishment. As an accused is presumed innocent, punishing an innocent person is not acceptable in the logic of law or justice.⁵⁷

⁵²Ferrd de Jong and Leonie vanlent, the presumption of innocence as a counterfactual principle, utrecht law review 2016, p32

⁵³ECHR, Art 6(2)

⁵⁴Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rdSess., U.N. Doc. A/810 (1948), Art 11(1)

⁵⁵Commission of the European Communities, Green Paper on the Presumption of Innocence, 26 April 2006 COM(2006) 174, p.5,

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006DC0174&from=GA>(accessed on 09/04/21)

⁵⁶ Ibid

⁵⁷Id, p.6

Despite the international acceptance, there are differences as to meaning or extent of application of the right.⁵⁸ Under normal circumstances, presumption of innocence goes hand in hand with burden of proof i.e. who shall be obliged to prove an accused person's guilt. In this case, the duty shall rest upon the shoulders of the prosecutor.⁵⁹ The unstoppable nature and technical variance of criminal behavior creates tension in the applicability of due process rights, including the presumption of innocence. In the eyes of variance specialists of the criminal justice system, presumption of innocence is "axiomatic and indispensable" on the process of the criminal legal system and its main goal is to safeguard wrongful convictions. Nevertheless, there are arguments that tend to believe this principle clashes with the security of the public as it becomes very difficult for prosecutors to adjudicate the two interests at the same time. In this case, public safety may fall under threat.⁶⁰

As far as the common law legal doctrine is concerned, the principle of presumption of innocence is highly concerned on the rule of evidence and burden of proof. To this fact Quintard-Morénas acknowledges the printing of the Ancient maxims rules which states;

*"Allegations must be proven by those who make them, and the accused must be considered innocent, and must therefore normally not be deprived of status and liberty in the interval between accusation and judgment"*⁶¹

According to Quintard, this principle is there to be used as a 'shield' from detention at a pre-trial stage. Even in the era of Magna Charta this principle seems to exist to protect an accused person from detention in a pre-trial stage by a means of bail right.⁶²

2.4.3. The right to have access to justice, fair and speedy trial

A pre-trial process is an essential stage that could benefit or divert the human rights of the accused. In this process if the concerned authority is obliged to uphold the law then the breach

⁵⁸ Pamela R. Ferguson, The presumption of innocence and its role in the criminal process, criminal law form (2016), p.133

⁵⁹ Ibid

⁶⁰ Antony Davidson Gray, The presumption of innocence under attack, new criminal law review, Vol. 20(2017), P. 570

⁶¹ Quintard-Morénas, 'The Presumption of Innocence in the French and Anglo-American Legal Traditions', (2010) *The American Journal of Comparative Law*, p. 150.

⁶² Ibid

of human right of an accused will be demolished and the criminal justice system will gain purpose of its name i.e. justice. This is also important in which it provides an opportunity to the accused to the granted entitlement of the constitutional right of presumption of innocence. On the other hand, if this stage is distracted by unlawful act of the authorized then the issue of rule of law and justice will crumble and that is red light for the promotion and protection of human rights in general and rights of an accused person in particular.⁶³

The main target of criminal law in Ethiopia is “to ensure order, peace and the security of the State, its peoples, and inhabitants for the public good.”⁶⁴ This shall be done according to the listed crimes and prescribed penalties in law. As Art 1 of the Criminal code infers, such prosecutions and penalties shall be for the good of the public at large.⁶⁵

Criminal justice is a fundamental tool to a society for the achievement of peace by controlling anti-social conducts within the community and the nation at large. The structure forwards three components namely law enforcement, judicial process and reformatory institution such as a prison. Here the core purpose of the system is to safeguard the innocent from being punished for the crimes that he/she didn't commit or omit. To this regard, it is unbeatable fact that in order to achieve the purpose, concert and adequate system shall be accommodated by the nation.⁶⁶

The Human Rights Committee in its general comment No. 32 (2007) urges for the fulfillment of fair trial both in criminal and civil proceedings. Such announcement applies to the true definition of the process. The core element to the right of fair trial is the grant of “equality of arms” to both parties in a case on one hand and the applicability of a fair and public hearing before an independent and neutral tribunal.⁶⁷ Equality arms in this case mean both parties (the prosecution and the accused) have equal rights in every process and stage of the proceeding before a tribunal.

⁶³ Ernest Ojukwu, handbook on prison pre-trial detainee law clinic, published by network of university legal aid institutions, Nigeria, 2012. P.2

⁶⁴ Proclamation of the Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, proc. no.414/2004,Neg.Gaz, preface

⁶⁵ Supra note 6, SimenehKirosAssefa, , p. 90

⁶⁶ Supra note 63, Ernest Ojukwu. P.3

⁶⁷ This entails for the transparency of the government to be judged by the public. As the government is the employee of the public at large its main career as justice provider must be seen and stand for scrutiny.

And the claim for the hearing to be public is to acquire the principle of justice and transparency. In a nation where democracy is exercised, “justice must not be done but also must be seen to be done”. When justice itself so requires, there are circumstances that court hearings could be in a closed trial. However, in general principle of law that shall be interpreted narrowly and must be necessary for the achievement of justice for instance for reasons of moralities, public order, national security and so on.⁶⁸

In every course of criminal justice system courts shall have the mandate to ensure their independence and impartiality. In this regard, independence refers to the safeguarding of judges appointment process, budget and finance, duration of their office and prevention from outside pressure. On the other hand impartiality implies to the hearing of a case before them i.e. judges in no circumstances shall be prejudiced or guided by self-interest or political inspiration.⁶⁹

It is undeniable fact that criminal proceedings shall be more speedily than other proceedings, especially when an accused is in detention. As delayed justice is considered as a denial of justice the proceeding shall be held without delay.⁷⁰

2.5. The role of the executive for the enforcement of bail right and proceedings

2.5.1. The process of Criminal Investigation

In criminal justice system the whole process starts with information on a ground of accusation or complaint made to a police and personal observation of a crime by a police officer.⁷¹ This is when the officer commences investigation. Criminal investigation is a process of fact-finding in criminal cases by police and sometimes public prosecutor. It is at this stage arrest and interrogation of a suspect takes place.⁷²

According to Van der Merwe (2008), crime investigation is “a systematic search for the truth with the primary purpose of finding a positive solution to the crime with help of objective and subjective clues.” He further explains the objective clues as the accurate evidence and objective explanation of these, that is, the so called *mute, indirect or circumstantial evidence*. Subjective

⁶⁸Supra note 68, African Human Security initiative, p. 141

⁶⁹Ibid

⁷⁰Id, p. 142

⁷¹Supra note 6, SimenehKirosAssefa, p. 89

⁷²Id, p. 103

clues on the other hand, are defined by him as the evidence given by individuals like victims, complainants, eye witnesses and perpetrators who have direct relations with the events.⁷³

Other authors called Gehl and Plecas (2018) explains criminal investigation as a multi-dimensional, intends to solve problems and grasp the foundation of a crime committed. According to the concept of their writing pertaining to criminal investigation, the investigator is expected to preserve the crime scene, collect the evidence, and develop an investigative plan that will lead to the forming of reasonable grounds to identify and arrest the person or persons responsible for the crime. For that reason an investigator instead of using ordinary strategies in the process of an investigation, they shall use systematic, updated and crucial mechanisms in order to achieve the ultimate goal. And they also specify that, an investigator shall critically access all information in the way that it will not disrupt the lives of those being investigated as well as victims of certain crime.⁷⁴

Apart from that an investigator shall know and apply the concept of ‘mensrea’ in English term which means “guilty mind” or “the intent to commit a crime”. The concept of mensrea seeks to determine if the accused person had the intent to commit the offence. For instance breaking someone’s property, in this case the investigator must access to find out whether the accused intend to break the property or was it by accident. In criminal justice system this is said to be an essential role of the investigator in which this could be a means to gather important information/evidences and that would help courts to uphold justice and fairness in adjudicating a case.⁷⁵ Nevertheless, the ECtHR specify three scenarios that the burden of proof may partly be reduced from the prosecution i.e. in strict liability offences, offences where the burden of proof is reversed and when a confiscation order is made. Here, the prosecution must present evidence to prove that the accused committed the physical act (actus reus) of the offence but does not have to show that he/she intended to act in that way or to produce that result in which such burden of proof shall be on the shoulders of an accused. Furthermore the ECtHR specifies the rights of an

⁷³Van der Merwe, C. J. Processing of information for prosecution purposes (Doctoral dissertation), 2008, p. 188

⁷⁴Rod Gehl & Darryl Plecas, Introduction to Criminal Investigation: Processes, Practices and thinking, Westminster, Justice Institute of British Columbia, 2016, p. 10

⁷⁵Id, p. 22

accused to raise a defense of self-defense, insanity or alibi before the prosecution was required to disprove it.⁷⁶

2.5.2. Crime investigation by police

In the criminal justice system, police investigators are in front to start an investigation and it holds a primary obligation to respect the rights and freedoms of an accused. It is important for a police to understand the concept of ‘burden of proof’ in criminal justice system. As pointed out in the above, burden of proof always falls on the responsibility of a police never on the hands of an accused.⁷⁷ In this sphere police has three major duties: crime prevention, crime investigation and recording of crime.⁷⁸ Crime prevention is the largest duty of the police to avoid the occurrence of a crime based on policy and strategy.⁷⁹ Yet, this is not included in the Ethiopian criminal procedure law as a responsibility rather on the occurrence of crimes through commission or omission the police have the duty to investigate and forward the investigation report to the public prosecutor.⁸⁰ At the end of an accusation process, reports round back to a police for the purpose of record.⁸¹ Even though this process not much appertained and preserved by other government organs, it is useful for a police for the plane and strategy of crime prevention.⁸² When a police officer obtains information about a certain crime he/she shall start investigation process instantly. This is the main duty of the institution even though the information given is unclear as to the offender’s identity or the situation of the informed crime.⁸³

⁷⁶Commission of The European Communities, Green Paper on the Presumption of Innocence, 2006 .p.7
<https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52006DC0174&from=GA>(accessed on 09/04/21)

⁷⁷Supra note 74, Rod Gehl& Darryl Plecas, , p. 14

⁷⁸Supra note 6, SimenehKirosAssefa, p. 114

⁷⁹Legal and justice Affairs Advisory Council Federal Attorney General, Criminal Justice System Working Group, Diagnostic Study of the Ethiopian Criminal Justice System, Addis Ababa, Ethiopia March, 2021, p.79

⁸⁰FDRE Criminal procedure, 1961, Art 37 (2)

⁸¹As per to the study by the Ethiopian Federal General Attorney on March 2021, because of a poor crime data handling severely hampers measurement of police performance in terms of effectiveness, efficiency and accountability, the criminal justice system becomes weaker and weaker in every condition of a way. In this regard, the institution urges for the much-needed improvements in the mechanisms of record handling methods. The late commencement of this mechanism which was on 2014 is said to be the main puling factor (Simeneh, 2018).

⁸²Supra note 6, SimenehKirosAssefa,, p. 114

⁸³Ibid

According to Geneva Centre for Security Sector Governance (2019) adheres to the creation of police reformation system to the importance of human rights and rule of law. This document is primarily concerned with the duties of officers to respect democratic values, human rights and rule of law.⁸⁴

2.5.2.1. Arrest

Even though there is no constant agreement on the definition of arrest, the US common law explains its existence as; “when a legally authorized person, such as the police, private security, or citizen, puts an individual under custody, because of his/her involvement in a crime”.⁸⁵In several cases courts have determined some elements accumulated together that can be recognized as an arrest of a person. These are; a purpose or intention to effect an arrest, real or presumed authority, actual or constructive seizure or detention of the arrestee by a person having present power to control the arrestee, communication by the arrestor to the arrestee of his purpose or intention to make an arrest and an understanding by the arrestee of the arrestor's intention to then.⁸⁶

2.5.2.2. False Arrest

False arrest means when a person is arrested without following the law of a nation. A person may be detained if there are evidences gathered through an investigation process that point to a certain person in the participation of the alleged crime or if a court of law orders the detention. A bare suspicion can't constitute arrest rather the suspicion shall be supported by critical evidence in order for the arrest to take place.⁸⁷The Fourteenth Amendment⁸⁸ gives the authority of arrest to merely law enforcement officers, citizens and private sector security officers. In this case, in addition to the public police any authorized organ or a person is responsible for a false arrest of an individual. The purpose behind the authorization of private sectors and citizens for temporary arrest is to protect the accordance of crimes in front of a community i.e. as the offender is within

⁸⁴Geneva Centre for Security Sector Governance, Police Reform: SSR Backgrounder Series, 2019, retrieved from www.dcaf.ch. accessed on May 15, 2021.

