



**WRONGFUL CONVICTIONS AND THE QUEST FOR REMEDIES
UNDER THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM**

By: Tesfaye Boresa Senbeta

Advisor: Dejene Girma Janka (Ph.D)

**A THESIS SUBMITTED TO THE COLLEGE OF GRADUATE STUDIES OF ADDIS
ABABA UNIVERSITY IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF MASTERS OF LAWS /LL.M/ IN HUMAN RIGHTS LAW STREAM**

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**Addis Ababa University
College of Graduate Studies
Law and Governance Studies
2015
Addis Ababa**

Declaration

I hereby declare that “Wrongful Convictions and the Quest for Remedies under the Ethiopian Criminal Justice System” is my own original work which has not been presented for any degree in any university and the sources used have been duly acknowledged and cited.

Tesfaye Boresa Senbeta

Signed _____

Approval Sheet by the Board of Examiners

Wrongful convictions and the Quest for Remedies under the Ethiopian Criminal Justice System

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Dedication

This thesis is dedicated all victims of wrongful convictions in Ethiopia

“No matter how careful courts are; the possibility of perjured testimony mistaken honest testimony and human error remain too real. We have no way of judging how many innocent persons have been executed .But we can be certain that there were some.”

Marshall Thurgood in Furman vs. Georgia (1972)

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHPR	African Court of Human and Peoples' Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCRC	Criminal Case Review Commission
DNA	Deoxyribo Nucleic Acid
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECrPC	Ethiopian Criminal Procedure Code
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Court of Rwanda
ICTY	International Criminal court of Yugoslavia
HRC	Human Right Committee
NHRIs	National Human Rights Institutions
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
US/USA	United States/United States of America
UPR	Universal Periodic Review

Abstract

The right to life and liberty and security of individuals are protected under international and regional treaties and under the FDRE constitution as well. Most of international treaties guaranteeing for these rights are ratified by Ethiopia. These rights are not absolute as they can be limited and deprived to enforce criminal law in the form criminal responsibility. But the process of depriving for the right to life and liberty shall pass via due process of law. The course of criminal proceeding shall fulfill and realize the basic tenets of fair trial guarantee to minimize miscarriage of justice that would result and not to convict innocent involved in the process instead of the real culprits. Cognizant of the fact, human beings are not error proof and practical administration of criminal justice is influenced by different factors; wrongful conviction of innocents is inevitable. Furthermore, the proper realization of fair trial rights and safeguards cannot immune the system from making mistakes. But it reduces the risk of convicting innocent individuals. Hence wrongful conviction cannot be avoided. Wrongful conviction is the greatest injustice done to individuals for the crime they did not commit. It results in immeasurable breach of their civil, political and loss of their socio economic rights. It is potential to shake confidence of the public against the criminal justice system itself. Though the issue was internationally recognized and backed by legal framework; the problem of wrongful convictions is not recognized in the Ethiopian criminal justice system. This thesis has disclosed some of the wrongful conviction cases in the Ethiopian context. It has been revealed that there are cases of wrongful convictions in which innocent individuals were imprisoned for many years for the crime they did not commit. Despite the existence of the problem in the Ethiopian criminal justice system, there is no legal frame work which allows for review of a final conviction after discovery of new evidence. The right to claim for compensations as a result of damage caused to the individuals by state machinery is also not regulated. So it is the focus of this study to appraise factors contributing for the occurrence of wrongful convictions on one dimension and to scrutinize the legal lacunae with regard to post-conviction remedies for persons wrongly convicted in Ethiopia on another dimension.

Key Words: Wrongful Convictions, Human Rights, Miscarriage of Justice, Review of Criminal Judgment, Post- conviction Remedies, Compensations

CHAPTER ONE

INTRODUCTION

1.1. Background

The notion of criminal law under every legal system is to keep the peace and order of public at large by punishing and rehabilitating wrong doers after utilizing systematic procedural and evidential methods to identify the criminals among the communities.¹ Despite the difference in the trial process of criminal cases from state to states; every legal system endeavor to elicit and discover the truth by identifying the true perpetrators of the crime.² Apart from criminal investigation techniques, persons accused of crime are endowed with the right to due process in the process of criminal proceedings to guarantee the rights to life and liberty of individuals protected under international, regional treaties and in domestic constitution.³ The right to due process of law is the right to be treated fairly, efficiently and effectively in the course of administering criminal justice.⁴ The mechanisms developed to protect the right of accused persons are the right to fair trial, presumption of innocence, equality of arms, fair and public hearing, independency and impartiality of the judiciary to mention few.⁵ The proper application of these safeguards in accordance with established legal principles and procedures is to generate fair administration of justice by convicting the guilty ones and acquitting the innocent individuals.⁶

The recognition of the right to life and liberty by itself does not mean that the right bearers are protected. Rather, the existence and enjoyment of these rights can be well-defined in case where they are contested and claimed in case of breaches. The criminal justice system can be regarded as fair and functional if it is capable of identifying and determining guilt and innocence of

¹ Daniel Layne Compensation for Miscarriage of Justice, Internet Journal of Criminology 2010, p, 3(Available at www.internetjournalofcriminology.com (Accessed on September 10 ,2014)

² Marvin Zalman, Criminal Justice System Reform and Wrongful Conviction: A Research Agenda Wayne State University, Detroit, MI,2006,p,477

³ Jeffrey Manns, Liberty Takings: A Framework For Compensating Pretrial Detainees, Harvard Law School, John M. Olin Center For Law Economics and Business ,2005 P, 5

⁴ Ibid

⁵ Michael Naughton, How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions, 2011 p, 41

⁶ Ibid

individuals accused of crime.⁷ The practical enforcement of these rights by criminal justice organs shall be compatible with the spirit of the international instruments and other constitutional rights principle. In the delivery of criminal justice, accused persons are presumed innocent through the trial process and it is the duty of the prosecution organ to prove beyond reasonable doubt that the accused person has committed the alleged crime he was charged for.⁸

The consequence of criminal liability can be serious that might entail in loss of life, liberty and freedoms. Hence the standard proof of beyond reasonable doubts is widely accepted in common law legal systems to render guilty verdict to avoid the risk of convicting innocent individuals.⁹ A criminal law philosophical maxim widely quoted is the Black Estonian proverb: “Let hundred Criminals run away than convicting one Innocent person” is also an indicator that wrongful conviction of innocent persons is condemned from the early period of criminal justice.¹⁰ The maxim tells us that acquittal of the guilty persons can be tolerated by the society where as conviction of the innocent may not be acceptable by any standard. Wrongful Convictions of innocent persons will not serve any purpose of the criminal law. Despite the existence of these legal safeguards to protect the rights of individuals accused of crime; the practice shows that innocents are wrongly convicted for crime that they did not commit. Theoretically criminal justice delivery is expected to convict the offenders and acquit the innocents. But in practice there are many subjective factors that influence the course of the process. Sometimes justice may be blind due to the fact that there are different stake holders in the system. Particularly the involvement of human beings in the process who are fallible can bring their own experience and biases which greatly influence the outcome of the cases.¹¹

⁷ Michael Naughton ,How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions, 2011,p, 41

⁸ Ibid

⁹ H. Patrick Furman, Wrongful Convictions and the Accuracy of the Criminal Justice System, Reproduced by permission. Colorado Bar Association, 32 The Colorado Lawyer 11 (September 2003), P, 11

¹⁰ Keith A, Findley, Wrongful Convictions: Encyclopedia of Psychology and Law, 2007, Sage Publications, available at http://www.sageereference.com/psychologylaw/Article_n353.html (Accessed on September 15, 2014)

¹¹ Susan A. Bandes Protecting the Innocent as the Primary Value of the Criminal Justice System, University of Michigan Press, 2008 p,413

The existence of wrongful convictions was recognized in other jurisdictions long years ago.¹² Furthermore; in recent period the accuracy of the criminal justice system has been questioned by revelations, mostly generated by new DNA investigative techniques of innocent people across the country in prisons including those on death row phenomenon.¹³ Of course, there are countries in which innocents were charged and convicted and served the sentence in terms of life in the form of death penalty, life imprisonments for the crime they did not committed.¹⁴ No matter how a given state criminal justice is strong enough; wrongful convictions of innocents are sure to occur.¹⁵ The recurrent existence of the problem of wrongly convicting innocent had been recognized in both Common Law and Civil Law legal systems which had also ensued in designing the mechanism to review the already occurred erroneous convictions.¹⁶

1.2 Literature Reviews

In finding out works of other authors and materials that are related with wrongful convictions in the Ethiopian context the writer had made unreserved search. To the extent of my reading goes I have not come across literatures or reviews that address the causes, impacts and practice of correcting wrongful convictions and review of final criminal judgments including the right to compensation for damage suffered as a result. There are articles and journals that discusses on specific themes of Ethiopian criminal justice system like presumption of innocence, burden of proof, legal representations.¹⁷ Those literatures generally discuss the substance and scope of these and their impacts on the whole outcome of the criminal proceedings. However the discussions in these literatures do not cover the issue of wrongful convictions and review of

¹² Bruce A. MacFarlane Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System, 2006,P, 3 See also “Convicting the Innocent: A Triple Failure of the Justice System” (2006) 31 Manitoba Law Journal 403

¹³ Naughton, Supra Note at 5,p,11

¹⁴ Miranda Jolicoeur International Perspectives on Wrongful Convictions: Workshop Report, September 2010

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Worku Yaze Wodage, Presumption of Innocence and the Requirement of Proof Beyond Reasonable Doubt: Reflections on Meaning, Scope and their Place under Ethiopian Law in Wondwossen Demissie (Ed.), Human Rights in Criminal Proceedings: Normative and Practical Aspects, Ethiopian Human Rights Law Series, Vol. III ,2010 ,See also Simeneh Kiros Assefa, The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process, Mizan Law Review, Vol. 6, No. 2, 2012

criminal judgment under the Ethiopian criminal justice system. The right to compensations for victims of wrongful convictions as a remedy is also a theme that has not been articulated yet.

1.3. Statements of the Problem

The deprivation of right to life and liberty can be justified for the purpose of enforcing criminal law through due process of law. In spite of the existence of most modern and sophisticated criminal justice system in the world which uphold for the proper implementations of the fair trial rights; states are not perfect and they cannot be free from defects in delivering justice.¹⁸ Hence, Ethiopia cannot be immune from such miscarriages of justice. The problem of wrongful convictions in Ethiopia may even get worse than expected. Low level of economic status and the standard of delivering of judicial service have an inverse relation. Hence taking into consideration the current economic status of Ethiopia the problem with wrongful convictions might be unfolding.

As legal practitioner the writer came to recognize that there are issues with regard to review of final criminal judgments under the Ethiopian criminal justice system. There are cases of wrongful convictions which have exhausted their appeal procedures but later found innocent upon discovery of new evidence that prove again beyond reasonable doubt that the crime was not either committed or the accused did not commit the said crime. This is where the justice system is failed to achieve its purpose. Even though the issue of review of final criminal judgment upon discovery of new evidence is governed in other jurisdictions; it is not governed under the Ethiopian law.¹⁹ The measurement of beyond reasonable doubt that the previous court has ruled is going to be over ruled again by other “Beyond reasonable Doubts” standards. So, it requires solutions to protect rights of the innocent individuals who are wrongly convicted. Even though the situation is protected under international human rights explicitly as independent right, the Ethiopian criminal justice system is failed to respond to the problem²⁰. FDRE constitution is also

¹⁸ Lynne Weathered , Wrongful Convictions in Australia, Cincinnati, Ohio Innocence Project, April 2011, p,1

¹⁹ ICC statute, ICTY, ICTR, African court of human and peoples right protocol art.46, See also Article 14(6) of the ICCPR provides that When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

²⁰ Ibid

silent on the right compensation for unlawful detention and wrongful convictions though ICCPR duly protect for the right to claim compensations for unlawful arrest, unlawful detention and in cases of wrongful convictions under its article 9(5) and 14(6) plainly.

There is no legal mechanism for claiming and remedying victims of wrongful convictions under current Ethiopian criminal justice system either for retrial or proceeding for good cause or claim for compensation as a result of the harm suffered as a result. The system does not provide for legal mechanisms to rescue the innocents who were wrongly imprisoned for serious and capital punishments.

So what remedies are available for the wrongfully convicted persons under the Ethiopian criminal justice in securing the right to liberty of the wrongfully convicted? What about the right to claim for compensation as remedy for the damage suffered as a result? In providing for long-lasting elucidation to the issue; the study will also examine recurrent causes that contribute for the occurrence of the problems to work on reducing from front to an end.

1.4. Objectives of the Study

The general objective of the research is to inspect the existence of wrongful convictions under the Ethiopian criminal justice systems and examining for remedies available to resolve the problem. The specific objectives to be dealt in this paper will be aimed:

- ❖ To assess factors contributing for the occurrence of wrongful convictions its prevalence and the impact of the problem in the process of administering criminal justice in Ethiopia.
- ❖ To appraise and assess for the availability of legal framework for review of criminal judgment upon the discovery of new evidences to exonerate innocent individuals wrongly convicted for crimes.
- ❖ To identify the existence of the right to compensation as a remedy for the victims of erroneous conviction for the damage they suffered by the acts of agent of the state in the Ethiopian criminal justice.
- ❖ Measures to be taken to reduce the risk of wrongful convictions are the objectives to be dealt in this thesis.

1.5 Research Questions

The existence of wrongful convictions in the criminal justice have the impacts on the system itself by shaking the public confidence since the system allows for the wrong doers to go free and potentially commit further crimes whereas the innocents are convicted and serve sentence imposed on them for the crime they did not commit. It also create emotional wound that cannot be healed on the families and relatives of the innocent persons convicted of the crime. Basing the assumption that the impacts of wrongful convictions greatly affect the credibility of the Ethiopian criminal justice system; the research questions that are going to be addressed in this thesis are:

1. Are there problems of wrongly convicting innocents in Ethiopia?
2. What are the impacts of wrongful convictions and the recurrent factors contributing for the occurrence of the problem?
3. What legal frameworks are developed to review the cases in cases where individuals are wrongfully convicted and serving sentence under the Ethiopian criminal justice?
4. What has been the practical experience of correcting wrongful conviction cases in Ethiopia?
5. Is there the right to claim compensation for the damage suffered by victims of wrongful convictions in Ethiopia?
6. What kind measures should be considered in preventing and minimizing the risk of wrongful convictions?

1.6 Methodology

This research is a doctrinal legal research based on both the primary and secondary sources. The primary sources utilized are interviews conducted with Judges, Prosecutors, Advocate and Case studies of court decisions. To show the scope of the problem under the Ethiopian criminal justice system court decisions were gathered from case decided at Federal courts and Regional courts particularly from Oromia, SNNPRs regional states courts. These cases were selected to be

discussed based on the information collected by the writer on the existence of the problem from different parts of Ethiopia.

Pertinent and related International, regional and domestic instruments were also used in constructing the argument in the Ethiopian context. Analysis of review of criminal judgments in Canada USA, UK, France and Germany has been made. These countries were selected on the basis of their well-developed legal mechanism on resolving issues on wrongful convictions and considering that our legal system is a hybrid of these systems which will be of great contribution in dealing with wrongful convictions in the Ethiopian context. Review of books, dissertations, journal, articles and internet links related to the concept were also other methods employed as secondary source.

1.7 Significance of the Study

The thesis focuses on the challenge of post convictions under the Ethiopian systems. Hence, the findings of this work contribute to understand the problem of wrongful convictions in Ethiopia. The paper will come up with the issue of review of criminal judgments after final decisions and the right to claim compensations from the state by victims of wrongful convictions. I hope the concepts on the possibility of review of criminal judgments after final decisions and the quest for remedies can be injected as a new course under the Ethiopian criminal justice system.

It will also be able to depict the causes for the wrongful convictions which helps Lawyers, Law students, Judges, Prosecutors, Police, Human Right Experts and others as a reference to understand how to deal with the problem. It also contributes in helping policy makers and legislature as inputs in drafting and approving related criminal issues. Moreover it can inspire and encourage others for further researches on similar themes.

1.8 Scope of the Study

The scope of the research is confined to wrongful convictions and its remedies under the Ethiopian criminal justice system. Discussions on the Ethiopian miscarriages of justice in relation with wrongful convictions will be part of the thesis. It will include the discussion of both substantive and procedural laws of Ethiopia with regard to the concept of wrongful convictions. Discussion on International and regional human rights system approach to wrongful

convictions scenario are also part of the study. The paper also encompasses the experiences of other legal system both from continental and common law countries.

The current new criminal policy of Ethiopia and other draft laws and other proclamations will also be considered. Moreover; the work will also come up with some practical case decisions in of the Ethiopian courts and how the problem has been resolved.

1.9. Limitations

In the process of preparing the work the writer has been challenged by the absence of domestic literatures related with wrongful convictions in the Ethiopian context. The absence of data bases showing previous cases in most of our courts both at federal and regional levels had been another limitation to disclose more cases of wrongful convictions in showing the magnitude of the problem. As the cases studied are taken from different courts and regions it was tough for me to personally access full story of the cases mainly due to lack sufficient fund to cover the costs. Hence such gaps were filled by interview with persons aware of the cases. There was lack of cooperation from stake holders in collecting more useful data and information. Despite these limitations the writer had portrayed that there are case of wrongful convictions in Ethiopia which had subjected innocent individuals to serve sentence.

1.10 Ethical Values

The writer takes an important ethical consideration in to account. Inter alia, case decisions and documents obtained are kept confidential. Interviewees are informed of the purpose of the study for genuine feedback and in securing informed consent from them. The writer also took care of the interviewees' response and their consent to disclose their identity. The writer also provides an accurate account of the information through examining the collected data to build a coherent justification for descriptions.

1.1 Organization of the Paper

The paper is organized in to six chapters. The first chapter is an introductory part and provides the general background of the study together with the problems, the research questions, the objectives and the significance of the study. It also explains the scope, limitations, methodologies employed in the study and ethical requirements that the writer obeyed during the study.

Chapter two concerns on general overview wrongful convictions concepts like Meaning, Evolution, Prevalence, Causes, Impacts. It also involves discussions on the legal framework for the right to review of criminal judgments and right to compensations at international ,regional and selected foreign experience of both civil and common law countries.

The third chapter deals with the safeguards in built under the Ethiopian criminal justice system in protecting innocent from the risk of wrongful convictions. The implication of the Ethiopian criminal justice model to risk of wrongful convictions is also analyzed together with related concepts.

Chapter four extensively discuss about wrongful conviction cases that had really happened in Ethiopia. These court decisions were analyzed as case studies to reveal causes of wrongful convictions and the practice how those cases had been handled by the system.

Chapter five focuses on the remedies available for the individuals who are wrongly convicted. Hence it provides for the assessment of the right to review of criminal judgment under the Ethiopian law on one hand and the right to compensation for the victims of wrongful convictions.

The final chapter forwards conclusion and recommendations that summarizes containing the findings in the study and the proposed recommendations to concerned government institutions and stakeholders.

CHAPTER TWO

OVERVIEW OF WRONGFUL CONVICTIONS

2.1 Understanding the Concept

2.1.1. Meaning

In literatures dealing with wrongful convictions there are differing perspectives on how to define wrongful convictions. Wrongful conviction happens when individuals are convicted of crime but later found to be innocent beyond reasonable doubt due to a confession by the actual offender.²¹ Ramsey and Frank had defined wrongful conviction as a process in which individuals are wrongfully convicted of a crime but are in fact innocent.²² Risinger has also stated that a wrongful conviction could be inter-changeable with factual innocence. Those who are factually innocent can be wrongfully convicted when no crime has been committed, or someone else committed the crime.²³ This term can have many different uses. It is also stated that two kinds of errors of justice occur as a result of wrongful conviction that errors of due process, which can be from violations of defendants' rights to the conviction of a factually innocent person, and errors of impunity, which can be from the failure to apprehend a perpetrator to the acquittal of a factually guilty defendant.²⁴

Generally it can be inferred that wrongful convictions are cases where innocent persons are wrongly convicted and serve sentence due to procedural irregularities in the process and later proved to be innocent. The convicted persons suffer from irreparable damages in the course of imprisonment and socio-economic consequences of loved ones and family members.²⁵

For the purpose of this thesis the term wrongful conviction is taken to refer cases where innocent persons are subjected to investigations, prosecutions and finally convicted to serve sentence for the crime that they did not commit and failed to prove their innocence by exhausting

²¹ C. Ronald Huff, A Rattner & E. Sagarin. *Guilty Until Proven Innocent: Wrongful Conviction and Public Policy*, Crime and Delinquency, 1986, 510-15

²² Ramsay RJ, Frank J. Wrongful conviction: Perception of criminal justice professionals regarding the frequency of wrongful conviction and the extent of system errors. *Crime & Delinquency* 2007, p, 436-70

²³ D. Risinger Innocents convicted: An empirically justified factual wrongful conviction rate. *Journal of Criminal Law & Criminology*, 2007 p,15,

²⁴ Brian Frost, 2003. *Errors of Justice: Nature, Sources and Remedies* Cambridge University Press.

²⁵ Daniel Ehigialua, Nigerian Issues in Wrongful Convictions, 80 U. Cincinnati Law Review (2012) Available at: <http://scholarship.law.uc.edu/uclr/vol80/iss4/4> (Accessed on January 23,2015)

all available remedies in the justice system. It is one form of miscarriage of justice.²⁶ Therefore wrongful conviction is the conviction of innocents who had no involvement in the crime charged for.²⁷ Exoneration is also another term related with wrongful conviction. It is an official declaration of innocence of wrongly convicted persons by government after they are proved to be innocent.²⁸

The term miscarriage of justice and wrongful conviction are often used interchangeably.²⁹ However there is a distinction between the two concepts. Of course, miscarriage of justice can occur even when the convicted person is factually guilty of the crime charged. Wrongful conviction of the factually innocent is also when a person has been convicted of a crime that they did not commit, or, in some cases, did not even happen.³⁰

The term miscarriage of justice is an outcome of unjustified conviction which was rendered either in breach of the relevant criminal code or where the totality of the available evidence leaves a serious doubt as to the adequacy of proof of guilt.³¹ It is not only limited to cases of proven or factual innocence but also includes cases where there have been unfair trials or the reliability of the conviction is in serious doubt.³² The term may be a synonym for a wrongly convicted innocent to describe improperly obtained a conviction or unjustified avoidance of conviction.³³ For the sake of this paper, it is possible to assert that all wrongful convictions can be a miscarriage of justice while all miscarriages of justice might not be categorized under the umbrella of wrongful convictions.