⁸⁵HalilAkbas, power of arrest : definition, legal justification and authority, Troy University USA, 2019, p.1

⁸⁶Alan G. Gless, Arrest and Citation: Definition and Analysis, 59 Neb. L. Rev.,1980, p.284

⁸⁷HalilAkbas, power of arrest : definition, legal justification and authority, Troy University USA, 2019, p.4

⁸⁸ Constitutional amendment (1868) in the United States, that granted citizenship and equal civil and legal rights to African American and slaves.

the community it's easier for the members of the community to identify the committed crime. For instance, in case of theft (shoplifting) store employees or security officers could arrest the offender. Having said that, such kind of arrest shall be supported by strong evidence, if not it could constitute a bigger responsibility on the person who initiated the apprehension.⁸⁹

2.5.2.3. Accountability

Accountability refers to responsibilities to an authorization granted by law and society. Being accountable to the public is an obligation of all who hold office or employment in a governmental system; it is a burden that is placed on the public sector when it accepts responsibility for exercising powers on behalf of the public. In this case, the authorization of a police by law and society constitutes to the responsibility of an officer by the principle of accountability. Here the process should be based on legal obligation and characterized by an attitude or duty.⁹⁰In the institutional formation, accountability demands the official in an individual, group and organization level to assist itself to the authority of the law, society and institution. For the existence of democracy it is necessary for a police institutional organization to be bound by a legal obligation in order to respect and obtain rule of law. The institution is expected to demonstrate *law abiding, disciplined, transparent and autonomous*.⁹¹

An organization of a police that is trusted⁹² by the society in democratic sphere, despite the duty to enforce the law it exercises its authorization according to the law. Here, police officers are accountable both for their institutional and personal statues. To this fact, respect for human right and the presumption of innocence are corner stones of an impartial and fair criminal justice system. Besides this, at all times a police officer shall be in a professional disciplined manner and accommodate transparency to the public for the construction of trust within the society.⁹³

⁸⁹Supra note 87, HalilAkbas, , p.4

⁹⁰Supra note 79, Federal Attorney General, p.66

⁹¹Id, p.67

⁹²It is about the public sector demonstrating its competence, reliability, and honesty in a way that allows the public to judge the trustworthiness of the public sector in using public money and resources.

⁹³Supra note 79, Federal Attorney General, , p.68

2.6. The role of the judiciary to bail right vis-à-vis the principle of ‘beyond a reasonable doubt’

2.6.1. The principle of beyond a reasonable doubt

The historical background of the principle of beyond a reasonable doubt (BARD) shows that it has been existed for a long time before the enlightenment. At this stage it was about the ‘certainty’ of guilt i.e. if the jurors are certain about the constructed guilt then that should be considered as the principle of beyond reasonable doubt.⁹⁴ Yet, after the enlightenment with the emergence of philosophers like John Locke and John Wilkins the issue of certainty which was associated with traditional or religious believes was not acceptable. In this case the principle of beyond reasonable doubt shall be supported with multiple lines of evidence and testimony rather than moral certainty. The emphasis that guilt must be established by BARD was concretely vested in the middle of 1850s. This principle was the bases of criminal conviction in most state and territorial courts of the United States including the federal courts.⁹⁵ According to Larry, Proof beyond reasonable doubt is *proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.*⁹⁶

The concept of Proof beyond a reasonable doubt stands for the typical measure of proof that a criminal court will apply when determining if evidence presented by the prosecution is sufficient to convict the person charged with an offence. If the evidence is sufficient, and the burden of proof has been satisfied, the court may convict the accused accordingly. In these cases, the onus to prove all the elements of the charge rests completely with the prosecution. The accused person is not required to prove that they are innocent.⁹⁷ In this matter the prove shall have the power to assert the accused’s guilt in black and white to the court and any doubt that could be caused by it should benefit the accused in his/her presumption of innocence.⁹⁸

⁹⁴Larry Laudan , Truth, Error and Criminal Law: An Essay in Legal Epistemology, 2006, (New York: Cambridge University Press), p.32

⁹⁵Id p.33.

⁹⁶Id p. 36

⁹⁷Supra note 74, Rod Gehl& Darryl Plecas, p. 14

⁹⁸ Supra note 55, Commission of The European Communities, p.7

2.6.2. The role of judiciary to the enforcement of bail right

The judiciary is one of the main organs of the government that have a great role in the process of ensuring democracy and the rule of law. This organ tends to protect and uphold the rights and freedoms of individuals by the power vested to it through the law primarily the constitution of a nation. Its independence shall be insured by a constitution especially from an executive body of a state. This is true in which the role of the judiciary is not merely end to the dispute settlement or compensation rather it goes beyond that to protect human rights of individuals from the arbitrary act of the government mainly the executive.⁹⁹

The judiciary plays an essential role in protecting the right of the public at large in general and the right of an accused/detained person in particular. First and for most as it's the judiciary that allows the pretrial to take place, it should have adequate information and evidence that support that information beyond reasonable doubt in order to continue the trail. In the lack of concrete evidence for the matter, the court shall instantly dismiss the case and order for the release of the detainee from prison. After a court permits the continuation of pretrial stage, it shall scrutinize the report and evidences attached by a police in line with the two interests of the criminal justice system (accused and public protection from crimes). At this stage it's very important to investigate the background of the accused on the basis of his/her community ties, family, work place, educational and financial statues, employment capacity ...etc. such pre conditions helps the court to rule and pass its decisions fairly and in balanced way.¹⁰⁰ In the ground where the above factors are accomplished, the court has to decide for release of an accused on bail or deny bail depending on strong grounds that are supported by beyond a reasonable doubt of a court.¹⁰¹

As far as the independency of the judiciary is concerned, the United Nations have forwarded preconditions for the achievement of the role as follows:-

1. The independency of a judiciary shall be declared in the nations constitution

⁹⁹GetahunKassa, Mechanisms of constitutional control: a preliminary observation of the Ethiopian system, Ethiopian Human Rights Commission, vol.20, 2007, p.98. In the present system of the judiciary in Ethiopia the supreme judicial authority is vested in the Federal and State Supreme Courts in their respective jurisdictions.

¹⁰⁰New York Senate research service, accused and unconvinced: a brief on bail practice, Albany New York, 1978, p.2

¹⁰¹Ibid

2. Conscriptio of judges shall be concluded with fair mechanism that insures the independency of the organ. Apart from fair participation of the executive, impartial body and professional organizations like that of law societies shall have active contribution in the matter.
3. Judges shall acquire a grant to the existence of their career until a legal age of retirement or expiry of their employment.
4. Disciplinary measures shall be accommodated by an independent review.¹⁰²

2.7. Consequence of pre-trial jail and denial of bail

Pretrial detentions in general and unnecessary/unlawful pretrial detentions in particular are the most ignored form of human rights abuse that tends to affect millions of persons each year. Such act allows a cause for poverty, undermines economic development and rule of law in a nation.¹⁰³In the consequence of losing freedom of movement in pretrial stage for days, months in some cases years; a detainee might lose his/her health, job, home, family and community ties.¹⁰⁴The result of pre-trial detention is very grave in which an accused that is presumed innocent is subject to physical and emotional abuse because of jail life. Apart from that, the family of an accused suffers unconditionally especially if the accused is the breadwinner of the family.¹⁰⁵

Socio-economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state-supported entitlements to education, public health care, housing, a living wage, decent working conditions and other social goods.¹⁰⁶However, it is unthinkable for an accused person who is in jail to enjoy these rights.

Even though there are arguments, it is widely agreed by scholars that excessive pre-trial detention can have negative effects on the prison system and trust in the justice system by the

¹⁰²Supra note 68, African Human Security initiative, p. 141

¹⁰³UNDP, The socioeconomic impact of pretrial detention, 2010, p.3[https://www.un.org/ruleoflaw/files/Socioeconomic % 20impact % 20of%20PTD_Sept% 2010%202010_Final.pdf](https://www.un.org/ruleoflaw/files/Socioeconomic%20impact%20of%20PTD_Sept%2010%202010_Final.pdf) accessed on 15/05/21

¹⁰⁴ Id, p. 7

¹⁰⁵Supra note 7Madhurima Dhanuka, , p 1

¹⁰⁶ International Institute for Democracy and Electoral Assistance (International IDEA), Social and Economic rights, 2017, p.3

public at large.¹⁰⁷ An accused person is part of a certain society his family, relatives, neighbors and friends will be on the side of the accused in a situation of detention. Where there is unlawful, unnecessary or excessive detention of their beloved one, they will obviously blame the criminal justice system and the state at large. Apart from that if the accused have high social support like politicians (activist), protest against the state government will be high. And that is not a good issue for the well-being of a nation at large.

As it is mentioned in the above police are the first to participate in the criminal justice system. In this case the institution shall adhere the principle of congruence in order to acquire trust and support from the society. Congruence mainly concerns on the proper accommodation of an institution with parallel to society's interest. Here, the police got to have a mutual understanding and willing co-operation with the society. In addition, it shall obtain support and trust from a society by a means of strong organizational structure with professionalism and ability to perform duty according to a principle of congruence. These steps include rule of law, freedom from political influence, clean from corruption and approaches by manners of ethics.¹⁰⁸

¹⁰⁷Luke Kelly, Bail conditions in the criminal justice systems in Kenya, Uganda, Rwanda and Tanzania, University of Manchester (2020), p4

¹⁰⁸Supra note 79, Council Federal Attorney General (2021) , p.68

CHAPTER THREE

BAIL UNDER INTERNATIONAL, REGIONAL AND NATIONAL LEGAL FRAMEWORKS

3.1. International frame works

An enormous massacre to human beings occurred in the two world wars was a reason for the existence of international human right instruments that tends to promote and protect human rights. The adoption of the UN charter in 1945 and the 1948 adopted instrument UDHR were the pillars for human right's recognition universally. The UDHR is the international instrument to inspire the *supremacy of the human being over his man-made institutions*.¹⁰⁹ The international framework for human rights mainly comprises of the UDHR and the 9-core international human right treaty instruments. Of these instruments, the UDHR and the ICCPR are the most relevant to the right to bail.

The ICCPR is an integral part of the law of the Ethiopia as the Ethiopian government has ratified it. With respect to the UDHR (which is a declaration rather than a treaty), almost all of the provisions of the declaration have attained the status of *jus cogens* meaning that the provisions contained form the norms of international law and cannot be set aside.

3.1.1. UDHR

Although, the UDHR does not explicitly recognize the right to bail, it recognizes various rights that are foundations to pre-trial justice and right to bail. The UDHR under Art 3 and 9 declares “*everyone has the right to life, liberty and security of the person*” and “*No one shall be subjected to arbitrary arrest, detention or exile,*” respectively. It further declares that “*everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has had all the guarantees necessary for his/her defense*”.¹¹⁰ The recognition of the right to be presumed innocent means that every accused shall be treated as innocent and all his/her rights (particularly, right to liberty) shall not be restrained until his/her innocence is proven otherwise by a court of law.

¹⁰⁹ AzizurRahmanChowdhury and Md. JahidHossainBhuiyan, An Introduction to International Human Rights Law, BOSTON 2010, p.3

¹¹⁰ Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3rd Sess., U.N. Doc. A/810 (1948), Art 11(1)

3.1.2. ICCPR

The ICCPR, one of the core international human rights treaties, explicitly provides for the right to bail. As per to the second sentence of Article 9(3) of the ICCPR, the concept of bail is embedded in the term “release”. According to the provision, release is the general rule that may be subject to conditions, which may be specified to ensure, that the accused appear trial or any other stage of the judicial proceedings.