²⁶ Chermaine Cribbs An Insight into the Wrongly Convicted: Going beyond the Perceptions and Beliefs of the Causes (2012), p,8

²⁷ Marvin Zalman, Qualitatively Estimating the Incidence of Wrongful Convictions Criminal Law Bulletin (2012) p,7

²⁸ Ibid

²⁹ Sandra Lean, The impact of popular beliefs and perceptions, held as factual knowledge about the Criminal Justice System, on incidences of wrongful accusation and conviction. Thesis submitted in fulfillment of the requirements of the University of Sterling for the degree of Doctor of Philosophy, February 2012 p,10

³⁰ Ibid

³¹ Thomas Thorp, Miscarriage of justice, Legal Research Foundation December 2005,p ,3 see also Miscarriages of Justice in Principle and Practice , Clive Walker, p,2

³² Isabella M. Blandisi, Societal Perceptions of Wrongful Convictions. A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Arts in The Faculty of Social Science and Humanities Criminology University of Ontario Institute of Technology, 2012,p,2

³³ Hannah Quirk, Identifying Miscarriages of Justice :Why Innocence in the UK is Not the Answer, p 761

2.1.2. Evolution of the Concept

From their earliest days, criminal justice systems have been plagued with the problem of erroneous convictions irreversibly erroneous in cases in which the sentence is death, and the sentence is carried out.³⁴ The first documented wrongful conviction case in the United States came to light in 1820, when the purported victim of a murder for which two men had been sentenced to death in Vermont turned up alive and well in New Jersey.³⁵ Since 1762, opponents of the death penalty have admitted possibility of executing the innocent as a compelling reason to abolish the death penalty when it was established that Jean Calas was innocent of the murder for which he was put to death in Toulouse, France.³⁶

The earliest attempt to identify cases in which innocent persons were executed was conducted in 1912 by the American Prison Congress which had concluded about the absence of wrongful convictions based on the inquiry sent to the warden of each prison in the United States and Canada.³⁷ Such response had initiated Edward Borchard to prepare the first systematic research on miscarriages of justice in 1932 which had had identified a total of 65 American and British cases in which innocent defendants had been convicted of felonies.³⁸ This work had refuted both the conclusions provided by the American Prison Congress and quote of judge Learned Hand which deny the existence of wrongful convictions in America.³⁹

There were also works done by different scholars who had showed the frequency and magnitude of the problem of wrongful convictions.⁴⁰ An argument dictating for the physical impossibility of convicting innocent was repeatedly proved with the help of DNA and non-DNA evidence, that

³⁴ James Acker R., Catherine L. Bonventre , Protecting The Innocents in New York : Moving Beyond Changing Only Their Names p,1252

³⁵ Ibid

³⁶ Id at 12, See also Seri Irazola, Ph.D., Erin Williamson, Julie Stricker, Emily Niedzwiecki, Study of Victim Experiences of Wrongful Conviction, published by the U.S. Department of Justice, 2013,p 8

³⁷ Robert H. Gault, "Find No Unjust Hangings" (1912–13) Journal of American Institute of Criminal Law and Criminology ,p 131

³⁸ , E. Borchard Convicting the innocent: Sixty five actual errors of criminal justice. Garden City, New York : Garden City Publishing Company, Inc. 1932.

³⁹ E. Borchard, "State Indemnity for Errors of Criminal Justice" (1941), Faculty Scholarship Series,Paper 3579. http://digitalcommons.law.yale.edu/fss_papers/3579 (Accessed on March 21,2015)

⁴⁰ , Edward D. Radin The Innocents (New York: William Morrow & Company, 1964 which Focuses on 80 new Cases of wrongful conviction, See also Brandon ,Ruth & Christie Davies ,Wrongful Imprisonment: Mistaken Convictions and Their Consequences ,London: George Allen & Unwin, 1973, P

many were wrongly convicted and incarcerated or even executed.⁴¹ The first systematic, social-scientific study of the causes, patterns, and consequences of miscarriages of justice was done by Bedau and Radelet in which had analyzed the causes and the number of innocents who had been executed.⁴² A number of very public exonerations in several jurisdictions have rebutted Judge Learned Hand's oft-cited claim that "the ghost of the innocent man convicted haunting criminal procedure was an unreal dream."⁴³

The eventual quashing of UK's terrorist convictions and the emergence of a number of further questionable convictions, led both the media and prominent academics to diagnose the criminal justice system as being in a state of crisis.⁴⁴ Subsequently it was found that crucial evidence in the case had been planted by police.⁴⁵ The same was true in Canada after a number of convictions were found to be wrongful convictions by sequences of inquiry.⁴⁶

Barry Scheck and Peter Neufeld, cofounders of the Innocence Project at New York City's Cardozo Law School have continued to work on cases in which DNA testing has established factual innocence and led to the release of wrongfully convicted prisoners.⁴⁷ DNA testing has been particularly important in post-conviction cases in which a defendant had long claimed that his conviction was erroneous and when biological evidence remained which could be used to conclusively test his claim.⁴⁸ An increasing number of the wrongly convicted also have established their innocence through non-DNA means of exoneration in the last twenty years.⁴⁹ Hence DNA testing has become increasingly sophisticated to declare many innocent persons to

⁴¹ Scheck, *Supra* Note 47 at 1252

⁴² Hugo Bedau, Adam and Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, *Stanford Law Review*, Vol. 40, No. 1 (Nov., 1987), p. 21-30 In 1957, Jerome Frank, a judge of the U.S. Circuit Court of Appeals, published a book entitled *Not Guilty* which traced 36 cases of wrongful convictions and points to several systemic causes.

⁴³ Martin Yant, *Presumed Guilty: When Innocent people are wrongly convicted*, Buffalo Prometheus Books, New York, 1991

⁴⁴ C, Walker, *Miscarriage of Justice in Principle and in Practice ; A Review of Justice in Error*, Black stone Press, London 1999, P,25-29

⁴⁵ *Ibid*, Those convicted entered the public consciousness collectively as members of the Guildford Four, Birmingham Six and Maguire Seven following a flurry of media coverage

⁴⁶ *Ibid*

⁴⁷ Barry Scheck, Neufeld, P. & Dwyer, J. *Actual innocence: Five days to execution and other dispatches from the wrongly convicted*. New York, NY: Doubleday. 2000

⁴⁸ Lofton Bagert, Celeste, "Legal Exoneration: A Case Study through the Life History of John Thompson" (2010), University of New Orleans Theses and Dissertations. Paper1138. P,8, In 1989 Gary Dotson, who spent ten years in an Illinois prison for rape, was the first person in the United States to be exonerated using DNA evidence

⁴⁹ Cohen, S, *The wrong men: America's epidemic of wrongful Death Row convictions*. New York, NY: Carroll & Graf Publishers, (2003) p, 441-45

be released from prison.⁵⁰ It had opened a new window of opportunity for applying real study and knowledge to the truth finding mechanisms in the criminal justice system.⁵¹ The exoneration of hundreds of erroneously convicted but factually innocent individuals has challenged the fundamental assumptions about the criminal justice systems of different states which urged states to deal with issues of wrongful convictions with broader perspectives by establishing inquiries, innocence projects and innocence commissions.⁵²

2.1.3. Nature and Prevalence

The very occurrence of false convictions is a reflection of our ignorance. It is to mean that if the criminal justice system is aware that defendants are innocent, it will not convict them in the first place. The essence of the problem is that we are trying to count events we can't observe. False convictions are not merely unobserved like unreported crimes but in most cases they are unobservable. The problem is not simply that we don't know whether a particular prisoner is innocent. As an instance, we may not know whether somebody is HIV positive, but we can test him for proof. The same is true for wrongful convictions.⁵³

Recognition of the problem of wrongful convictions comes largely from studies of cases terminating in exonerations.⁵⁴ These exoneration studies have produced a rich dataset from which several factors that contribute to wrongful convictions have been identified. The vast majority of the exonerations studied to date occurred in rape cases following DNA testing and murder cases often involving the death penalty. Such cases, comprising a tiny sliver of the criminal justice system workload, are relatively unrepresentative of the vast majority of felony convictions.⁵⁵ However the problem has come to exist frequently.

⁵⁰ The Innocence Project, at <http://www.innocenceproject.org/> (last visited on December 13, 2014), numerous wrongful conviction cases in the death penalty were also resolved with the help of DNA evidence. Since 1973, one hundred people have been exonerated and released from death row. After 2000, 157 wrongly convicted prisoners have been exonerated and released as a result of DNA testing and there is every indication that this figure will continue to grow

⁵¹ Frank, *Supra* Note 22 at 432

⁵² Samuel R. Gross & Shaffer, M., and Exonerations in the United States (1989-2012), National Registry of Exonerations. Retrieved from <http://www.law.umich.edu/special/> (Last accessed on January 5, 2015)

⁵³ C. Ronald Huff and Martin Killias *Wrongful Convictions and Miscarriages of Justice: Causes and Remedies in North American and European Criminal Justice Systems*, Routledge, 2013, p.2

⁵⁴ *Ibid*

⁵⁵ Georgia State University College of Law, Legal Studies Research Paper No. 2013-26: Police Misconduct as A Cause of Wrongful Convictions, Russell Covey, *Washington University Law Review*, 2013, p. 1134

There are two significant facts to determine the nature and extent of the problem. First, there are no systematic data kept on wrongful convictions in most countries which makes tough to accurately estimate the magnitude or frequency of this problem across jurisdictions.⁵⁶ The other is literature on wrongful convictions demonstrates that if it were possible to reinvestigate all cases in a manner similar to what has been done in many capital cases, the number of exonerations would be much higher than what has been seen in recent years.⁵⁷ Studies on wrongful convictions reveal that wrongful convictions are much more common than exonerations, and the vast majority of wrongful convictions are never caught.⁵⁸

The high profile cases of wrongful conviction cases that have been discovered are homicides and sexual assault.⁵⁹ True estimates of the number of wrongful convictions likely will never be known since most criminal convictions involve individuals who have been convicted for less serious crimes that receive less attention and review and many individuals convicted for a crime do not possess the resources to research and expose a potential wrongful conviction.⁶⁰

A research conducted in USA focusing on capital murder and rape cases has revealed that the overall empirical minimum rate of error for factually wrong convictions was 3.3 percent and the maximum was 5 percent nationwide.⁶¹ It is not only the existence of DNA evidence that result in exonerations rather non-DNA evidence perjury and false confessions have been shown to prove the innocence of persons wrongly convicted.⁶² Though actual incidence of wrongful conviction is difficult to calculate, researches provide that the factual rate of wrongful conviction is believed to be as high as 5 percent in rape and murder cases.⁶³

⁵⁶ C. R. Huff, Wrongful conviction: The American experience, *Canadian Journal of Criminology and Criminal Justice*, 46(2), 2004.P, 107

⁵⁷ Supra Note 32 at 523

⁵⁸ Ibid, see also Perry Kanawha, M.A. Policing in the Era of Increased Awareness of Wrongful Convictions: Police Officers' Reflections on Institutional Change, Public Pressures and the Nature of Modern Policing. (2007) p,5

⁵⁹ Blandisi, Supra Note 37 at 110

⁶⁰ Ibid

⁶¹ Frost, Supra Note 24 at 13

⁶² Lean, Supra Note 29 , p 11

⁶³ Frost, Supra Note 24 at 17

2.1.3. Causes of Wrongful Convictions

For every wrongful conviction there are respective causes that warrant the court to pronounce judgments. There may be one or more causes that contribute to produce the result.⁶⁴ Wrongful conviction of individuals can be discovered under various situations. In most of the time these cases were established after the true offender admits to the crime, when the deceased are turns up alive, lying witness confesses to the crime and renounces his testimony, DNA or other exculpatory evidence becomes acknowledged.⁶⁵ Once wrongful conviction is identified, the case can be examined from arrest to conviction in order to determine what went wrong in the process.⁶⁶