In addition to the above provision, the ICCPR recognize various rights that are supplementary to the right to bail. It recognizes every person’s right to liberty and asserts that no one shall be deprived of such right except on such grounds and in accordance with such procedure as are established by law.¹¹¹ Further, it recognizes every person’s right to be presumed innocent until proved guilty according to law.¹¹² These two rights are the very core foundations of the right to bail. The right to bail is construed in light of these two rights. Accordingly, right to bail is a general rule because no person should be deprived of his/her liberty nor be presumed culprit without being proved guilty according to law.

Section 18 of the Human Rights Act 2004 stipulates that everyone is entitled to the right of liberty and security and no one shall be subject to arbitrary arrest or outside the law. This further protects the right of an accused person who even might be arrested according to the law by laying out some grounds to be fulfilled by law-authorized officials. For instance; to inform the accused the reason of his/her arrest, to take the case before a tribunal, release on security of appearance shall be granted by the court, grant the right to be tried in reasonable time or grant the release, one who is deprived to his liberty right by unlawful measure shall have the right to apply to court for release and so on.¹¹³

¹¹¹International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by GA Res. 2200A (XXI), 16 December 1966, entered into force 23 March 1970 Article 9(1)

¹¹²Article 14(2) of the ICCPR.

¹¹³Human Rights Act 2004, section 18, Effective date 14/05/20

file:///F:/AAU%20MA/Thesis%20materials/International%20HRs%20&%20bail/HRs%20act%202004-5.pdf

accessed on 26/03/21

3.2. Regional Framework (AU)

The human rights framework under the AU primarily consists of the African Charter on Human and People's Rights¹¹⁴ (herein after the "Banjul Charter"). As opposed to the international human rights framework, the Banjul Charter recognizes Civil and Political Rights, on the one hand, and Economic, Social, and Cultural Rights, on the other hand.

Although the Banjul Charter does not explicitly mention bail, it is implicit in Article 6 setting out the right to liberty.¹¹⁵ Article 6 reads as follows:

*"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."*¹¹⁶

By virtue of the above article, no person should be deprived of his/her freedom except for reasons and conditions previously laid down by law. In other words, the right to bail may be rejected for reasons and conditions previously laid down by law. The above provision, however, has a limitation, as it doesn't objectify the reasons and conditions that may be "necessary" to deprive a person to his /her freedom.

Under the AU framework, there is no other instrument that encompasses the right to bail. However, there are two documents issued by the African Commission on Human and People's Rights that stipulate the right to bail.

The first document is the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa. This document contains an explicit and detailed provision on the right to bail which reads as follows:

"Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their

¹¹⁴ Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

¹¹⁵ Chigovera et al., 2016, p. 48

¹¹⁶ African Charter on Human and Peoples' Rights, Art 6.

*trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.”*¹¹⁷

The above provision is very important as it set out objective standards as opposed to the Banjul Charter. This is evident in the obligation of the state to furnish “sufficient evidence” that deems it “necessary” to prevent the accused from: (1) fleeing; (2) interfering with witnesses; and (3) posing a clear and serious risk to others. It further provides that release may be subject to certain conditions or guarantees, including the payment of bail.

The second document is the Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention (the Luanda Guidelines)¹¹⁸ which contains a wide-range of rights that pertain to the right to bail. First, it recognizes every person’s right to liberty and security of the person. Under this right, it asserts that detention must always be an exceptional measure of last resort.¹¹⁹ This assertion makes the guideline unique as it affirms that detention must always be a last resort.

Second, it explicitly recognizes arrested person’s right to apply for release on bail or bond pending investigation or questioning by an investigating authority and/or appearance in court.¹²⁰ This is also an important aspect of the guideline as it recognizes both police bail and court bail.¹²¹

Third, it explicitly provides that detention in police custody shall be an exceptional measure. It further asserts that legislation, policy, training and standard operating procedures should promote the use of alternatives to police custody, including court summons or police bail or bond.¹²²

Fourth, it sets two cumulative standards that may led to pre-trial detention; (1) reasonable grounds to believe that the accused as been involved in the commission of a criminal offense that carries a custodial sentence; and (2) there is a danger that he or she will abscond, commit further

¹¹⁷ Section M(1)(e).8

¹¹⁸ Adopted on may 2014, at its 55th ordinary session in Luanda, Angola.

¹¹⁹ Paragraphs 1(b) and 10(b) of the Luanda Guidelines.

¹²⁰ Paragraphs 4(i) of the Luanda Guidelines.

¹²¹ Such recognition is also made under Paragraphs 7(a) of the Luanda Guidelines.

¹²² Paragraphs 6(a) of the Luanda Guidelines.

serious offences or if there is a danger that the release of the accused will not be in the interests of justice.¹²³

Fifth, it recognizes the specific needs and interest of children and women with respect to pre-trial detention. Accordingly, it accords special protection to children and women.¹²⁴ For instance, in the case of children, it states that the principle of the best interests of the child should be paramount in any-decision-making and action taken in relation to child suspects and detainees.¹²⁵ Further, in addition to the applicability of pre-trial detention as a last resort, it further requires that it should be for the shortest possible period of time.¹²⁶ With respect to women, it obliges States to “develop legislation, procedures, policies and practices that are designed to protect the rights and special status and distinct needs of women and girls who are subject to arrest, police custody or pre-trial detention.”¹²⁷

3.3. National frame work

It’s undeniable fact that the state is responsible for protecting, respecting and fulfillment of human rights in regardless of any differences what so ever. A government shall lay out a system that grants the promotion and protection of human rights in a nation at large. Such commitment starts with the law maker i.e. to forward adequate protection though the law. Under the Ethiopian Context, the right to bail is directly or indirectly enshrined in the following legislation.

3.3.1. FDRE constitution (1995)

The FDRE constitution under its preamble forwards the strong commitment to build a political community founded on rule of law.¹²⁸The constitution has a great role in administrating the criminal justice system through fundamental human rights that are broadly enshrined in the document. As far as the human rights of an accused person is concerned there are a wide-range of rights that promote and protect the human rights of an accused person. Some of these rights includethe right to life (Art 14), right to liberty (Art 17),¹²⁹ prohibition against inhuman treatment

¹²³ Paragraphs 11(a(ii)) of the Luanda Guidelines.

¹²⁴ Paragraphs 31 and 32(a) of the Luanda Guidelines.

¹²⁵ Paragraphs 31(a(i)) of the Luanda Guidelines.

¹²⁶ Paragraphs 31(a(iv)) of the Luanda Guidelines.

¹²⁷ Paragraphs 32(a) of the Luanda Guidelines.

¹²⁸ Constitution of the FDRE Proclamation No.1/1995, preamble

¹²⁹ *No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.*

(Art 18), the right of a person arrested (Art 19), right of persons accused (Art 20), the right of person held in custody and convicted person (Art 21), and right of access to justice (Art 37).

Apart from the general protection given to an accused person to his/her right to liberty, Art 19 and 20 provides specific promotion and protection of the right of an accused who is arrested or to be arrested according to the law. More specifically, Art 19(6) grants an accused a right to bail which shall only be denied by a court of law in exceptional circumstances that are prescribed by law. The court may also demand “adequate guarantee” for the conditional release of the arrested person.¹³⁰ However, it does not elaborate as to what constitutes as adequate guarantee.¹³¹

In addition Art 19(4) apart from the entitlement of inalienable right to the accused on his/her petition to a court for their next trial, it seem to provide unlimited right for investigation of an alleged crime while an accused person is in prison. This Art states;

“All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. Where the interest of justice requires, the court may order the arrested person to remain in custody or, when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial.”¹³²

The right given to a police to arrest and conduct investigation is very broad whereas the right to liberty is narrow.¹³³ This opens a door for arresting individuals before conducting any investigation, which is contrary to the principle of presumption of innocence and human rights of an individual. In Ethiopia, experiences show that it is easy to get arrested but very difficult to be released from prison. As discussed in the above the first complication starts from the legislator. Under normal circumstances as liberty right of an individual is a fundamental human right of a person, restricting such right shall be scrutinized and interpreted in a due care and diligence.

¹³⁰ FDRE constitution, Art 19 (6)

¹³¹ It is not clear whether it considers the financial statues of the accused or not i.e. what does adequate means in this legislation? Is it for the freedom/affordability or appearance on a trial?

¹³² FDRE constitution, Art 19 (4)

¹³³ Supra note 6, SimenehKirosAssefa,, p. 199

Arrest has to take place after collecting adequate evidence that somehow indicates the guilt of an accused person.

It's the police's duty to investigate a crime even where the allegation is "open to doubt." In addition, the police have other constitutional duties as provided for both in the Constitution and the police proclamation, which is respecting the fundamental human rights of a person.¹³⁴ As per Art 13 (1) of the FDRE constitution, "all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of chapter 3".¹³⁵ Chapter Three of the FDRE constitution deals with fundamental rights and freedoms. Furthermore, Art 88 of the constitution urges for all government institutions to organize a democratic principle in the authorization and conducting their duties. As per to this Art "the government shall be guided by democratic principles, it shall promote and support self-rule at all level, it shall respect the identity of Nations, Nationalities and peoples of Ethiopia and shall have the duty to strengthen ties of equality, unity and fraternity among them."¹³⁶ In these provisions of the constitution as the police is one of the branch of the executive body in both regional and federal level, it is obliged to perform its duties and in case of violation it endures the accountability as per the law.

One of the main means to have access to justice is the right to a speedy trial. The right to a speedy trial is a constitutional right in Ethiopia. The FDRE constitution provides protection to the accused person to acquire a speedy trial through various mechanisms. For instance the right to be informed promptly of the reasons for their arrest and any charge against them in the language they understand,¹³⁷ to be brought before court within 48 hours of their arrest,¹³⁸ petition the court to order their physical release where the arresting police officer fails to bring them before a court within the prescribed time¹³⁹ and to provide reasons for the arrest and the right to be released on bail.¹⁴⁰ If an accused person is well informed to an accusation, it will be easier to defend one's self.

¹³⁴Id, p. 111

¹³⁵ FDRE constitution Art 13(1)

¹³⁶ Id, Art 88(1) and (2)

¹³⁷ Id, Art 19(1)

¹³⁸ Id, Art 19(3)

¹³⁹ Id, Art 19(4)

¹⁴⁰ Id, Art 19(6)

3.3.2. FDRE criminal law (2004)

After the replacement of the 1957 penal code of Ethiopia in 2004, the objectives and aims of criminal law which is to ensure order, peace and security of the nation with its people. Although the criminal code doesn't explicitly provide for bail, it provides for the overall objectives and aim of the criminal justice system.