Some previous researchers investigated information garnered from court records, legal documents, or news-reports that chronicle all types of crimes where wrongful convictions occurred.⁶⁷ Other researchers investigated only capital cases⁶⁸ or explored only recent DNA exonerations. Still other research was based on survey research, or reviews of existing literatures.⁶⁹ Research efforts have produced a list of factors determined to be associated with the phenomenon of wrongful conviction. The major contributing factors are: mistaken eyewitness testimony, false accusations, police misconduct and error, prosecutorial misconduct and error, inadequacy of counsel, faulty expert testimony, false confessions, and community pressure for a conviction.⁷⁰ Other important, but less empirically researched factors are: presumption of guilt, existence of a prior criminal record, judicial error, mental incompetency of the accused, racism, and simple mistake.⁷¹

Research data reveal that, in most cases of wrongful conviction, more than one factor is likely to have influenced the case.⁷² When we know that the outcome was wrong, we are able to retrace the steps that led to it.⁷³ Therefore wrongful conviction provides the opportunity to critically

⁶⁴ Gross, *Supra* Note 52 at 14

⁶⁵ *Ibid*

⁶⁶ Gault, *Supra* Note 59 at 20

⁶⁷ Bedau, *Supra* Note 42 at 179

⁶⁸ *Ibid*

⁶⁹ D. Connery, *Convicting the innocent: The story of a murder, a false confession and the struggle to free a wronged man*. Northampton, MA: Brookline Books, Inc. 1996

⁷⁰ B. Gould, J & Leo, R.A. One hundred years later: Wrongful convictions after a century of research. *Journal of Criminal Law and Criminology*, 100(3),(2010), p, 825-832

⁷¹ *Ibid*

⁷² Huff, *Supra* Note 21 at 512

⁷³ C.R. Huff, A, Rattner & E.Sagarin, *Convicted but Innocent: Wrongful Conviction and Public Policy*. London: Sage Publications, 1996, P, 461

examine criminal justice processes and practices. In the next section these causes will be briefly discussed.

Eyewitness identification is a critical tool for investigating and prosecuting criminals.⁷⁴ Eye witnesses' error refers to the mistaken identification of an innocent criminal suspect by a victim or eyewitness to a crime. Such error might happen due to the reason that stress shapes people's perception of an event due the fact that human memory is inherently flawed especially when recollections are evoked from a crime-scene setting where an extraordinary experience may impede a witness's powers of perception.⁷⁵

Show ups and lineups are the basic identification procedures used by the police.⁷⁶ Lineups are preferred as they are perceived to be fair to the accused. The manner, in which the lineup is conducted, however, can greatly affect the procedure's fairness and reliability.⁷⁷ The police lead in a group of individuals presumably of the same general physical type so that the witness can view them all. Police then ask the witness if she is able to identify anyone in the lineup.⁷⁸ Conduct of the police can influence the identification process, which leads eyewitnesses to distort their reports of the witnessing experience across a broad array of questions.⁷⁹ USA has developed guidelines for police identification procedures which provide that identification procedures must be administered double blind to avoid bias both by witnesses and the person administering the lineup and so that correct offender could be identified. Numerous researchers who have seriously studied wrongful conviction had identified eyewitness error as the leading and most prevalent factor associated with the phenomenon.⁸⁰ Such error is particularly harmful to an innocent suspect since their testimony will make to admit that they are criminal. It has played a role in dozens of miscarriages of justice all over the world.⁸¹

⁷⁴ Nilon, Supra Note 78, Ibid

⁷⁵ G.F Wells and E. Seelau, Eyewitness identification: Psychological research and legal policy on lineups, Psychology, Public Policy and Law, 1995,P, 765-91

⁷⁶ Shop up procedure is when police permit a witness to view a single suspect for possible identification whereas line up is when police allow the witness to view several possible suspects.

⁷⁷ Ibid

⁷⁸ David, A. Sonenshein Robin Nilon, Eyewitness Errors and Wrongful Convictions: Let's Give Science a Chance, 2010, p 272

⁷⁹ Jon B. Gould, Julia Carrano, Richard Leo, Joseph Young, Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice, U.S. Department of Justice, 2013, p,9

⁸⁰ The Innocence Project, Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of Misidentification, Benjamin Cardozo School of Law, July, 2009

⁸¹ Christopher Sherrin, Comment on the Report on the Prevention of Miscarriages of Justice, Criminal Law Quarterly volume 52, P,2005, 142

Another common cause of wrongful convictions is Perjury and snitches.⁸² A number of erroneous convictions have turned on the testimony of police informants who themselves lied for personal gain. In many jurisdictions, the prior criminal records of such witnesses and any statements, including inconsistent statements that they made to the police will be disclosed to the accused in order to assist in cross examination. In common law legal system snitches have been a common phenomenon, and it has long been recognized that their mixed motives undermine the credibility of their testimony.⁸³ Even though the use of criminal informants is a useful asset to our criminal justice system its application goes without oversight and quality control and leads to innocent people being wrongly convicted an increase in official corruption, and a lack of respect for the law.⁸⁴ As jailhouse snitches frequently receive cash or lenience in sentencing for their own crimes, such offering will highly encourage them to fabricate testimony. Statements made by people with incentives to testify become the central evidentiary elements of a wrongful conviction.

It is frequently the case in these wrongful convictions that the incentives that prosecutors use to obtain informant testimony, which may include cash payments, a release from prison, or leniency in sentencing, are not disclosed to the jury. In more than 15% of wrongful convictions overturned by DNA evidence, an informant or jailhouse snitch testified against the defendant.⁸⁵ Faulty science and expert testimony were also recognized as basic causes of wrongful convictions.⁸⁶ They refer to erroneous and unworthy scientific and expert evidence that is unintentionally offered against an innocent suspect to a crime. The scientific and other laboratory test of blood or fingerprint produced as evidence brought to court will render in conviction or acquittal to a wrongly accused suspect and it need serious care in conducting both scientific tests including expert testimony. These are also included as contributing factors by most other researchers studying wrongful conviction.⁸⁷

⁸² Rob Warden, Control on Wrongful Convictions, *The Snitch System: How Snitch Testimony Sent Randy Stendil and Other Innocent Americans To Death* (2004) p, 2

⁸³ *Id.*, at 3

⁸⁴ Law Enforcement Confidential Informant Practices: Hearing before the Subcommittee on Crime, Terrorism, and Homeland Security, and the Sub comm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary, 110th Congress , Loyola Law School, Los Angeles,2010

⁸⁵ Informants, The Innocence e projects at <http://www.innocenceproject.org/understand/Snitches-Informants.php>. (Last Visited on December 21, 2014)

⁸⁶ *Ibid*

⁸⁷ Bedau, *Supra* Note 42 at 25

Police officers are often the first members of the criminal justice system to intrude in a criminal case. The police respond to a crime scene after being notified by a citizen that a crime has taken place or by their own observation and involve in criminal cases just at the beginning. The activities of the police at this juncture will have dramatic implications to an innocent individual who becomes a suspect.⁸⁸ Police error refers to situations where the police make honest mistakes that may lead to the wrongful arrest of an innocent suspect. Such errors may include mistakenly arresting the wrong person, misreading a search-warrant, or making an unintentional misapplication of the law. Once police error or misconduct contributes to a wrongful arrest, there is an increased likelihood that other criminal justice officials will add momentum to the mistake. Research confirms that police misconduct and errors are major contributors to the wrongful conviction of the innocent.⁸⁹

Police misconduct involves intentional actions by police officers and detectives that are designed to increase the odds that a suspect will be arrested and convicted.⁹⁰ Such misconduct may include not giving a Miranda warning, fabricating or planting evidence, suppressing exculpatory evidence, coaching witnesses at lineups and photo spreads, or coercing a confession. All of these types of activities increase the probability that innocent individuals will be arrested and convicted of crimes they did not commit.⁹¹

Prosecutorial misconduct and errors are another major problem associated with wrongful conviction. Prosecutorial error refers to those actions in which a prosecutor makes an honest mistake that may lead to the wrongful prosecution and conviction of an innocent suspect.⁹² These can be innocent use false or erroneous witness testimony, false or erroneous forensic evidence, or false confessions whereas, Prosecutorial misconducts might include activities in which they intentionally withhold exculpatory evidence, fabricate evidence, coerce witnesses, knowingly use false testimony or apply undue plea-bargaining pressure that may force suspects to plead guilty to crime they did not commit.

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Ofshe and Leo, Richard A Richard J., Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation, 88 J. Crim. L. & Criminology 429 (Winter 1998) p, 35-38

⁹¹ Warden, Supra Note 82 at 57

⁹² Ibid

The most commonly established misbehavior of the prosecution is their failure to turn over exculpatory evidence.⁹³ Due to their position within the criminal justice process, a prosecutor's errors or misconduct can result in devastating consequences to an innocent suspect.⁹⁴ When prosecutors do not critically examine the evidence against the accused to ensure its trustworthiness, or fail to comply with discovery and other obligations to the accused, they will fail to achieve justice.⁹⁵ The willful abuse of power by prosecutors occurs when they view a trial as a kind of game and forget the purpose of criminal proceeding to ensure fair and just administration of justice.⁹⁶

Even if prosecutors fail in their duties, a suspect's attorney is expected to eagerly investigate and defend the case.⁹⁷ It is the defense counsel's responsibility to protect the innocent from the mistakes of all parties involved in the case including prosecution's reluctance to reveal potentially exculpatory evidences. Inadequacy of counsel refers to instances where innocent individuals are wrongfully convicted of a crime they did not commit due to incompetence, laziness or lack of well preparation on the part of defense lawyers. Many of the cases studied showed that original defense counsel did not adequately represent the interests of the suspect due to inexperience, inadequate investigative resources and related factors.⁹⁸

It is also suggested that some defense attorneys without fully investigating their client's claims of innocence too often use plea bargaining as a standard operating procedure to reduce their workload. Hence Inadequacy of counsel is listed as an important factor in wrongful conviction.⁹⁹ False confession and accusations are also another cause which is an intentional lies made against an innocent suspect who is wrongfully charged with a crime.¹⁰⁰ They can originate from an individual who actually committed the crime in order to cover their own involvement in the incident and from unforgiving spouses, business partners or anyone who thinks they can get

⁹³ Buckley v. Fitzsimmons 1993

⁹⁴ Id at 66

⁹⁵ A. Peter Joy, The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies For A Broken System, Washington University School of Law in St. Louis, (2012) , p,406

⁹⁶ Barry Scheck, Neufeld, P, & Dwyer, J. Actual innocence: Five days to execution and other dispatches from the wrongly convicted. New York: Random House Publishing, 2000, p, 235

⁹⁷ Warden, Supra Note 82 at 20

⁹⁸ R.C Huff. & A. Ratner, Convicted but Innocent: False Positives and the Criminal Justice Process, in Joseph E. Scott, eds. Controversial Issues in Crime and Justice. Newbury Park, CA: Sage, 1988 p, 235

⁹⁹ Yant, Supra Note 43, Ibid

¹⁰⁰ Ibid

profit.¹⁰¹ False accusations have even occurred when no crime ever took place. Sometimes they will result from the mental illness of an accuser.¹⁰²