To this end, the purpose of the law is mainly to prevent crimes by clearly prescribing the acts and omissions constituting a crime and imposing the appropriate punishment for the commission of such acts or omissions. Basically, the main purpose of punishment in criminal ruling is two-fold:

- a) educating the wrong doers not to involve in similar action for the future;
- b) to make the situation as a lesson to the public at large;
- c) to rehabilitate the wrong doer. This is evident, under the preamble of the Criminal Code, which reads as follows:

*The fact that wrongdoers, 'instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the reform of criminals.'*¹⁴¹

3.3.3. Criminal Procedure Code (1961)

The Criminal Procedure Code (CPC) of 1961 is the key legal document that set out the procedure of bail even though it doesn't provide a clear definition as to the meaning and concept of bail. As far as duties and authorization is concerned, this document has provisions that entail the public prosecutors and police to their respective responsibilities and power.¹⁴² To this regard, Art 8(2) burdens the public prosecutor to give "the necessary order and instructions" and make sure that the police is carrying out its responsibilities with regards to the law. Moreover, it describes for the police to assist the public prosecutors in preventing the peace and crime, in discovering the commission of offences and arresting wrongdoers.¹⁴³ The duty of a police to investigate a crime before arresting a suspect is prescribed in the provisions of the code. A police shall be open to

¹⁴¹Supra note 141, FDRE Criminal Code (2005), proc. preface para.8

¹⁴²Art 8 and 9 of the Criminal Procedure Code of 1961

¹⁴³ Art 9 of the Criminal Procedure Code of 1961

doubt on the criminal accusation, information and/or complaints received.¹⁴⁴ In other words police shall commence investigation in prior to arrest. After the police accomplish its investigation then it shall hand over clear report to the public prosecutor as per Art 37 (2 and 3) of the CPC.¹⁴⁵

The CPC of 1961 recognizes both police bond and court bail. For a police department to insure bond before taking an accused to court certain points has to be fulfilled. These are, if the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment; if it is doubtful that an offence has been committed; or the summoned or arrested person has committed the offence complained of. In any of these circumstances, the police officer may release the accused on a bond with or without sureties to ensure that the accused will appear at such place, the police may fix date and time as.¹⁴⁶

This legislation classify offenses asailable and non-bailable offences: the non-bailable offences are those charges that do carry the death penalty or rigorous imprisonment for fifteen or more (note that a person may not be released, if the charge entails these penalties if there is a possibility that the person in respect of whom the offence was committed is dying).¹⁴⁷ Furthermore, sub Art 2 of Art 63 Prohibits any person from being released on bail unless such person has entered into a bail bond with or without sureties. In this regard, the court shall decide whether the surety is sufficient to secure the attendance of an accused at the court when so required to appear¹⁴⁸ and the court is required to make its judgment concerning a bail application within 48 hours.¹⁴⁹

Under Art 51 (1)(a-h) of the CPU, it clearly authorized a police to arrest an accused without any warrant. To mention one as indicator, where police “reasonably suspects”¹⁵⁰ of having committed or being about to commit an offence punishable with imprisonment for not less than one year”.

¹⁴⁴ Art 22 and 23 of CPC of 1961. Furthermore, as per Art 23 of this legislation obliges the police to record any complaints and statements with other evidences given or informed. And Art 36 forwards the obligation of a police to have a dairy of investigation in every step of the investigation.

¹⁴⁵ Sub Art 1 of this Art specifies “for the police to accomplish its investigation without unnecessary delay”. Yet, it doesn’t specify the time or the meaning of unnecessary delay to an investigation.

¹⁴⁶ Article (28(1)) of the Criminal Procedure Code of 1961

¹⁴⁷ Id, Article 63(1)

¹⁴⁸ Id, Article 63(2)

¹⁴⁹ Second sentence of Article 66 of the Criminal Procedure Code of 1961

¹⁵⁰ The question here is that, what constitutes reasonable suspect.

After a detainee is brought to a tribunal having a jurisdiction, the court is obliged to rule whether to keep the suspect in custody or release him on bail.¹⁵¹ However, where the police applies for remand to conduct the uncompleted investigation to the case, then the court may grant the remand fourteen days on each occasion.¹⁵²

Even though the offence does not constitute to a non- bailable offence, there are other conditions or circumstances that bail might be rejected. These are, if the applicant is of such nature that it is unlikely that he will comply with the conditions laid down in the bail bond, the applicant, if set at liberty, is likely to commit other offences; and the applicant is likely to interfere with witnesses or tamper with the evidence. Nevertheless, if bail application is allowed, the court, upon its full discretion, should fix the conditions on which the bail is granted.¹⁵³ Furthermore, the amount to be secured (guarantors or monetary security) is decided by the court having regard to (1) the seriousness of the charge; (2) the likelihood of the accused's appearance; (3) the danger to public order which his/her release may occasion; and (4) the resources of the accused and his/her guarantors.¹⁵⁴

3.3.4. Draft Criminal Procedure Code in Ethiopia¹⁵⁵

The 1961 Criminal Procedure Code is currently under revision after being operational for more than half a century. The draft Criminal Procedure Code is expected to revitalize the criminal justice system in Ethiopia. The recent draft of the code contains a significant number of provisions that aim to govern the criminal procedure in line with the fundamental human rights and principles enshrined under the FDRE Constitution and international human right treaties, principles, and norms.¹⁵⁶

¹⁵¹ Article 59 (1) of the Criminal Procedure Code of 1961

¹⁵² Art 59 (2 and 3) of the Criminal Procedure Code of 1961. In this case, the fourteen days that is allowed for remand seems to be unlimited as long as the police demand it.

¹⁵³ Article 68 of the Criminal Procedure Code of 1961. And after the accused furnishes the bail amount he/she has a right to be released from jail as per Art 72 of the CPC .

¹⁵⁴ Article 69(2) of the Criminal Procedure Code of 1961

¹⁵⁵ The draft Criminal Procedure Code used for this thesis is a recent draft obtained from the General Attorney Office.

¹⁵⁶ This is evident in the first paragraph preamble.

With regards to the right to bail, the draft Criminal Procedure Code devotes an entire book on bail. It explicitly states that an arrested or charged person has a right to be released on bail as opposed to the 1961 Code.¹⁵⁷ Another core alterations are the new draft under its aim explicitly urges for restrictions/guidance to the power of the government in other words it aims to uphold rule of law and also it explicitly recognizes the presumption of innocence of every accused person before proven guilty by laying the burden of proof on the shoulders of the prosecutor.¹⁵⁸

Another feature of the draft Code is, like the 1961 Code, it recognizes both police bond and court bail.¹⁵⁹ Under the draft code, a police may release an arrested person with or without surety if the charge brought against the latter is a misdemeanor offence, as the case may be.¹⁶⁰ Differently, if there is a doubt that the arrested person may have committed the alleged offence, the police may only release the arrested on a bond with surety.¹⁶¹ The draft code further outlines the conditions that may be set by the police.¹⁶² Besides this, it lays out the duties and responsibilities of the police and prosecutor under Art 19 and 20 respectively. The later Art specifies, for the prosecutor to lead the process of crime investigation until accomplishment.¹⁶³

Regarding to investigation time in the process of remand, the new draft has lay out alternatively better solution than the current CPC. Hence, the new draft has limited the time for investigation in the process of remand, which shall not excide four months from the application of the remand.¹⁶⁴ In the absence of conclusion of the investigation, the court may release an accused on bail or remand the accused for twenty days until the public prosecutor issue a suite.¹⁶⁵

With regards to court bail, the draft Criminal Procedure Code states that a bail application may be submitted to a court of law and such application may be rejected by the court, if it is

¹⁵⁷ Art 132

¹⁵⁸ Art 3 (3) and Art 5(1 and 2) of the Draft Criminal Procedure Code

¹⁵⁹ Art 132(3) of the Draft Criminal Procedure Code

¹⁶⁰ Id, Art 111 (1)

¹⁶¹ Id, Art 111 (2) of.

¹⁶² Id, Article 111 (3)

¹⁶³ This conclusion creates a lot of arguments especially on the side of the police institution in which it seems to undermine the capacity of a police in leading a crime investigation process.

¹⁶⁴ Art 113 (1-3) of the Draft Criminal Procedure Code

¹⁶⁵ Sub Art 4 of Art 113 of the Draft Criminal Procedure Code. Yet, the final effect of non-accomplishment of an investigation is to release the accused on bail and permits for the investigation to continue (Art 114 of the same code).

convinced that the arrested will not appear at a requested time and place, if it sufficiently believes that the arrested will threaten witnesses or tamper with evidences.¹⁶⁶ Like that of the existing code, it requires the court to decide on a bail application within 48 hours.¹⁶⁷ If the court approves the bail application, it will decide upon the type and amount of condition to which the bail is allowed.¹⁶⁸

As far as bail's nature and amount concerned, the court shall observe certain situations before it forwards its decree. These are it shall consider first, commission of the offense, and number, gravity, and nature of the charges. Second, whether the arrested has satisfied his/her previous bail condition. Third, the possibility of the accused to evade accountability. Finally, it shall consider the wealth, income, and social status of the accused.¹⁶⁹

Furthermore, unlike the 1961 Criminal Procedure Code, the draft code tries to address the specific needs and interests of certain groups (particularly, the court will allow bail for a pregnant women, a single parent who has a child below the age of 9, or one of the parents where both the husband and wife, who has a child below the age of 18, has been arrested at a similar or same time).¹⁷⁰ Besides, it considers the non-affordability of bail amount by the accused and explicitly allows the court to modify its order and grant bail for an accused, who is not able to furnish the surety and not charged with a rigorous crime, by ordering the accused to be the surety himself/herself.¹⁷¹

3.4. Other Proclamations and regulations

3.4.1. Anti-corruption legislations

The FDRE revised Anti-Corruption Special Procedure and Rule of Evidence proclamation 434/2005 is applicable both to federal and regional jurisdictions. Article 4 (2) of the Proclamation entitles an investigator to release an accused on bail if there is a doubt as to the commission of crime or the accused in committing the crime or if the accusation is not

¹⁶⁶ Article 133 of the Draft Criminal Procedure Code. Unlike the current CPC the new draft doesn't label offences under bailable and non-bailable offences. In line to the fundamental human rights aspect and the power of a court to rule in a case on its own discretion, this is the right application.

¹⁶⁷ Article (135(1)) of the Draft Criminal Procedure Code

¹⁶⁸ Id, Article 136(1)

¹⁶⁹ Id, Article 136 (4)

¹⁷⁰ Id, Article 136 (2)

¹⁷¹ Article 138

punishable with rigorous imprisonment.¹⁷² The last phrase of this Art implies that even with the absence of sufficient evidence, where the accusation is punishable with rigorous imprisonment bail right is prohibited by law. Even though Article 4(1) of the above mentioned proclamation was modified, the amended also prohibits a demand or applicability of bail right where the allegation is punishable with more than 10 years.¹⁷³

According to Art 5 (1 and 2) of pro 434/2005, in the process of appeal for a fixed excessive bail amount or if the investigator or prosecutor has lodged an appeal to the higher court, then the court shall order to the denial of bail right of an accused.

Article 5(2) of the proclamation 882/2015 states;“*An investigator or a prosecutor, by evidence supported by an affidavit, may, apply to the court for a restraining order against any property acquired by the commission of a criminal offence and the fruits thereof.*”¹⁷⁴ However, the non-amended Article 10 of proclamation 434/2005 states that properties or money shall not be subjected to restraining order. Further, sub Article 2 of the Article declares the non-restriction of money or property that is necessary for a period of three month in the opinion of the court for the purpose of livelihood.

3.4.2. Labor proclamation

According to Ethiopia’s history of employment relations, in order to avert discriminations that occurred in regards to a status or class of a person labor law succeeds to exist.¹⁷⁵ In regards to the economic wellbeing of an individual and his family, well established mechanism that balances the rights and duties of employment relations is a core element. The recent amended labor law proclamation number 1156/19 specifies rights and duties of an employer and an employee in a clear manner. Nevertheless, there is no clear provision in this proclamation that specifies the right of detained accused person to his/her employment relations. The accusation of a person in criminal act does not mean he/she is guilty of the allegation i.e. the suspect might be released from prison after six months or a year.

¹⁷² FDRE Revised Anti-Corruption Special Procedure and Rule of Evidence Proclamation 434/2005, Art 4(2)a,b,c. and sub Art 3 of this Art stipulates the right of accused in prison to apply to court to be released on bail.

¹⁷³ FDRE The revised Anti-Corruption Special Procedure and Rule of Evidence (Amendment) proclamation 882/2015 Art 3

¹⁷⁴ This Art is the amendment from proclamation 434/2005 Art 8

¹⁷⁵ Mehari Redae, employment and labor law, 2009, p.5

<https://chilot.files.wordpress.com/2011/06/employment-and-labour-law.pdf> (accessed on 20/05/21)

The only provisions that tried to touch upon the matters of a detained person are Article 27(g) and Article 27(j). Article 27(g) states that conviction for an offence may be a ground to terminate an employment contract by the employer without notice where such conviction renders the employee incompatible for the post he/she holds.

On the other hand, Article 27(j) provides the right of an employer to terminate an employment contract without any prior notice on the ground of sentence. The Art states “absence from work due to a court sentence passed against the worker for more than thirty days.”¹⁷⁶

Even the FDRE civil servant proclamation number 1064/2017 which governs the employees under the government does not specify rights and/or duties of detained accused person who is an employee of the government institution.