A false confession is an untruthful statement made by an innocent individual who admits to committing a crime.¹⁰³ Even though it is difficult to understand why someone would confess to a crime that the individual did not commit several studies of erroneous prosecutions conducted have shown that anywhere from 14 percent to 25 percent of the cases reviewed involved false confessions.¹⁰⁴ The causes for false confession are mainly police induced confessions which results from the product of multiple steps process of influence, persuasion, and compliance.¹⁰⁵ They usually involve psychological coercion.¹⁰⁶ Under certain conditions of interrogation, police are more likely to elicit false confessions and certain types of individuals are more vulnerable to interrogation pressure and more easily manipulated into giving false confessions.¹⁰⁷

Obtaining a confession becomes especially important when there is little or no other evidence against the suspect especially in high profile cases in which police detectives are under great pressure to solve the crime and typically no credible evidence exists against an innocent suspect who police erroneously believe is guilty.¹⁰⁸ As plea-bargaining is mostly used to secure conviction of the accused individuals; prosecutors offer them that they will be acquitted or subjected to lenient penalty. However once they have got their admission which is based on wish to be freed (to avoid severe punishment) can also referred as one cause of wrongful convictions.¹⁰⁹

2.1.4. The Impacts of Wrongful Convictions

Among the main reasons that force to study wrongful conviction is the impacts that it impose on individuals wrongly convicted. Criminal convictions result in deprivation of liberty from simple to rigorous imprisonment, capital punishment or fine depending on the nature and seriousness of

¹⁰¹ J. McCloskey Convicting the Innocent, Criminal Justice Ethics, 1989 p, 54-59

¹⁰² Huff, Supra Note 73 at 472

¹⁰³ Kimberly Coffman, Anne Jenkins, Confession, Coercion, Procedural Error and the Juror, UNF Theses and Dissertations, Paper 202. 2001, P 55

¹⁰⁴ Leo, Supra Note at 90 at 429-46

¹⁰⁵ Huff and Rattner, Supra Note 21 at 520

¹⁰⁶ Leo, Supra Note 90 at 450

¹⁰⁷ Joy, Supra Note 95 at 12,

¹⁰⁸ , S.R, Gross, The Risks of death: Why Erroneous Convictions are Common in Capital Cases, Buffalo Law Review, (1996), P, 469

¹⁰⁹ Ibid

the crime committed as it is provided in the domestic and international criminal laws.¹¹⁰ Therefore the right to life, liberty, and property are highly interrelated in the sphere of private autonomy which government is bound to respect.¹¹¹ Convicting individuals for crime they did not commit can have detrimental effect in many directions both on the public, the government, and the wrongfully convicted individual. Hence the effect of wrongful incarcerations of innocents will result in immeasurable breach of their civil, political and socio economic rights as well. In the next section some of the impact of wrongly convicting innocents will be discussed with regard to individual rights public confidence in the criminal justice system and public safety.

2.1.4.1. Individual Rights and Freedoms

When an innocent person is wrongly convicted the convicted individual unjustly suffers and is subjected to the horrors of prison life, is denied freedom for several years and possibly faces execution. The family of the wrongfully convicted individual also unjustly suffers wife without husband, children without father, mother and father without son, brothers and sisters to mention few.¹¹² In addition to the financial, psychological, and physical consequences connected with wrongful conviction, the social stigma of being imprisoned even wrongfully makes it difficult for wrongfully convicted individuals to regain their reputations.¹¹³ Many wrongful conviction victims face the same serious social effects as those who are rightfully imprisoned.¹¹⁴ Victims experience a sense of physical and psychological loss due to their loss of freedom, dignity, and most important, their credibility.¹¹⁵

It was also conclude that the psychological distress of the innocent inmate is greater than those who are really convicted for their criminal acts since the wrongly convicted not only deal with the normal mental and physical suffering of prison life, but also with the thought of how such an injustice could have happened to them.¹¹⁶

¹¹⁰ Huff, Supra Note 56 at 107-119

¹¹¹ John Martinez, Wrongful Convictions As Rightful Takings: Protecting Liberty Property UC Hastings College of the Law, (2007) P, 18

¹¹² Scheck, Supra Note 96 at 244

¹¹³ D.S Kahn presumed guilty until proven innocent: The burden of proof in wrongful conviction claims under state compensation statutes. University of Michigan Journal of Law Reform, 44(1), 2010, p,123-132

¹¹⁴ Id, at 134

¹¹⁵ Ibid

¹¹⁶ Kanawha, Supra Note 58 at 114

One of the most prevalent psychological disorders that occur in those that are wrongfully convicted is post-traumatic stress disorder. They develop feelings of fear and hopelessness, restricted affect, and detachment from loved ones and outbursts of anger. In addition, the individual can develop panic disorders, paranoid symptoms and alcohol and drug dependence and suicidal thoughts and personality disorders.¹¹⁷

Furthermore, individuals that are wrongfully imprisoned experience extreme anxiety which includes mistrust of police and the criminal justice system in addition to fear of other inmates.¹¹⁸

They also face anxiety upon returning to society. The innocent prisoner has to deal with the uncertainty of their future and resentment toward the system for taking away their life unjustifiably. When the wrongfully convicted are finally released, it is difficult to readjust to a society that continued without them. They will proceed with participating in violent crimes, which invokes fear and mistrust from the community.¹¹⁹

2.1.4.2. Public Safety

Wrongful conviction punish innocent person in place of the person who actually committed the offense. Apart from the social cost of wrongful conviction on the individual erroneously convicted the individual guilty of committing the crime escapes justice and may continue committing other crimes.¹²⁰ It also undermines every purpose that criminal punishment is designed to serve. In actuality, the initial criminal behavior is positively reinforced if punishment or negative consequences are not applied. A system cannot deter or incapacitate the real criminal not to mention any attempt to rehabilitate him if he is free while someone else is locked up for his crimes.¹²¹

The costs of these erroneous convictions extend beyond the enormous price to defendants. Victims and their families also pay a significant price. Moreover, victims are confronted with the terrible realization that if the person who was convicted is not guilty.¹²² Generally for every

¹¹⁷A, Grounds, Psychological consequences of wrongful conviction and imprisonment, Canadian Journal of Criminology and Criminal Justice, 46(2), (2004), 165-182

¹¹⁸ Ibid

¹¹⁹ Shawn Armbrust, When Money Isn't Enough: The case for holistic compensation of the wrongfully convicted. The American Criminal Law Review, 41(1), (2004), P 77-85

¹²⁰ S.R Gross & O'Brien, B. Frequency and predictors of false conviction: Why we know so little, and new data on capital cases. Journal of Empirical Legal Studies, 5(4) , 2008, p, 927-31

¹²¹ Ibid

¹²² Daniel Givelbert, Meaningless Acquittals And Meaningful Convictions: Do We Reliably Acquit the Innocent? Rutgers Law Review, 1997, p, 1394

wrongful conviction there is a corresponding guilty individual who has not been brought to justice and who may be continuing to commit crimes in the community.¹²³

2.1.4.3. Public Confidence on the Criminal Justice System

Currently the annual exoneration of many convicted persons who were on death row phenomenon serving long years in prison and exoneration of those who have been executed have attracted the attention of the general public. The continuous and frequent convictions of innocent persons have raised the question on the efficiency of the criminal justice system internationally. It was indicated by research that such flaws in the system can shake the faith of criminal justice professionals and the citizenry alike in the ability of the criminal justice system to identify criminals and achieve justice. Wrongful convictions, therefore, can damage the symbolic status of the criminal justice process. The statement made by judge Learned Hand in 1923 was refuted as many innocent individuals have personally lived that unreal dream.¹²⁴ In the case of the innocent convicted, the experience is not a dream but a very real nightmare.

The symbolic importance of the criminal justice process to a free society cannot be understated. When an individual is wrongly convicted, and then later that conviction is overturned, a poor image reflects upon and tarnishes the image of the criminal justice process. This damage ultimately places a burden on the integrity, prestige, reputation, credibility, and effectiveness of the entire criminal justice process.

Searching for the truth to identify criminal has flawed in the criminal justice and this directed to lose confidence in the criminal justice process among the public.¹²⁵ When public confidence regarding the fairness and competency of the system is lost the ramifications can be serious. In criminal cases, once a system appears to be incapable of separating the innocent from the guilty, citizens may lose faith in their police officers, prosecutors, and judge's ability to do justice unlike tolerance in civil cases.¹²⁶ It also decreases the need to obey the law by the wrongly convicted and the communities who believe the convicted individuals were, in fact innocent.

¹²³ Bedau, *Supra* Note 42 at 35

¹²⁴ Kanawha, *Supra* note 58 at 36

¹²⁵ E, Connors. Lund Regan, T, Miller & McEwen, T. *Convicted by Juries, Exonerated by Science: Case studies in the use of DNA Evidence to Establish Innocence after Trial*, 1996, p, 5-7

¹²⁶ *Ibid*

There is also a broader effect of shaking public confidence in the criminal justice system by undermining, the legitimacy of the entire criminal justice process.¹²⁷

2.2 International Legal Framework on Review of Wrongful Convictions

A concept demanding review of final criminal judgments is confronted with an argument which advocates for the finality of judgments not to erode the decisions of lower courts and their power of enforcing laws.¹²⁸ Barry Friedman argues that broader post-trial rights are necessary in the interest of fairness. Mainly it also allows the judiciary to correct its own legal mistakes, helping to ensure that the state deprives defendants of their liberty only in accordance with the law.¹²⁹ When new evidence of innocence surfaces, post-trial review can help set an innocent person free.¹³⁰ Despite these contentions it was concluded that it is not compatible with the international human right treaties which guarantee the right to individuals not to be deprived of their liberty arbitrarily and the rights to life and liberty of innocent persons wrongly convicted of crime must take precedence over the justifications for the necessity of principle of finality.¹³¹

As wrongful conviction of innocent persons is apparently recognized in an increasing number around the world, it has come to be accepted as an international human rights issue.¹³² More attention is being given to whether criminal justice systems are providing sufficient measures for the effective review and rectification of wrongful convictions and whether international obligations in that regard are being met.¹³³ There can be no issue of more pressing concern to international law than to protect the life and liberty of innocent human beings not to be violated by state machinery.

The right to life is the most fundamental of all human rights because it is the essential right from which all other rights are derived from.¹³⁴ If an individual is deprived of her right to life, all other human rights will be meaningless. Article 6(1) of the ICCPR, describe that every human being

¹²⁷ Frost, *Supra* Note 24 at 765

¹²⁸ Susan Bandes, *Simple Murder: A Comment on the Legality of Executing the Innocent*, *Buffalo Law Review*, 1996, p, 501- 507

¹²⁹ *Ibid*

¹³⁰ David Wolitz,, *Innocence Commissions and the Future of Post-Conviction Review*, *Arizona Law Review*, Vo.52 2010, p 17

¹³¹ David Hamer, *Wrongful Convictions, Appeals and The Finality Principle: The need For A Criminal Cases Review Commission*, *UNSW Law Journal* Volume 37(1), 2014, p, 35

¹³² Lynne Weathered, *Investigating Innocence: The Emerging Role of Innocence Projects in the Correction of Wrongful Conviction in Australia*, 2009, p, 18

¹³³ *Ibid*

¹³⁴ Article 6(1) of ICCPR

has the inherent right to life. These instruments prohibit deprivation of life except under conditions prescribed by law as far these laws are not arbitrary.¹³⁵ The Human Right Committee has also further elaborated the right to life to include the right of individuals to be protected by the state against arbitrary deprivations of life by other persons within society including those acting on official status.¹³⁶

Similarly, the right to liberty is also protected under these human rights instruments.¹³⁷ It entails the right to liberty of the person and the right to personal security of individuals as well. Furthermore it was protected under different treaties.¹³⁸ However; the guarantee of such right is not without limitations as most of the rights are subject to limitations. Deprivation of liberty is a legitimate form of state control over persons within its jurisdiction. Any deprivation of liberty is only allowed if it is carried out in accordance with a procedure established by domestic law and if the following minimum guarantees are respected.¹³⁹ These are fair trial, presumption of innocence, and independence and impartiality of the tribunal.¹⁴⁰ Quality in terms of administration of justice; protection of the rights of the parties involved; efficiency and effectiveness are the core measurement for the enforcements of these rights in practice. The right to fair trial is guaranteed in different global and regional treaties.¹⁴¹

All mechanisms which are associated with fair trial rights are mainly designed to protect the rights of innocent persons in the dispensation of criminal justice. Despite the existence of these fair trial rights which are aimed to protect the rights of accused on the one hand and that of innocents on the other, it is now widely recognized that innocents were erroneously convicted for the crime they did not commit.