¹⁷⁶ Ethiopian labor proclamation No. 1156/19, Art 27(j)

CHAPTER FOUR

THE PRACTICE OF BAIL ENFORCEMENT

This chapter shall elaborate the practical aspirations of bail enforcement in both positive and challenged aspects of the issue. As bail right is a constitutional entitlement of an accused and directly associated with the principle of presumption of innocence and other fundamental human rights of a suspect, its enforcement shall be immediate and on the ground of law. Yet, with the existence of positive aspiration of bail practice, as some contemporary practice tend to show the non-applicability of the constitutional right, the research will analyze the limitations and the impact of the act to a suspect or their family lives.

4.1. Positive aspects of the legal frame work and practice of bail right in Ethiopia

The Ethiopian government has formulated legislations that are valuable for the promotion and protection of human rights in general and rights of the accused in particular. The supreme law of the land, particularly, acknowledges the right to bail, as well as the ratified international instruments that form an integral part of the national legislation. The CPC of 1961 has also its bold print for the positive implementation and interpretation of the right.

4.1.1. Bail as a constitutional right

As it is clearly stipulated under Art 19 of the FDRE constitution, bail right is a constitutional right. To this effect, in every sphere of the criminal justice system, it shall apply as a constitutional right. The key informants and the participants of the FGD also recognized that bail right is a right that is entitled by the virtue of the supreme law of the land. Especially, legal practitioners, contend that bail has to be entitled without any exception in which the burden of proof of contesting the right totally lies on the accuser. One of the legal attorney, states that;

“Bail right shall be interpreted as a constitutional right as it entails the liberty of a person and to be presumed innocent until evidence against him/her implies anther wise in order for a court of law to deprive the entitlement.”¹⁷⁷

¹⁷⁷ Interview with Ato Mohammad Jima, legal attorney both under Oromia and Federal courts, at Adama on 20/02/2021

The judiciary, which holds a crucial power for the enforcement of bail right, has to recognize the right as constitutional. For that matter, the judges in the High court and Supreme Court jurisdictions strongly acknowledges the constitutional entitlement of the right. Accordingly, one judge of the supreme court believes that “no one have a power to take the right of bail because as it is constitutional right it is given by the law and it can only be restricted by the law when and only when justice so requires.”¹⁷⁸

4.1.2. Good Practices in the Interpretation of Bail

In practical aspiration of bail right in Ethiopia, a number of practical cases imply the positive practices of the legal institutions in criminal justice system of the nation. As the case story of Annex 3 impliedly denotes, the Federal High Court’s litigation process that took place on the date of October 10, 2020 granted the bail right of the accused.¹⁷⁹In this case, the lower court that is the High Court permitted 14 days for investigation upon the request of the prosecutor/investigator¹⁸⁰; however, the court rejected a second application for the extension of the investigation as the police’s report was deemed insufficient by the court. To that fact, the court granted the suspect’s constitutional right as there was no necessary ground to keep him in jail.¹⁸¹In the decision of the court, it specified that “the investigation time granted to the police was for the purpose of gathering new evidences and report to the court, however as the police did not give due diligence to its duty, the court has banned its request”. Consequently, the court rejected the petition of the police for the additional investigation time (remand) and sustains the request of the accused to be released on bail.¹⁸²

Similarly, as shown in Annex 1, in the court case between LidetuAyalew and the prosecutor of East Shewa Zone, the judgment of the High Court can be taken as an exemplar for granting the fundamental right of bail rather than refusal to the accuser’s liberty right. In the litigation process, the public prosecutor objected the claim of the defendant to be released on bail. The ground of the objection was, as the defendant’s accusation attributes to Art 22(3) of

¹⁷⁸ Interview with AtoGetyeEndalew, Judge of the Federal Supreme Court, at Sidist Kilo, Addis Ababa sidist Kilo on 05/02/2021

¹⁷⁹ Federal Police Criminal investigation office Vs. Moy bonSanfēTerefe, Federal Supreme Court file No. 197505, 09/11/2020

¹⁸⁰ As per Art 59(3) of the CPC

¹⁸¹ As per Art 59(1) of the CPC, the court has granted bail right to the accused to be released from prison.

¹⁸² Federal Police Criminal investigation office Vs. MoybonSanfēTerefe, High Court file No. 260644, 26/10/2020

Proclamation No. 1177/2012 and accordingly as this entails to 5-20 years imprisonment, the law does not permit the release of the defendant on bail. The prosecutor further contends that, “as the defendant had been receiving cardiac treatment abroad, he has medical appointment to receive surgical treatment abroad. Hence, he can be disappeared, if allowed to travel to abroad for the treatment.” After the court examined both claims, it presented the following decision;

“There is no legal ground to revoke the defendant’s not to be bailed, merely by suspecting that he can be disappeared if allowed to be released on bail. Therefore, considering the vulnerability of the defendant to the current COVID-19 pandemic, we have rendered decision that the defendant shall be released on bail”

4.2. Limitations and challenges for the enforcement of bail right in Ethiopia

There are certain challenges on the enforcement of bail right when it is analyzed on the bases of practical circumstances. As the limitations to the applicability of the right primarily emanates from the government (legislator, executive and judiciary), the researcher has identified the issues through practical experiences of individuals, professionals and government officials who are associated to the issue. Furthermore, by elaborating decision of tribunals on bail right of a suspect; it will show the challenges that are confronting the enforcement of bail and liberty right of an accused.

4.2.1. Bail right as a rule and not exception

According to the FDRE Constitution, bail right is accorded as a rule and may only be limited in exceptional circumstances prescribed by law. Similarly, the ICCPR allows every person the right to release with an exception to specific circumstances that are specified by law.

Despite the above legislations, prosecutors and the police seem to practically conceive the right to bail as an exception and the denial of bail as a rule. This is evident in various criminal cases where the police/prosecutors by default object to bail right and call for the non-release of the accused. Ideally, the prosecutor and police have the crucial role in the enforcement of bail right that is presenting objection to bail in exceptional circumstances that justify the non-release of the accused. As opposed to this, the practice shows that the prosecutor and police tend to object the release of the accused in almost all circumstances. Such trend is very dangerous as it negates the constitutional principle that bail is an exception and not the rule.

4.2.2. The subjective and inconsistent interpretation of the ground to deny bail

The other challenge that is common is the subjective and inconsistent interpretation of the grounds to deny bail. Here, in most cases of criminal bench, the police or prosecutor urges for the denial of bail, raising the following grounds; that the accused may not appear to the next trial, their release could be dangerous to public safety or if released they could tamper with evidences are widely used subjectively and inconsistently. Indeed, inherently, these grounds are subjective that have to be decided by the court on a case-by-case basis and it is difficult to set objective standards. However, in the Ethiopian context, these grounds are not supplemented by sufficient evidences as they ought to be, rather, in practice, the prosecutor and police object bail right and courts deny bail based on their own subjective thoughts.¹⁸³

The subjective interpretation of the grounds to deny bail creates an inconsistent and unpredictable criminal justice system that allows bail for an individual with a particular case and denies bail to another with an identical case. To avert this, the researcher suggests a sort of guideline that should be developed by the Courts, Police, and Prosecutor for a uniform and consistent application of the law. This guideline should strike the balance between the right of the accused, on the one hand, and the court's power to decide on bail right as it deems necessary.

4.2.3. Limitations in crime investigation process

A person shall only be arrested where there is sufficient evidence for a committed crime. First and for most, the commission of a crime have to be proved and a person has to be charged for such commission before an individual is called as "accused".¹⁸⁴ However, there are practical cases for which illegal detentions of a person before commencing an investigation or without instituting a case in a court within 48 hours.¹⁸⁵

Even though, the FDRE constitution grants a right to the executive body to investigate a case while a suspect is under detention (Art 19(4)), it has also sufficient provisions directly or

¹⁸³ Interview with HaileslaseGebremedhin, legal attorney under all Federal courts, Addis Ababa, 12/04/2021

¹⁸⁴ Interview with GamachuGutama, legal attorney both under Oromia and Federal courts, at Adamaon 20/02/2021. When he forwards his practical experience in investigation and arresting a person in Oromia region he quoted "it's very simple to arrest a person without evidence in our country". He further explained, "a person was accused and arrested for a crime of setting a fire to a property of a complainer. However, when investigation was commenced, there was no fire occurrence or property damage, after that the detained was release after being arrested for two days."

¹⁸⁵ Which this is against the principle of rule of law see Art 29(1) of theCPC

indirectly promotes and protects the human rights of an accused. Nevertheless, the rights given by the constitution and followed by the CPC of 1961 especially in matters of investigation process seem to be the main challenges in the pre-trial stage of a criminal justice system. To this fact in almost all criminal cases, requesting additional time for investigation as per the provisions of the law is becoming as a tradition of the criminal justice system. This petition by a police or public prosecutor is usually done for the purpose of remand¹⁸⁶ and in the exception of some cases, a court permits the ground over the human right of a suspect.

As per the analysis of the researcher, the enormous challenge emanates from the law itself in which the FDRE constitution entitles the police or prosecutor to demand additional time for investigation while the suspect is in jail and above all the CPC 1961 confirms its endlessness so long as the court permits the petition. This means that as long as a police or prosecutor requires and the court agrees, the accused will be deprived of his/her right to liberty for unlimited period. In this case, by analyzing the facts the researcher believes that these provisions of law are fabricated purposely for the deprivation of fundamental rights and freedoms of an accused, as needed by a political organ of a government.

4.2.4. Public prosecutor in the process of crime investigation

According to the FGD with public prosecutors, a point was raised pertaining to the process of a crime investigation i.e. whether public prosecutors shall follow up and lead crime investigation processor it is better for a police to conduct its work independently. At that junction, all of the public prosecutors agree on the previous point for the reason of legal knowledge and enhancement of human rights protection, such as presumption of innocence of a suspect, according to the law. Here, they strictly believe that because prosecutors acquire legal profession it is better for them to follow up and lead a criminal case's investigation.¹⁸⁷

Nevertheless, this argument may not hold water as some public prosecutors have violated the very human rights they assert to safeguard. This is evident, in the charge of LidetuAyalew on breach of Federal Weapon Administration and Control Proclamation no.1177/2012 Art 22(3), which reads;

¹⁸⁶ All the legal attorneys interviewed to this research has confirmed this.

¹⁸⁷ FGD with eight federal public prosecutors, at Ledeta Attorney General office, on June 04, 2021 at 2:00PM

“If the crime indicated under sub article 2 of this article is committed with bulk firearm, he/she shall be punished with rigorous imprisonment of between eight to twenty(8 - 20)...”¹⁸⁸

To the contrary, Art 22(2) states about a holder of unlicensed single firearm that shall be punishable with simple imprisonment of one year to three years.¹⁸⁹ Here, for someone who knows the law and urges for the promotion and protection of human rights according to the constitutional rights and duties, the distinction between ‘bulk firearm’ and ‘single firearm’ should be clear since the weapon found in the accused’s house is ‘single’. Therefore, the case should have been presented on the virtue of Art 22(2) rather than Art 22(3). According to LidetuAyalew’s statement, “the case was formulated not to uphold justice but to keep me in prison and make me stay away from the public seen”.¹⁹⁰

Depending on this fact, the researcher’s analysis is that, the case was forwarded just to deny the accused’s right to bail.¹⁹¹ As stated above, even someone who doesn’t have legal background profession could assert that case would fall under Art 22(2) and the researcher do not think the public prosecutor miss that point. However, as per the labeling of offences on the CPC Art 63(1), in order an offence to be non-bailable it shall be punishable above fifteen years. In this case, Art 22(2) is punishable only to simple imprisonment not exciding three years but Art 22(3) is punishable up to twenty years rigorous imprisonment.