¹³⁵ Article 4(2),6(1) of ICCPR Article 3 of UDHR, Article 6 of CRC, Articles 9 MWC and Article 28 of CEDAW

¹³⁶ CEDAW, General Recommendation No.19 on violence against women at 7(a). CEDAW contains no express provision guaranteeing the right to life

¹³⁷ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 21 7 A (111) of 10 December 1948(Herein after UDHR)

¹³⁸ Id, Article 9 states very briefly that 'no one shall be subjected to arbitrary arrest, detention or exile'. The basic principles set out in Article 9 of the Universal Declaration are elaborated upon by the ICCPR in Article 9 (right to liberty and security of the person). Article 7 ACHR, Article 5 ECHR and Article 6 ACHPR

¹³⁹ Article 9 and 14 Of the International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXZ) of 16 December 1966, Entry into force: 23 March 1976.(Herein after the ICCPR)

¹⁴⁰ Id, Article 14(1-5)

¹⁴¹ Article 10 of UDHR , Article 14 and 15 of ICESCR, Article 6 of ECHR, Article 7 Protocol No. 7 to ECHR, Article 8 , 9 ACHR, Article 7 of ACHPR and Article 62-67 of Rome Statute of ICC, Article 27 ACHR

2.2.1. Review of Criminal Conviction on Grounds of Newly Discovered Facts

A procedure to re-open criminal cases after a final judgment on grounds of newly discovered facts is available in many countries and before international criminal tribunals.¹⁴² It is not considered to be a part of the appeal process. In these procedures the accused can request a reopening of the case because of the discovery of potentially decisive information not previously known despite due diligence by the party. To the contrary a request for review of acquittal basing newly obtained evidence will obviously raise a contention with the principle of prohibition of double jeopardy. With regard to the issue of wrongful conviction Article 14(6) of the ICCPR is a pertinent provision which clearly indicates the obligation of states to provide remedies for persons wrongly convicted by a final decision.¹⁴³ It provides that the previous conviction shall be reversed on the ground of new or newly discovered facts to prove that there has been a miscarriage of justice in the case. Unless the previous conviction is reversed the covenant does not allow persons wrongly convicted to claim compensation for wrongful incarcerations. The covenant requires states to establish a mechanism to conduct re-trial of the case after it is finally decided.

Unless there is extra procedure to review these finally decided case by courts the provision cannot be enforced since reversal of the previous conviction is a precondition to claim compensation. On this provision HRC had forwarded a general comment No 13 and 32 that such right is not observed and insufficiently guaranteed by domestic legislation.¹⁴⁴ The committee required all members to take necessary measures in ensuring the enjoyment of the right to claim compensation due to miscarriages of justice happened to them by the act of states.¹⁴⁵ The committee warned States to take necessary measures particularly supplementing their legislation in this area in order to bring it into line with the provisions of the Covenant.

¹⁴² Article 84(1) of the ICC Statute, Article 25 of the Rwanda Statute, Article 26 of the Yugoslavia Statute, Article 4(2) of Protocol 7 to the European Convention; Guideline 11 section 55(b) of the Principles on Legal Aid Article 2(3) of the ICCPR, Article 25 of the American Convention, Article 7 of the African Charter, Article 23 of the Arab Charter, Article 13 of the European Convention, Article 48 of the African court of Human Rights Protocol.

¹⁴³ Article 14(6) of the ICCPR states that when a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered the punishment as a result of such a conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

¹⁴⁴ UN Human Rights Committee (2007), General comment no. 32, Article 14, Right to Equality before Courts and Tribunals and to Fair Trial, (23 August 2007, CCPR/C/GC/32), section IV

¹⁴⁵ Ibid

The committee had also repeated the same comment under general comment 32 that states are under obligation to enact legislations which allow exercising rights indicated under article 14(6) of the same covenant.¹⁴⁶ There are also numerous cases brought before the human right committee by individual communication requiring for retrial of their cases after final decision is given.¹⁴⁷ Though some of these cases were rejected due to admissibility by the committee post-conviction review issue was raised in all cases that there shall be mechanism for resolving conviction basing on newly discovered evidence.¹⁴⁸ The committee has also announced that failure to provide remedy in these situations by states is incompatible with the rights conferred in the covenant and amount to breach of article 2 of the ICCPR that all states shall take all necessary measures to realize the full enjoyment of rights guaranteed in the covenant.¹⁴⁹

In communication *No. 354/1989, L. G. v. Mauritius*¹⁵⁰, the author claimed that Mauritian Law does not provide for a retrial in cases in which fresh material evidence becomes available after the conclusion of the trial was rejected by Committee on the ground that the issue fresh material evidence has not been substantiated. However there was a dissenting opinion on the case that argued for the set-up of institution to review cases when there is newly discovered evidence that show miscarriages of justice. The opinion provides that there shall be mechanisms developed by states for the enforcement of the provision allowing demanding compensation.

In this case Individual opinion submitted by Mr. Nisuke Ando, pursuant to rule 92, paragraph 3, of the Committee's rules of procedure provides that:

“It is possible to argue that article 14(6) presupposes not only a legal system under which retrial is institutionalized, but also a legal system which does not allow for a retrial and under which pardon remains the only recourse available for the convicted person, even where new or newly discovered facts show conclusively that the conviction was arrived at erroneously, on the ground of the provision's wording “when his conviction has been reversed *or he has been pardoned*. While I do not intend to rule out this possibility, I feel

¹⁴⁶ *Id*, at Para 52

¹⁴⁷ *L.G.v. Mauritius*, Comm. No. 354/1989, U.N. Doc. CCPR/C/40/D/354/1989 at 12 (1990), *Terry Irving v. Australia*, Comm. No. 880/1999, U.N. Doc. CCPR/C/74/D/880/1999, *Albert Wilson v. Philippines*, Comm. No. 868/1999, U.N. Doc. CCPR/C/79/D/868/1999, *Dumont Vs. Canada*, Communication No. 1467/2006 CCPR/C/98/D/1467/2006 Human Rights Committee Ninety-eighth session 8, 26 March 2010.

¹⁴⁸ *Ibid*

¹⁴⁹ ICCPR, *Supra* Note 160 at Para 18

¹⁵⁰ Communication No. 354/1989 Submitted by: L. G. Date of communication: to HRC 17 February 1989 Alleged victim: The author State party: Mauritius ,31 October 1990 (fortieth session)

obliged to express my concern about legal systems under which no retrial is permissible and pardon remains the only available recourse in such cases. Furthermore, retrial ensures that the erroneously convicted person is given an opportunity to have his or her case re-examined in the light of fresh evidence, and to be declared innocent.”¹⁵¹

He argued that a retrial provides an opportunity for the judiciary to reexamine its own conviction and sentence in the light of fresh evidence and correct its errors. In his opinion, pardon should not be an alternative since it is prerogative of the executive which is discretionary and noted that the institution of retrial is essential for the principle of independence of the judiciary. Mr. Nisuke Ando also expressed his concern that it would be difficult to justify why innocent individuals should need to be pardoned pursuant to the prerogative of the executive.

Apart from the protection of the right in the ICCPR, ICC statute, African court of human and people’s rights protocol , Rwandan and Yugoslavian Appeals Chambers have also distinguished procedures to consider additional evidence about a fact that was considered at trial and new information that was not considered at trial.¹⁵² These tribunals have clarified that consideration should be given to a new information as long as it will have a detrimental effect on the outcome of the case. The aim of such a procedure is to preserve the interests of justice and avoid the perpetuation of a miscarriage of justice.

ICC statute provides that it is possible to claim review of conviction or sentence basing newly discovered facts.¹⁵³ The statute allows for the convicted person himself or after death, spouses, children, parents or the Prosecutor on the person's behalf to apply to the Appeals Chamber to revise the final judgments of conviction or sentence on the basis of new evidence that has been discovered later but that did not available at the time of trial. It is restricted that convicted person cannot be benefited from this procedure if there is any contribution on their part on the

¹⁵¹ Individual opinion submitted by Mr. Nisuke Ando, pursuant to rule 92, paragraph 3, of the Committee’s rules of procedure, No. 354/1989, L. G. v. Mauritius,1990

¹⁵² The Statute of the International Criminal Court, adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court, Rome, 17July,1998(ICC) ,

¹⁵³ Article 84(1) of the ICC provides The convicted person or, after death, spouses, children, parents or one person alive at the time of the accused's death who has been given express written instructions from the accused to bring such a claim, or the Prosecutor on the person's behalf, may apply to the Appeals Chamber to revise the final judgments of conviction or sentence on the grounds that new evidence has been discovered.....

production of these newly discovered evidence.¹⁵⁴ The statute provides that new evidence brought should have the capacity to reverse the verdict had it brought before.¹⁵⁵

If it determines that the application is meritorious, the appeal chamber may, as appropriate reconvene the original Trial Chamber, constitute a new trial Chamber or retain jurisdiction over the matter with a view to arrive at a determination on whether the judgment should be revised.

Similar to the Rome statute International Criminal Tribunal on Yugoslavia guarantee for persons wrongly convicted to demand a review on final criminal convictions so that the case should be subjected to retrial on the basis of newly obtained facts.¹⁵⁶ It states:

“Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal an application for review of the judgment.¹⁵⁷”

The statute forward that in cases new facts have been discovered which was not known at the time of the proceedings these can be a ground either for the convicted person or the Prosecutor to claim review of the judgment.