Adjusting hierarchal levels by law is not a solution in order to obtain real facts/evidences on a criminal investigation case; rather, other options have to be explored. Putting in place a hierarchy among different institutions would only increase the tension of competition in such institutions and undermines the human rights of the accused. During the FGD, the researcher has observed that this created contempt from both sides as one side contends, “I’m the leader so you shall follow my instruction” and the other will have the feeling of “who are you to order me, this is my line”. And such kind of tension may create a huge disruption in the criminal justice system of a

¹⁸⁸ Art 22(3) Proclamation No.1177/2020 Firearm Administration and Control Proclamation, March 25,2020

¹⁸⁹ Art 22(2) Proclamation No.1177/2020 Firearm Administration and Control Proclamation, March 25,2020

¹⁹⁰ Interview with LidetuAyalew, a politician who was a suspect, Addis Ababa, 18/02/2021, 3:00pm

¹⁹¹As explained under chapter three of this thesis, the FDRE civil procedure code Art 63(1) explicitly denies right of bail for those who are convicted of a crime punishable above fifteen years.

nation. The researcher strictly believes that these institutions has to work together in harmony and by respecting each other's role and responsibility in the criminal justice system.

4.2.5. Police and/or public prosecutor's refusal to enforce bail judgment

The decision of courts is sometimes undermined by the police and/or the prosecutor. With regards, to bail and liberty right of an accused, four court cases are discussed below.

The first is the Prosecutor of East Shewa Zone vs. LidetuAyalew. The charge brought against the defendant states that the defendant has violated article 22(3)Federal Weapon Administration and Control Proclamation no.1177/2012 by possessing unlicensed weapon i.e. one gun, the slug with two bullets and 16 pieces of bullets in his residential house at East Shewa Zone, BirbirsafokaKebele.¹⁹² Consequently, the defendant was arrested on July 25, 2020. After the court adjudicated both parties proceedings, it granted the right of bail on the surety of Birr 100,000.00 to be furnished by the defendant for his release from prison on the date of 22/09/2020. Notably, the decision that granted the defendant his bail right was not unanimous in which one judge among the three doubted the appearance of the defendant on the next trial for the reason of "defendant's medical appointment abroad" which was explained by the attorney of the defendant himself in court.

Following the decision of the high court, the East Shewa Zone General Attorney ignored the decision of the court and submitted its appeal/objection to the Supreme Court of Oromia eastern permanent bench on the date of 23/09/2020.¹⁹³

The law doesn't permit a police or public prosecutor to restrict an accused from his/her liberty rights that is granted by authorized court of law on the fundamental right of bail. However, in the practical case of Lidetu, even though several times the court ordered the police department to release the defendant or to submit a good reason for the arrest there was no response by the police for almost one month.¹⁹⁴ Without responding to the two summons of the court, the

¹⁹² Prosecutor of East Shewa Zone vs. LidetuAyalew, East Shewa Zone High Court,File No. 60025

¹⁹³Prosecutor of East Shewa Zone vs. LidetuAyalew, Supreme court of Oromia eastern permanent bench,File No. 330994.

¹⁹⁴ The East Zone High Court criminal Bench despite the first order for the grant of bail on the date of 22/09/2020,it forwarded an order on the date of 8/10/2020 for the police to examine the reason why they fail to release the defendant from prison. The same is true an order was summoned to the concerned police authority on 15/10/2020 and 19/10/2020.

Oromiapolice commission after the appellate court renders its decision on 06/10/2020 for the release of the accused from prison,¹⁹⁵ replies on writing to the third one which was issued on 19/10/2020. The letter acknowledges as follows;

“We have been examining the issue to execute as per the order of the court and we have identified that the defendant is rearrested, as he is suspected in breaching the constitution of the country. Hence, the prosecutor of Supreme Court of Oromia reported that the defendant is following the issue at Eastern Permanent Bench.”¹⁹⁶

Lidetu explained the situation as;

“After the High Court ruled in granting my bail right, a police officer took me out of the classroom in the prison and told me I was released. However, without taking me out of the prison gate, he confirmed that I was suspected of another crime so that I had to register again and put me in a room which was a next door to the room I was before.”¹⁹⁷

The analysis of the research is, first and for most despite the order of the court to release the accused from prison, the police department did not enforce the order and in addition did not even care to specify the reason behind that. Providing a reason immediately after the ruling of the court, is one thing and disregarding the order without providing any reason is another. The later, seem to say much about lack of respect to the decision of the court in general and disrespect to the judiciary in particular. To this respect, by analyzing the back ground and the statues of a police officer in the nation, the researcher believes that the lack of respect couldn't emanates from the police officer rather from somebody with power to order the police officer. As specified in the FGD by public prosecutors, “police officers tend to respect the order of his/her financier or higher official rather than the court”.¹⁹⁸ Had it been the police officer's fault in disregarding the decision of the court, the issue of accountability would have been raised and without any pre condition the officer would face termination. Nevertheless, as the casetends to hold another issue, accountability is out of the question.

¹⁹⁵Prosecutor of East Shewa Zone vs. LidetuAyalew, Supreme court of Oromia eastern permanent bench,File No. 330994, order No. 2.

¹⁹⁶ A letter from Oromia National Regional State Oromia Police Commission to East Shoa Zone High Court Adam, written on the date of 20/10/2020 to Ref. No. KPO17-125/2899/2

¹⁹⁷Interview with LidetuAyalew, a politician who was a suspect, Addis Ababa, 18/02/2021, 3:00pm

¹⁹⁸FGD with eight federal public prosecutors, at Ledeta Attorney General office, on June 04, 2021 at 2:00PM

The second case was instituted on the date of May 6, 2020 after a charge pertaining to illegal detention was submitted to Oromia National Regional State Oromia Police Commission. The detainee's name was KanenusKalid and he wrote the petition on the illegal deprivation of his liberty by Oromia Police Commission Shashemene City Police Department.¹⁹⁹ KanenusKalid was accused with a charge of rape on a file No.16157. As there was no sufficient evidence in order to pursue the case, the Bishoftu Town General Attorney declared the closing of the file as per Art 42 of CPC to the Bishoftu Town District Court on 21/10/2020. Accordingly, the court ordered for the release of Kanenus from police custody on the same date.²⁰⁰ However, the police did not enforce the decision of the court for the reason that the defendant was convicted of another crime committed in Shashemene city. The commission further explained that the defendant has been released on the above court order but he has been rearrested on a new police file no. 192/2013 as of 20/10/2020, which is the same date the court ordered to release the defendant.²⁰¹ The letter noted at the end as follows;

“....This order was forwarded from the higher security officer. Therefore, we would like to notify the court we will provide the necessary solution after completing examination, as the defendant is currently detained for another crime.”²⁰²

The Bishoftu Town District court, depending on the above petition from the police, ordered for the continuation of the case without requesting/accessing any evidence or order for the release of the defendant.²⁰³

In this scenario, the defendant appeals to the East Shoa Zone High Court by objecting the decision of the court on the same date that the decision was rendered (27/11/2020). The main objection of the applicant is that;

“I was detained without being brought to a court of law since 20/10/2020 and now the lower court has accepted their petition without any evidence to the allegation. Even

¹⁹⁹Letter written from Oromia National Regional State Oromia Police Commission to Oromia Police Commission Shashemene City Police Department on 07/05/2020.

²⁰⁰KanenusKalid Vs. Bishoftu Town General Attorney, file No.16157, Bishoftu Town District Court, order rendered on 21/10/2020 at 12:00

²⁰¹Letter from Oromia Police Commission Bishoftu Town Administration Police Department to Bishoftu Town District Court, Ref. No. QPBMB/912/2-8/13, 27/11/2020

²⁰² Id

²⁰³Bishoftu Town Police Department Vs, KanenusKalid, file No. 15074, court order rendered on 27/11/2020 at 10:00 o'clock.

though, it is my constitutional right to be brought before a tribunal within 45 hours but the police did not do that. Therefore, I urge for the acceptance of my appeal which is for the court to close the file and order for my release or grant me a bail right.”²⁰⁴

By examining the objection, the court ordered for the release of the detainee ruling that the detention was illegal and without any evidence.²⁰⁵ Despite the order of the court, Kanenus was not released. On the agency of his attorney, he applied to the court on 23/12/2020 for his release from prison. The court ordered the release and the effect of failing to enforce its decision in a clear manner by adjourning it to 25/12/2020 in order to know the report by the police. Nevertheless, the police did not enforce the decision and once again, the court rendered its order in less commanding manner by adjourning it to 28/12/2020.²⁰⁶

From the above case the researcher has analyzed, the breach of various fundamental human rights of the suspect which are discussed under chapter two and three of this thesis. For instance, the right to be brought before a court within 48 hours, liberty right, presumption of innocence, access to fair and speedy trial, access to justice... etc. The letter from Oromia National Regional State depending on the petition by Kanenus on the date of 6/05/2020 declares the illegal detention of the accused without following due process of law. Apart from that, after the court ordered the release of Kanenus, the police refrained by issuing a letter that declares the order was given from higher official. This clearly stipulates, the supremacy of the executive over judiciary.

The third case which is under Annex 4 that implies the practice of illegal detention without evidence. This case was constructed by Adama police officer in the allegation of “internationally striving to cause conflict and civil war in Oromia Regional State following the death of Hachalu Hundessa” against the suspects namely Nuri Abiya and Ahmed Seid before the date of July 16, 2020 by file no. 36552. However, as those suspects were judges of the same court that they were brought, the court ruled that it can’t adjudicate the case for the reason of their friendship with the suspects.²⁰⁷ For that matter, the police applied its allegation to the Woreda

²⁰⁴Kanenus Kalid Vs. Bishoftu Town Police Department, East Shoa Zone high Court, file No. 61002 decision rendered on 27/11/2020

²⁰⁵Kanenus Kalid Vs. Bishoftu Town Police Department, East Shoa Zone high Court, file No. 61002 decision rendered on 27/11/2020

²⁰⁶Kanenus Kalid Vs. Bishoftu Town Police Department, East Shoa Zone high Court, file No. 61002 decision rendered on 25/12/2020

²⁰⁷Petition to West Shoa Zone High Court by Adami Tulu District police Officer, Ref. No. DAAT/61/03/2012, July 22, 2020

Court on August 17,2020. On the same date, East Shoa Zone High Court ordered for the release of the suspects from prison.²⁰⁸ However, the police did not enforce the order for a long time until a higher official demands for the release.²⁰⁹

The fourth case under Annex 3 also shows, the refusal of federal police to enforce the decision of Federal High court on bail grant on 26/10/2020. In this case, even though the high court ordered for the accused to be released on bail, for the reason the police didn't forward sufficient evidence for the first 14 days of remand authorized by the court, the police without enforcing the order, appeal the decision on the ground of not giving additional time for investigation and remand after 12 days on 06/11/2020. To this fact, the police has detained the accused without any legitimate ground for 12 days and above all breached his duty to obey the decision of the court.

In these practical cases, it is evident that the police or prosecutor has used its power to abuse human rights of individuals. Under normal circumstances, government officials are selected to uphold the law and to respect human rights of every individual despite the fact of any differences. The exercise of any institution or official outside this power shall entail accountability. Yet, as it can be clearly observed especially from the second case, it seemed that the police department exercise higher authority than that of the court without being able to have sufficient evidence against the accused. Especially, in the letter issued to the Woreda District Court by the police department on the date of 20/10/2020, the police is giving an order to the court; rather than executing the order of the court. Without following the due process of law, the police ordered the court to wait until their investigation is completed. Apart from that, the police specified that the order of arrest is given from a higher official and the court accepted that without any objection.

It is undeniable fact that, the presumption of innocence is a constitutional entitlement and one of the fundamental human rights of an accused person. To this fact, as the principle considers every suspect innocent until a court of law declares his/her guilt beyond a reasonable doubt, it is the duty of the government officials to observe and respect the human rights of a suspect and exercise rule of law throughout the process. Nevertheless, the principle of presumption of

²⁰⁸Order from East Shoa Zone High Court to Adami Tulu Wereda Court, file No. 59775, August 17, 2020.

²⁰⁹Interview with Mohammad Jima, legal attorney both under Oromia and Federal courts, at Adama on 20/02/2021

innocence has been violated under the above two court cases. Further, in all cases, the constitutional right to bail and liberty has been jeopardized by the refusal of the police/prosecutor to enforce the court order.