In addition to these above international statutes ICTR has also considered special mechanism of challenging criminal convictions.¹⁵⁸ It has opened the door for claim of innocence after the final decision is rendered by the tribunal as far as there are newly discovered facts are available. The international tribunal for Rwanda statute provides that:

“Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the Decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgments.¹⁵⁹”

¹⁵⁴ Ibid

¹⁵⁵ Ibid, other grounds of claiming retrial of the cases are discovery of new evidences on the previously used document that they were found either forged or falsified. Additionally when an act of serious misconduct or serious breach of duty of sufficient gravity of the judge participated in the convictions is committed

¹⁵⁶ The International Tribunal which was established by the Security Council acting under Chapter VII of the Charter of the United Nations for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

¹⁵⁷ Article 26 of the ICTY statute

¹⁵⁸ The Statute of the International Criminal Tribunal for Rwanda (ICTR), annex to UNSC Resolution S/RES/955(1994), New York, 8 November, 1994

¹⁵⁹ Id, Article 25

African court of human rights protocol article 48(1) provides that:

“An application for revision of a judgment may be made to the Court only when it is based upon discovery of a new fact of such nature has to be a decisive factor that it was unknown both to the Court and the party claiming revision provided that such ignorance was not due to negligence.¹⁶⁰”

Therefore; at international criminal justice system the rule for claiming review of final judgment is well governed to be requested by persons who are found guilty of certain crime upon producing newly discovered facts that were not actually existed during the previous proceeding. Currently, international and regional treaty bodies are established to enforce and monitor human rights obligations imposed on states and to provide remedies in case there are breaches. Any decision and recommendation given by these bodies can be implemented at the domestic level of the state concerned. However this requires the existence of procedural mechanisms to entertain such cases. Unless there are no procedural means to re-examine cases which have already exhausted their appellate procedures these decisions cannot be enforced. A case should also be reopened where there is a risk that the fairness of the proceedings has been undermined by violations of the accused rights.¹⁶¹ The existence of these mechanisms at global level indicates the prevalence of the problem that requires solution at all levels. To ensure an effective remedy and reparation for violations of fair trial as required by international standards, certain procedures should be put in place at the national level that final criminal proceedings can be reopened after referral for consideration from those bodies.¹⁶²

UNHCR acknowledges that the exact modality of review of criminal convictions will vary across jurisdictions and legal systems.¹⁶³ However, State parties to the ICCPR are under an obligation to provide for the substantial review, by a higher tribunal according to law, of both conviction and

¹⁶⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights Adopted on 10 June 1998 Entered into force on 25 January 2004, See also, article 45 which provides for the right compensation as remedy breach of human rights.

¹⁶¹ Article 84(1) of the ICC Statute, Article 25 of the Rwanda Statute, Article 26 of the Yugoslavia Statute, Article 4(2) of Protocol 7 to the European Convention Guideline 11 section 55(b) of the Principles on Legal Aid Article 2(3) of the ICCPR, Article 25 of the American Convention, Article 7 of the African Charter, Article 23 of the Arab Charter, Article 13 of the European Convention, Article 48 of the African court of Human Rights Protocol.

¹⁶² Article 46 of the ECHR

¹⁶³ A Symposium :An International Exploration of Wrongful Convictions, University of Cincinnati Law Review, Volume 80, No. 4, 2012 p 1415-17

sentence. There were also different international conferences held on sharing experience on mechanism of reform on prevention and reduction of wrongful convictions at global level.¹⁶⁴

The Committee has consistently emphasized that the requirement to exhaust domestic remedies applies only to the extent that those remedies are effective and available.¹⁶⁵ The State must give details of the remedies available to the victim, together with evidence that there would be a reasonable prospect that such remedies would be effective.¹⁶⁶

Similarly, in its general comment No 31 the HRC emphasized that all branches of the States and other public or governmental authorities at whatever level national, regional or local are in a position to enforce the responsibility of the State party to the Covenant.¹⁶⁷ The committee added that States parties should award reparation and appropriate compensation to individuals.¹⁶⁸

2.2.2. Foreign Experiences of Post- Conviction Review Mechanisms

Wrongful conviction is the problem that has been faced in many jurisdictions irrespective of the legal systems they follow. Particularly it was primarily identified as legal problem in Canada, UK and USA.¹⁶⁹ The problem had also deep rooted in states like France and Germany which are continental law countries. No matter how a given system is perfect it is inevitable in any system that working human being can make error since humans are not error proofs by nature. The overall system of a given state with regard to criminal prosecution might not be perfect to avoid erroneous convictions of innocent persons. Therefore there is a problem in every legal system despite the variance in the degree of the problem. Neither the adversarial nor the inquisitorial systems are perfect. So the continental countries will also face the problem of convicting innocent persons. States have been handling the problem by devising different mechanisms of reviewing post-conviction claims of innocence.

¹⁶⁴ In the case of *Dumont vs. Canada*, the Committee considered that delays of nine years in civil proceedings had deprived the victim of an effective remedy. The Committee has also recalled on many occasions that the supervisory review procedure against court decisions which have entered into force constitutes an extraordinary means of appeal is limited to issues of law and does not permit any review of facts and evidence.

¹⁶⁵ Report of the Human Rights Committee, A/68/40, Volume I, Para 163

¹⁶⁶ *Ibid.*

¹⁶⁷ See General comment No 31, Para 4

¹⁶⁸ *Id.* at Para 16-17 provides that restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations and taking measures to prevent a recurrence of the type of violation in question are other forms of reparations to be awarded.

¹⁶⁹ *Supra* Note 27 at 221

The term post-conviction review refers to a judicial proceeding that allows a person to challenge his conviction using grounds that could not have been raised on direct appeal. It is a procedural device that may be used to raise a collateral challenge to the judgment or sentence in a criminal case. It can encompass several different kinds of state remedies, including writs of habeas corpus and *Coram nobis* and various challenges to sentences.¹⁷⁰ The essential feature of all claims in post-conviction proceedings is that it challenges the validity of the judgment or sentence on grounds other than those that were or could have been raised on direct appeal.

Hence it is paramount to study how the issue came to evolve over time in these states and the mechanisms developed by these states in reviewing and challenging wrongful convictions of innocent citizens. Such comparative study will be a benchmark for the Ethiopian legal system in devising an appropriate mechanisms in both correcting and preventing the cost of wrongful convictions.

2.2.2.1. Canadian Post-Conviction Review System

Canada has had its share of wrongful convictions.¹⁷¹ Despite the checks and balances in the Canadian criminal justice system, many cases of wrongful convictions have occurred.¹⁷² The cases of David Milgaard¹⁷³, Donald Marshall and Guy Paul Morin¹⁷⁴ are among the familiar wrongful conviction cases that had occurred in Canada. However, these are not the only cases; they merely represent the most highly profiled ones.¹⁷⁵

Canada had established Commissions of Inquiry to work on wrongful convictions of these cases in 1986.¹⁷⁶ The commissions recommended for establishment of an independent review body to investigate alleged cases of wrongful conviction.¹⁷⁷

¹⁷⁰ Ibid

¹⁷¹ Report on the Prevention of Miscarriages of Justice, 2004, FPT Heads of Prosecutions Committee Working Group, at 2, online: <http://www.justice.gc.ca/en/dept/pub/hop/> (Accessed on January 5, 2015)

¹⁷² Bruce MacFarlane, "Convicting the Innocent: A Triple Failure of the Justice System" (2006) 31 *Manitoba Law Journal* 403, P,28-36

¹⁷³ Frost, *Supra* Note 24, at 35-39

¹⁷⁴ Nova Scotia, Royal Commission on the Donaid Mwshull Jr. Prosecution, Volume 1 Findings and Recommendations, by Chief justice . Alexander Hickman, chair (Halifax: Province of Nova Scotia, 1989)

¹⁷⁵ Kent Roach, *Wrongful Convictions in Canada*, 80 *University of Cincinnati Law Review*. (2012) p 1466 Available at: <http://scholarship.law.uc.edu/uclr/vol80/iss4/19/> (Accessed on April 17, 2015)

¹⁷⁶ Macfarlane, *Supra* Note 172, at 25-27

¹⁷⁷ Ontario Commission on Proceedings involving Gzy Pm1 Morin, Volumes 1 and 2, by The Honorable Fred Kaufman, (Toronto: Queen's Printer, 1998)

After judicial avenues have been exhausted section 696 of the criminal code serves as a safety net valve which allows the minister of justice to review alleged wrongful convictions that have not been detected and remedied by the courts.¹⁷⁸ This rule was injected in Canada since 1892.¹⁷⁹ The Minister's power to correct a miscarriage of justice is an extraordinary one that can be exercised only in those exceptional cases where a person presents new and significant information that casts doubt on the correctness of his conviction.¹⁸⁰

An application for review pursuant to section 696(1) of the Criminal Code must be based on *new and significant* information. Information will be considered *new* if the courts did not examine it during the trial or appeal or if the information surfaced after all court proceedings were over. The information must be reasonably capable of belief, relevant to the issue of guilt, and capable of affecting the verdict if it had been presented at trial.¹⁸¹ If the Minister of Justice determines a miscarriage of justice that has occurred as a result of newly discovered facts, they may either return the case to trial court for retrial or refer the matter to a court of appeal for hearing and determination as if it were an appeal against conviction or dismiss the application for review is final.¹⁸²

Under Section 696(3)(4)¹⁸³ of the Canadian criminal code it is legalized that the court to decide on admissibility of fresh evidence whether it sufficiently undermines the reliability of the verdict so as to render the conviction a miscarriage of justice and if the evidence is admitted; the conviction is quashed and order for exoneration of the individual. Similarly; Section 748(2) of the code provides for the free pardon mechanism to review of wrongful conviction cases. Canada had exonerated and paid compensation for many who have been subject to miscarriages of justice.¹⁸⁴

¹⁷⁸ Ibid

¹⁷⁹ Canadian Criminal Code of 2002, section 696. The legislation went through several revisions and ultimately became Canada's post-conviction review process of section 696 in 2002

¹⁸⁰ Macfarlane, Supra Note 171, Ibid

¹⁸¹ Section 696.1(1) of the Canadian criminal code states: An application for ministerial review on the grounds of miscarriage of justice may be made to the Minister of Justice by or on behalf of a person who has been convicted of an offence under an Act of Parliament or a regulation made under an Act of Parliament...whose rights of judicial review or appeal with respect to the conviction or finding have been exhausted.

¹⁸² Supra Note 159, Section 696.3 (3) provides that the federal Minister may exercise his or her powers and grant a remedy if satisfied that there is a reasonable basis to conclude that a miscarriage of justice likely occurred

¹⁸³ Section 696.3(4) of 2002 criminal code provides that the federal Minister shall consider (a) whether the application is supported by new matters of significance, (b) the relevance and reliability of information that is presented in connection with the application, and (c) the fact that an application is not intended to serve as a further level of appeal and that any remedy granted is an extraordinary one.

¹⁸⁴ Ibid

2.2.2.2. Post- Conviction Review in United Kingdom

UK has also placed a great emphasis on safeguarding the innocent from wrongful conviction as well as on convicting the guilty by including the burden of proof rules, the presumption of innocence, and the privilege against self-incrimination.¹⁸⁵ Despite these safeguards it has been facing the problem of convicting innocent persons.¹⁸⁶ Before the enactment of Criminal Justice Act in 1995 people convicted of crimes in the UK had one appeal available pursuant to the Criminal Appeal Act of 1907.¹⁸⁷ In 19th century the English parliament had empowered the royal prerogative of mercy to entertain and redress for wrongful convictions.¹⁸⁸

The provision provides for mechanism by which final convictions can be reviewed by Home Secretary, who had the authority to refer extraordinary cases to the Court of Appeal if he determined that a miscarriage of justice may have occurred.¹⁸⁹ A number of high-profile exonerations in the 1980s and 1990s raised concerns in the UK about the prevalence of wrongful convictions and the paucity of mechanisms to correct them.¹⁹⁰ In particular, Birmingham Six case in which six Irish men falsely convicted of bombing a pub in Birmingham galvanized public opinion when their convictions were overturned in 1991 after 16 years after the home secretary remitted the case to court of appeal.¹⁹¹

The Royal Commission on Criminal Justice was established and charged with examining causes of wrongful convictions and recommended that England should establish a new national institution to independently review claims of wrongful conviction and Criminal Cases Review Commission (here after CCRC) was established by the 1995 Criminal Justice Act.¹⁹² CCRC is created to be independent organ to investigate miscarriages of justice and refer cases to court of appeal basing criteria under Section 13 of criminal appeal act of 1995.¹⁹³ Since 1997 the commission has overturned several convictions and it has become a crucial organ in entertaining

¹⁸⁵ Nobles, Schiff, Miscarriages of Justice: A Systems Approach, Mod Law Review, (1995), P, 299