Pertaining to the enforcement of decision of a court by police department and/or public prosecutors was raised in the FGD with public prosecutors. At the session, all of the participants admitted the occurrence of non-obedience of court's decision by a police in Ethiopia both in federal and regional states. Apart from that they all have confirmed that it is illegitimate act. However, the researcher observed that some of the participants started to reason out the situation and tried somehow legitimate the act. One participant stated that, "we can't rely on the court's decision for the reason of personal capacity, commitment and corruption." Another participant continued and said, "judges don't understand the idea of the accused person but the police or public prosecutors do, especially on crimes that are complicated in nature e.g. crime of corruption." In the exception of the proclamation of anti-corruption, they all blamed the law itself (CPC 1961) for not having any provision that stipulates the right of appeal for bail grant.²¹⁰

Here the observation of the researcher is that, in the exception of one participant,²¹¹ no one raised what should be done in order to up hold the human rights of an accused rather they reputedly mentioned that the public needs justice in its wellbeing and security. In this case, they prefer innocent person to stay in jail than that of for a criminal to be released out of jail. All of them adhere Art 63(1) of the CPC in which it labels offences asailable and non-ailable offences. And they totally disagree with the concept of the new draft of criminal procedure in making all the offencesailable. In the middle of the discussion, the issue of independency of the court in labeling the offences by the legislator was raised. However, pertaining to the issue one of the prosecutors strictly stated that;

*"As the penalty of criminal offences are set up by the legislature so should theailable and non-ailable offences. Because the House of People's Representative are there to uphold the public's interest for its fair well and that is what matters."*²¹²

²¹⁰ FGD with eight federal public prosecutors, at Ledeta Attorney General office, on June 04, 2021 at 2:00PM

²¹¹ He said the government officials should work for the balance of the two interests in criminal justice system namely "the public and the accused".

²¹² FGD with eight federal public prosecutors, at Ledeta Attorney General office, on June 04, 2021 at 2:00PM

In this case the researcher believes that the public prosecutors are wishing to use the law and the liberty of a person for the accomplishment of their duty. Prosecutors as they are the guardians of the law, they shall stand for rule of law, equity and justice. It is their duty to up hold the human rights of the accused person not to restrict or urge for its denial. Here, if it is seen only in one side of the coin, as most of the prosecutor's believe i.e. "for the safety of the public, it's ok for a person who could be innocent to stay in prison for some time", it's difficult to acquire justice. However, for the achievement of justice in a society and a nation at large, the criminal justice system shall balance these two interests equivalently.

In difference to those ideas, only one prosecutor tried to specify the challenges that emanate from political tension. He further explains, the police department in our country is not mandated to the law rather to the organ that pays the wage or formulates its budget. The police will do anything if the order comes from his higher official, in this case he will prefer to obey the order of his financier rather than the court's order.²¹³

4.2.6. Limitations on the acceptance of appeal to bail grant

Concerning to the restriction of the right to liberty on "bail grant" upon appeal, with an exception to the proclamation of Anti-corruption No. 434/2005 Art 5, other legislations including the CPC does not allow denial/injunction of bail grant by a lower court. Moreover, Art 19(6) of the FDRE constitution clearly allows the court to restrict the right to bail in exceptional circumstances prescribed by law. Yet, there is no provision of law under the current CPC that allows the restriction of the constitutional right of the accused after bail is granted. The law only allows appeal by an accused in case of bail denial.²¹⁴ However contrary to the law, in practical cases appeal is permitted and become a means to injunction the decision of a lower court on bail grant.

As it could be observed from the case of Lidetu (Annex 1) in supreme court of Oromia Eastern Permanent Bench file No. 330994, the court has accepted the appeal and banned the decision of the lower court not to be enforced.²¹⁵

²¹³ Ibid

²¹⁴ Art 75(1) of the CPC. Which states, "Where bail has been refused by a court, the accused may apply in writing within twenty days against such refusal to the court having appellate jurisdiction under Art. 182 (1) to grant bail."

²¹⁵ Prosecutor of East Shewa Zone vs. LidetuAyalew, Supreme court of Oromia eastern permanent bench, File No. 330994, order No. 2.

The researcher's analysis to this case is that, the judiciary is playing a great roll in violating the fundamental human rights of an accused outside the law. Under normal circumstances, it's the duty of the judiciary to uphold rule of law in protection of human rights of individuals. Yet, as some practice tend to shows undermining of laws by the judiciary like that of the above case, it needs special attention for the protection of human rights of a suspect.

4.2.7. Lack of strong, committed and impartial judiciary for the enforcement of its decisions

Under criminal justice system as the judiciary plays a great role in protecting mainly the right to life and liberty of an accused person, it has to depend on the evidence that is forwarded by the accuser. Here the evidence shall pursue the court for making its decision rather than the words of the police/prosecutor. As clearly stipulated under chapter two of this thesis, courts has to rule on the basis of beyond reasonable doubt. In every stage of the proceeding, the evidence shall assert the accused's innocence or guiltiness in a clear manner.

On the researcher observation while accommodating an interview in the Federal Supreme Court in one of the criminal session office of judges, a police officer appears with a suspect on 05/02/2021 in the afternoon. The judge permitted them to inter and explained their case in front of the researcher. The police was there to appeal the bail grant of the accused by the Federal High Court on 04/02/2021. The accused also confessed that, he was in prison for two months and he was sick for the last two weeks but they did not care to take him to hospital. Even the court released me on bail yesterday in the morning they refuse to release me from jail. As it was Friday, the judge adjourned the case to Monday (08/02/2021) without ordering the police to release the suspect or to take him to hospital.

Furthermore LidetuAyelew specified that, "When I asked the judges that why don't they force the police to release me from prison? One of the judges said we only hold pens not guns."

This shows that the court is not independent even to enforce its decisions and above all it lacks commitment to render protection of human rights of an accused.

4.2.8. Lack of accountability

In order rule of law to sustain, the practical accountability of illegitimate act is crucial and essential for the realization of human rights and freedoms of an accused. Any government official has to be accountable for his/her wrong acts by the virtue of law.

However, the researcher did not observe any scenario or a case for the accountability of an official who fails to enforce the decision of the court including for these cases that are part of this thesis. As one of the interviewee attorney specifies;

“The main reason for the illegitimate act of police/prosecutor is the lack of accountability once the case is over. In my experience as being legal attorney, I have never heard or seen an official be disciplined because he fails to enforce court decision pertaining bail grant²¹⁶.”

4.3. The effect of pre-trial detention and denial of bail right

The impact of pre-trial detention could be severe to the accused and their family. As the detention process could be sudden for the accused, it will be difficult to be ready psychologically and/or in family accommodations. In addition, detention could make the suspect vulnerable to other violations in and outside the prison.

4.3.1. Vulnerable to other violations

In the criminal litigation between Federal police crime investigation office Vs. SaginMtikuTeshome (Annex 5) which was under the jurisdiction of the Federal High Lideta 10th session, the Court rendered its ruling and allowed bail to the accused on the date of March 06, 2020.²¹⁷ However, as the accused was not released and alienated from his family, the wife of the suspect submitted a petition to the court on March 10, 2020 describing her and their family’s situation. As per to the petition,

“My husband was an employee of the Federal police institution and on February 13, 2020, without providing any reason, they called him from home in the evening - 12:00A.M- as a suspect of a criminal offence. After the case was submitted to High Court, it ordered for him to be released on bail for the amount of 3,000.00. After we furnished the amount of bail, we asked the criminal investigation office for his release.”

²¹⁶Interview with GamachuGutama, legal attorney both under Oromia and Federal courts, at Adama on 20/02/2021

²¹⁷ Federal police crime investigation office Vs. SaginMtiku Teshome, Federal High court, file No. 253309, decision rendered on 06/03/2020

*However, they told us that they have released him according to the courts order but confirmed that the federal police officials, who initiated the allegation at the beginning, kidnapped him and took him to Meles Academy around Sululta. And, the people who reside their told as that he was living in sorrow.*²¹⁸

The court in this case summoned the Federal Police crime investigation office to explain the situation on March 13, 2020. The Federal Police confirmed to the court that they have applied the court's decision on time but confessed to the court that officials from Federal office took him after he was released from prison. Depending on that information, the court summons the Federal office Meles Academy in Sululta to explain the situation. As they did not appear by the summons of the court, the court gave order to Human Rights Commission with the help of Federal police investigation office to investigate a human right violation on the accused. Unfortunately, the petition of the accused's wife was true. The suspect has been detained illegally and has been bitten by officials of the government who was working with him.²¹⁹

In this case, the researcher's analysis is that, some government officials cannot control their abusive behavior until court of law passes its decree. And that is very dangerous for the essence of justice and rule of law, if everyone want to render judgment on his/her own position.

4.3.2. The effect on access to justice

Access to justice stands for both the accuser's human right and the security of the public at large. To this fact, as the police institution spearheads the prevention and investigation of a criminal case, it shall be systematically uphold the rights of the accused and the interest of the public. Rule of law is the main tool to the realization of justice in a criminal justice system. Where unlawful action especially from government officials strongly stand without the purpose of accountability, then the faith of justice will crumble.

Nevertheless, as the practical situation of the criminal justices system in general and the enforcement of bail right in particular can be observed through those cases clearly explained above, the access to justice continues to be jeopardized in the Ethiopian context.

²¹⁸ Petition to Federal High Court on file No. 253309, 10/03/2020

²¹⁹ Interview with Genanew Assefa, Federal High Court judge and one of the judges in this case, 22/02/2021

4.3.3. The effect on right to life

It is evident that the unlawful detention of LidetuAyalew (Annex 1) has threatened the life of the accused. As Lidetu was a patient of a complicated heart disease, he needed a serious heart medication that could be accommodated abroad. Apart from that, as the disease made the patient highly vulnerable to covid-19, the prison life of Ethiopia was a violation of the fundamental right of the right to life.

“The person with kidney, asthma, heart and blood pressure has very low probability to recover from corona virus pandemic.” mine is not simple cardiac problem, but as it severe heart disease I have received surgical treatment and referred to abroad so that I can get advance medical treatment. Now, we are in critical situation. Hence, if I am infected with the corona virus, I have no chance to be recovered. My litigation is about my right to stay alive. If I am banned not to travel to abroad, this will threaten my right to stay alive.”

It is undeniable fact that Covid-19 is an enormous threat not only for someone who suffers from other severe disease but also anyone who is healthy. For that reason, after the eruption of the virus in Ethiopia, the government-released detainees especially prisoners for petty offences, drug offences and for those sentenced who have less than a year remaining on their sentences.²²⁰ Having said that, restricting an accused who suffers severe heart disease problem after a court of law orders his release on bail is violation of the constitutional and fundamental human right i.e. the right to life.

4.3.4. The effect on family of an accused

It is undeniable fact that, the detention of one family member will distract the lives of the whole family. Especially, if the detainee is the breadwinner of the family, the situation will be more complicated. In a nation where there is no clear entitlement of an accused to his/her employment rights i.e. it will be difficult to fully acknowledge the financial security of accused's family until the freedom of the accused. Even after freedom, the fact that he/she could be unemployed in a

²²⁰<https://www.deccanherald.com/international/covid-19-germany-ethiopia-to-release-prisoners-817636.html> accessed on 14/06/2021 . Attorney General Adanech Abebe told state media the measure would apply to more than 4,000 prisoners.

nation where 20%²²¹ of the population suffers unemployment, the wellbeing of an accused and more over wellbeing of a family will be at risk. On the other hand, the nation's unemployment rate and burden will increase and that is not a positive thing for the economy of the country.

As specified under chapter three, the amended Anti-corruption proclamation No. 882/2015 Art 5(2) mandates an investigator or public prosecutor to apply for restraining order of the accused's property or any fruit thereof.²²² However, Art 10 of proclamation No. 434/2005, states for the non-restriction of a property or money that is necessary for a period of three month in the opinion of the court for the purpose of livelihood. This means that, in the request of the restraining order police or prosecutors shall consider the livelihood of the suspect and their family.

As per Annex six²²³, it was the wife of the accused who brought petition to the Federal High Court on the date of 17/01/2019 for the permission of livelihood expenses from her bank account that was restrained before two months by the police investigation office in which her husband was accused for corruption. In this case, the court adjourned the case to 05/04/2019 which is almost after three months from the petition, ordering for the requested expenses be supported with evidence. One of the mechanisms that the court suggested in order to fix children's expenses was, for a stranger from children affairs office to interrogate the children to know their expenses. Yet, as the petitioner replied that it is not appropriate for the psychological wellbeing of the children, the court ruled on 28/06/2019 after five months and eleven days depending on the number of the children and evidences attached with the petition.

The analysis of the research is that, even though the law urges for the protection of human rights, i.e. family of the accused not to suffer from the risk of financial insecurity, but as could be understood from the above case the lack of commitment from the executive body, the three month entitlement was indirectly denied. Moreover, the court without taking in to consideration the principle of "the best interest of a child" ruling for the conduct of interrogation session, is by

²²¹ <https://tradingeconomics.com/ethiopia/unemployment-rate#:~:text=Unemployment%20Rate%20in%20Ethiopia%20is,macro%20models%20and%20analysts%20expectations.>

²²² The public prosecutor got the right to restrain any property or fruits (usually in bank accounts) of an accused for 48 hours and even after Applying to a court, it would be unlikely for the denial of the request especially if the allegation is on corruption.

²²³ Federal police investigation office Vs Kinfe Dagnew (second petitioner Lulit Hagos), file No.225319

itself a breach of human rights of a child. Besides that, ruling after almost six months is against the law and human right principles.

4.4. Bail under the new Draft Criminal Procedure Code

The new draft of FDRE Criminal Procedure code is a critical reform for the realization of criminal justice system, in general, and bail right of an accused, in particular. As the current provisions of the draft code entails better procedural schemes to enhance the achievement of human rights and freedoms of a suspect, the enactment of the draft any time soon would be a landmark for the enhancement of the criminal justice system of Ethiopia.

First, the draft code does not label offences as bailable and non-bailable offences as opposed to the 1960's CPC. As such, it may alleviate the obstacles that come from such distinction.²²⁴ The major impediment that emanates from such distinction is the denial of bail as a rule for certain offenses. As dictated in the FDRE Constitution, bail is an exception however the categorization of offenses as bailable and non-bailable entails the application of denial of bail as a rule for certain offences. This would, in turn, provide an independent platform for the judiciary to decide on whether a certain case is bailable depending on the merits of such case. Therefore, this has an implication for both the accused and the judiciary; as the former's right to bail is maintained and the latter's independence is not limited by the legislator.

Second, as the new draft limits the investigation time demanded by a police as per Art 113, for the purpose of remand, it will decrease the abuse by a police or prosecutor. Particularly, the existing practice of taking for granted the period allowed for investigation would be limited under the draft code. However, the researcher holds the opinion that the investigation period allowed under the draft code, up to four months, is somehow exaggerated and is against the fundamental human rights and freedoms of a suspect, particularly the right to liberty, right to non-arbitrary detention, and so on.

Third, unlike the current CPC, the draft incorporates the rights of women, children and in general the best interest of family life under criminal allegations. In this case, it allows the court to grant bail on the grounds of such considerations. For instance, a pregnant women, a single parent who

²²⁴As per the information gathered by the means of FGD with public prosecutors, they all disagree with the fact that this new draft has erased Art 63(1) of the current CPC. They strictly believe that such labeling of offences in order to deny bail is critical for the safety and well-being of the public.

has a child below the age of 9, or one of the parents where both the husband and wife are suspects of a crime who has a child below the age of 18 and has been arrested at a similar or same time, may be allowed bail considering their particular circumstance.²²⁵

Fourth, it considers the non-affordability of bail amount by the accused and explicitly allows the court to modify its order and grant bail for an accused, who is not able to furnish the surety and not charged with a rigorous crime, by ordering the accused to be the surety himself/herself.²²⁶

For the above reasons, the researcher believes that this is a very good start for the promotion and protection of fundamental human rights and freedoms of an accused in general and a suspect with children (family). As family is the starting point and the backbone of a nation, working for its best interest and well-being is a critical idea that shall be interpreted in a broader manner.

²²⁵ Article 136 (2) of the Draft Criminal Procedure Code

²²⁶ Article 138

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

The lack of commitment in administering the process of criminal investigation has constituted an enormous challenge to the enforcement of bail right. In addition to that, the legislature permits the request of remand for investigation process under the FDRE constitution. As the police have a constitutional entitlement to conduct investigation while an accused is in prison, it is not likely for the police to conduct investigation while the accused is free. For that reason, the deprivation of liberty rights of an accused and the practical challenge of bail enforcement starts there.

The FDRE constitution and other legislations as explained under chapter three of this thesis, entitles unconditional power to a police to arrest an individual. As the legislator opens the gate widely, it seems to pave a way for unnecessary detention of an accused person. Especially, as it is elaborated in the empirical part of this thesis, cases with political sensitivity will be on the mercy of the police under the investigation. As far as the subjective conditions for bail denial is concerned, the police may associate a case in order to convenience the court for the denial of the right and more over make the acquisition fall on non-bailable offences or open another court file in a charge of different offence just to restrict the liberty right of a person. To these facts, in certain courts as the principle of “beyond reasonable doubt” is not applicable, the above petitions of a police for denial of accused’s freedom will be admissible.

The researcher believes that a state with an aspiration of democracy protects its citizens from excessive power of a government official and that starts with adequate legislations that tend to limit the power of government officials in protection of human rights of the people. Nevertheless, the legislator has created a challenge in the sphere of bail enforcement and its proceeding.

The effect of labeling offences in order to deprive an accused’s liberty right is also another challenge in the law and it is against the human right principles of international laws. As Ethiopia has ratified a number of international instruments, especially the main ones like the UDHR and the ICCPR, this entails an obligation to be abide by the instruments. To this fact, even though these specified instruments do not have broad provisions that specifies about bail

entitlement, however, there are commentaries and acts that directly or indirectly formulates for the protection of the liberty right of an accused. Therefore, the government has to observe those instruments and administer accordingly.

Pre trial stage is an essential stage for the rights of an accused. This is the main stage to scrutinize the submitted offences and investigations to be seen parallel to the two interests of the criminal justice system. Yet, the practical expansion in the pretrial detention through unlawful manner has established a chaos to the reliability of criminal justice system in the nation. To this fact, this requires a strong and strategic solution in order to avert the practical challenges at hand.

As human rights are interrelated and interdependent in nature, the denial of one right will constitute to the deprivation of another right. In this case, it is clear that the denial to enforce liberty and bail judgment through the unlawful and irrational practice of the police and/or public prosecutor has constituted an enormous effect on other fundamental human rights of an accused and their family.

As to the impartiality and independency of Ethiopian court system is concerned, it needs a serious and separate solution in which the challenge is deeply rooted and comes through variable dimensions. This critically needs the government's commitment at a whole for real transformation of the criminal justice system. In fact and in most cases, as the political tension of the government tends to throw its very long hands in order to disrupt the lawful ruling of the judiciary, it needs committed self-scrutiny in order to change the tradition. Besides this, lack of a system in order for the judiciary to enforce its decisions has made the process difficult. In general sense, the existence of judiciary is an advantage for the fundamental rights and freedoms of an accused. Nevertheless, as the judiciary in Ethiopia is too weak to even enforce the decrees of its judgment, the faith of the human rights of a suspect becomes vulnerable in every step of the way.

5.2 Recommendations

In order to avert the limitations and challenges under criminal justice system pertaining to the enforcement of bail right, the researcher has recommended the following ideas;

- ❖ First and foremost as the limitation starts on the legislations of the nation that tend to pave the way for easy detention of an accused, it shall be revised to prevent a suspect from unnecessary arrest. For the sake of promotion and protection of human rights and freedoms to an accused, the law shall not permit any detention without evidence. Above all the law shall peruse the presumption of every suspect innocent before proven guilty through the principle of beyond reasonable doubt. To this fact, the law shall not label offences in order to restrict the liberty of a suspect in a pre-trial stage. Hence, the current legislations pertaining to detention and bail right shall be scrutinized and be amended on the bases of the fundamental human rights aspect.
- ❖ As the subjective interpretation of denying bail are inconsistent and unclear in every jurisdiction of a tribunal, it shall be specific and clear by law. The House of Peoples Representative has to elaborate the instants and limitations to create a permanent solution for the problem.
- ❖ Establishing capacity building trainings shall be common to all organs of the government. Especially on crime investigation process, as some crimes could be systematic and complicated, the police have to be trained and become one-step forward than a crime perpetrator. Apart from this, the police shall know the basic principles under criminal justice system for better protection of fundamental human rights of a suspect.
- ❖ Instead of denying bail right to an accused, another system shall be created to control the suspect's every day statuses. For instance, for a suspect to appear in a police station around his/her community every day, to accommodate bracelet alerts or electric tag for a suspect to wear. In case where a suspect cannot be found, announcement on TV shall be as alternative mechanism to get a suspect with the help of the society.
- ❖ Commitment for justice is an essential tool in order to create a government that is trusted by the public. In the realization of peace and security in a society, the people shall trust the government. In order to obtain that, the government especially the executive and judiciary officials have to be committed to realize the public's interest.

- ❖ In relation to the commitment issue, the judiciary in separate manner has to be committed to enforce the decisions of its representatives. The judiciary has to be independent and impartial for the protection of the fundamental human rights and freedoms of a suspect. In order for that to happen, the government especially the executive has to enhance the independency of the judiciary.
- ❖ As the main reason raised for the denial of bail is the disappearance of a suspect to a next trail and the systematic identity changes that could take place easily in Ethiopia, the government shall create a digital identification card depending on the finger prints of an individual. This shall deploy a system to identify an individual everywhere in the nation and in addition, it will avert multiple identity of a single person. Therefore, it will be easier for the authorized official to find a suspect.

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Annexes

Questions prepared for Judges

1. How does the provisions of law pertaining bail right apply?
2. In what ground do you deny or grant bail right of an accused?
3. What are the limitations in the law for bail right and its enforcement?
4. After a court forwards its decision for a release of an accused on bail, is there any system for the assurance of the enforcement the decision?
5. What are the practical challenges in the enforcement of bail right?
6. Why do you think a police refuses to enforce decision of a court to release an accused on bail?
7. Are there legal grounds for that? If not what is the consequence of the unlawful act or do they become accountable?

Questions prepared for Legal Attorneys

1. What are the grounds to be a criminal suspect under the Ethiopian law?
2. Do you think there are sufficient provisions to uphold the human rights of an accused?
3. Do you think there are any limitations on the law pertaining to bail right of an accused? If there are what are those?
4. Do you think a police refuses to obey the decision of a court on bail release? If yes, what could be the grounds for that?
5. If the answer of question number 4 is yes, Why do you think a police engage in that act? Are there any accountability for his/her act?
6. What do you think should be done to avert the action?

Questions presented to suspects whose bail right has been banned by a police

1. What do you say about bail right in Ethiopia?
2. What do you think are the limitation for the exercise of bail right?
3. Do you encounter any human rights violation problems during your detention time as criminal suspect? If yes what?
4. Based on question number 3, what measures were provided by concerned bodies to compensate your victimizations if any?

Questions prepared for FGD with public prosecutors

1. What is the process of prosecution of an accused by a public prosecutor in Ethiopia?
Does public prosecutor assist on crime investigation?
2. What is bail right and its purpose under criminal justice of Ethiopia?
3. Do you think detaining an accused before proving his/her guilt (under pretrial stage) is just especially when we see it in line to the fundamental HRs of an accused? Why and why not?
4. In the contemporary practice of criminal justice system of Ethiopia, do you think police denies the release of an accused after a court of law grants his/her freedom of liberty? If the answer is yes, why do you think a police officer restricts the right even after the court has forwarded its decision?
5. If the Answer is yes to Q no. 4, could you explain the issue of accountability in the situation? As a public prosecutor what would you do if a police restricts the liberty of an accused even though a court declares for the release?