¹⁸⁶ Ibid

¹⁸⁷ England Criminal Appeal Act 1968, section 17 provides that upon application for the mercy of the Crown on behalf of any person convicted of an indictable offence ... it may, after such inquiry as he thinks proper, by an order in writing, direct a new trial at such time and before such court as he may think proper

¹⁸⁸ Ibid

¹⁸⁹ UN General comment no 32, Supra Note 144 at 20

¹⁹⁰ Symposium, Supra Note 163 at 1417

¹⁹¹ Horan, David, The Innocence Commission: An Independent Review Board for Wrongful Convictions, Illinois University Law Review, 1991, P 104-5. See also The Royal Commission criminal justice report, 1993. 162 - 63

¹⁹² England Criminal Appeal Act, 1995, Section 35

¹⁹³ Id, section 13 provides real possibility that the convictions will be reversed, existence of new argument not raised before and the exhaustion appeal from normal channel of court as ground to refer case back to court of Appeal

wrongful conviction cases.¹⁹⁴ There are also numerous innocence projects in England which work hand in hand with the CCRC.¹⁹⁵

2.2.2.3. Post-Conviction Review Mechanism in USA

The U.S.A experience with the problem of wrongful conviction traces back to the nation's history, when colonists were often subjected to secret accusations without the right to question their accuser's.¹⁹⁶ The American criminal justice system have been plagued with the problem of erroneous convictions irreversibly erroneous in cases in which the sentence is death, and the sentence is carried out.¹⁹⁷ Scholars have sought to identify wrongful convictions in the American criminal justice system. Despite the controversy on whether erroneous convictions have occurred¹⁹⁸; it was proved that innocent have been executed by raising DNA exonerations for death row phenomenon, close call situations and executions which were post-humously exonerated.¹⁹⁹ Close calls are cases in which execution was averted at the last moment, sometimes with only a few days or even hours to spare, and if the death sentence had been carried out, a demonstrably innocent prisoner would have been executed.²⁰⁰ Recent empirical evidence especially DNA evidence, has opened a window through which we can examine this faith in the system. The Exoneration Registry maintained in the United States puts the current number of the wrongly convicted at 1,125 since 1989.²⁰¹ These cases have not only confirmed that wrongful convictions exist, but have shown that innocent people are often convicted at a higher rate than ever acknowledged previously.²⁰²

The American system had already inbuilt legal mechanisms on how to review such cases like writ of Coram Nobis, Habeas Corpus and Post-conviction Motions.²⁰³ A writ of error Coram Nobis has a long history in the common law legal system which was created to review cases on

¹⁹⁴ Criminal Cases Review Commission website at: <http://www.ccrcc.gov.uk> (Accessed on January 21, 2015)

¹⁹⁵ Cohen, Supra Note 49 at 1427

¹⁹⁶ C. Ronald Huff and Martin Killias, *Wrongful Convictions: International Perspective on Miscarriage of Justice*, Temple University Press, Philadelphia, Published 2008 Printed in the United States of America, p 59

¹⁹⁷ Jesse Tafero was executed in Florida in 1990 which was classified in the category of wrongful executions a decade ago in the preface to the paperback edition of our book, *In Spite of Innocence*.

¹⁹⁸ Findley, Keith. *Learning from Our Mistakes: A Criminal Justice Commission to Study Wrongful Convictions*, Wilson Company. *California Western Law Review* No 2 (2002), p, 31- 34

¹⁹⁹ *State vs. Willingham*, Available at <http://www.scribd.com/full/> (Accessed on December 10, 2014)

²⁰⁰ Bedau, Supra Note 42 at 71-72

²⁰¹ *Ibid*

²⁰² The Innocence Project, at <http://www.innocenceproject.org/> (last visited on 29 January 2015)

²⁰³ Irazola, Supra Note 36 at 61

new facts at a time where appellate review of criminal judgments was generally unavailable and when courts conclusively render final decisions.²⁰⁴

Later on it was adopted in USA for the sole mechanism of post-incarceration judicial review of erroneous convictions as a means of collateral review.²⁰⁵ It is a mechanism to correct a judgment which is erroneous because of facts, not in issue at the trial and unknown to the defendant at the time, which affects the validity of the proceedings.²⁰⁶ It is not an appellate remedy rather to permit courts, in extraordinary circumstances and within narrowly circumscribed bounds, to review otherwise final judgments.²⁰⁷

The federal district courts and numerous states have criminal cases involving the existence of the writ.²⁰⁸ Federal Rules of Criminal Procedure provides that the court may grant a new trial to a defendant if required in the interest of justice.²⁰⁹ In most of the cases such writ is available to wrongly convicted individuals who are no longer in custody. In U.S persons wrongly convicted and served sentence can raise claims of newly discovered evidence in a post-conviction motion.²¹⁰

In the absence of post-conviction procedure established by statutes or if the procedure does not provide a remedy, habeas corpus is another method of seeking post-conviction relief. Supreme Court decisions and Due Process Clause of the Fourteenth Amendment granted states to provide constitutional procedural protections before depriving an accused of his liberty.²¹¹ Many states have now adopted specific post-conviction procedures that may be used in place of a petition for writ of habeas corpus. It is available only to those who are in custody but claiming that they are innocent of the crime convicted with.²¹²

²⁰⁴ David Wolitz, *The Stigma of Conviction: Coram Nobis, Civil Disabilities, and the Right to Clear One's Name*, Georgetown University Law Center, 2009, p 2-3

²⁰⁵ *Ibid*

²⁰⁶ Orefield, Lester B. (1933) "Writ of Error Coram Nobis," *Indiana Law Journal*: Vol. 8: Iss. 4, Article 3. P, 247

²⁰⁷ Brian M. Hofstadter, *Common-Law Writs and Federal Common Lawmaking on Collateral Review*, 96 N.W. L. Rev. 1413 (2002) See also *United States v. Travers* in which a man who had already served his sentence for federal mail fraud brought a petition for a writ of Coram Nobis and invalidated his conviction.

²⁰⁸ Donnelly, Richard C, *Unconvicting the Innocent*, Faculty Scholarship Series. Paper 4764,(1952)

²⁰⁹ Daniel F. Piar, *Using Coram Nobis to Attack Wrongful Convictions: A New Look at an Ancient Writ*, 30 N. Ky. Law Review (2003), P, 506-07

²¹⁰ Connery, *Supra* Note 69 , at 259

²¹¹ Griffin, Lissa, "The Correction of Wrongful Convictions: A Comparative Perspective" (2001), Pace Law Faculty Publications, Paper 472. <http://digitalcommons.pace.edu/lawfaculty/472> (Accessed on March 17,2015)

²¹² *Ibid*, See also *Brady v. Maryland*, 373 U.S. 83, 87 (1963) in which defendant Brady was convicted of murder in the first degree and was sentenced to death, even though he contended that another person committed the actual killing. The police had possessed exculpatory evidence which shows the real perpetrator of the alleged murder.

ABA standards for Criminal Justice regarding post-conviction remedies provide comprehensive remedy for post-conviction review of the validity of judgments of conviction, or of the legality of custody or supervision based upon a judgment of conviction.²¹³ The proof that the wrongly convicted need to successfully demonstrate their innocence are undisclosed testimony and evidence, witness recantations, new scientific methods or discoveries, new evidence of another's guilt and others which can be successful with investigation assistance.²¹⁴ The motion serves the limited purpose of providing the defendant with a remedy in the event there has been a substantive deprivation of federal or state constitutional rights in the proceeding that produced the judgment or sentence under attack.²¹⁵

Recently due to large exonerations of persons on death row phenomenon²¹⁶ and serving long sentence as a result of compelling evidence particularly DNA the America system came to fully recognize for judicial review to focus on the innocent, by amending its procedures on federal habeas review for innocence gateway to those who could show they were probably innocent.²¹⁷

U.S.A has enacted Innocence Protection Act which is aimed to ensure that convicted offenders are afforded an opportunity to prove their innocence through DNA testing, help states provide competent legal services at every stage of a death penalty prosecution.²¹⁸ These were also incorporated in 2004 Justice for all acts bill. The bill emphasizes denying inmates a right of access to evidence for tests of innocence shocks the conscience and offends social standards of fairness and allows greater access to post-conviction DNA testing at the cost of the federal government.²¹⁹

Innocence Commissions are government institutional mechanisms established in most of American states charged with examining the issues on miscarriages of justice and to forward possible recommendations to be considered by the criminal justice system.²²⁰ Innocence projects were also developed to resolve and reduce the rate of wrongful convictions in America since it

²¹³ American Bar Association, Annotated Code of Professional Responsibility, Chicago, 1979

²¹⁴ Lisa, Supra Note 211, ibid

²¹⁵ Sawyer vs. Whitley, U.S. 333, 1992, Courts entertain a successive federal habeas corpus petition of actual innocence in the American criminal justice to uphold the right to life and liberty are guaranteed as fundamental human rights in their constitutions.

²¹⁶ The Death Penalty Information Center (DPIC) lists 142 death row exonerations from 1973 through 2013, and the newly created National Registry of Exonerations enumerates 1,187 cases from 1989 through mid-2013 available at <http://www.deathpenaltyinfo.org/> (accessed on January 30, 2015)

²¹⁷ District Attorney's Office for Third Judicial Dist. v. Osborne, 557 U.S. 52, 2009, p. 69

²¹⁸ Innocence Protection Act of 2004, Section 411-12,

²¹⁹ Ibid

²²⁰ Ibid

was first introduced by Barry Scheck and Peter Neufeld at the Benjamin Cardozo Law School in New York City.²²¹

2.2.2.4. France

France has numerous cases of wrongful convictions that had shown error of the judiciary by acquitting a guilty person or convicting an innocent person.²²² It is perceived as an error against which there must be a remedy since every wrongful conviction violates the bundle of human rights that cannot be limited by procedural rules.²²³ After verdicts become final by appeal, France has adopted *pourvoi en révision* as a remedy for review of criminal cases which is to mean petition to obtain a new trial after a final verdict.²²⁴ The *pourvoi en révision* is necessarily for a review of the whole case and the duty of the Supreme Court, as a court of revision is to search for the objective truth and it is available against final decisions in criminal cases if the defendant has been found guilty of a felony crime.²²⁵

Grounds for the right to revision for error are listed under section 622 of the French Criminal Procedure Code. These preconditions are: appearance alive of the person supposed to be dead for homicide conviction, when another accused has been convicted of the same act after conviction of previous innocent persons; when after a conviction, one of the witnesses has been prosecuted and convicted for false testimony against the accused and when after a conviction, new facts or evidence unknown at the time of the trial is produced or revealed so as to create doubt about the guilt of the accused.

The person claiming for review of cases shall be required to show about the existence of the grounds indicated in the procedure. The notion of new facts may comprise the admission of a third party, the statement of a witness, and discovery of mental disorder in the convicted person

²²¹ Barry Scheck, Closing Remarks on Eight DNA Exonerations in Canada as of 2002, *Cardozo Law Review* No. 900, (2002)

²²² Jean Dehays, accused of the homicide of a farmer, was sentenced to twenty years of compulsory labor in 1949. He was retried and acquitted in 1955; Jean-Marie Deveaux was sentenced to twenty years of imprisonment in 1963 for the homicide of his employers' daughter. In a new trial, he was acquitted in 1969. *pourvoi en révision* was opened then he was re-judged and finally acquitted on April 25, 2005.

²²³ *Supra* Note 85 at 5

²²⁴ Section 622 of the French Criminal Procedure Code Inserted by Law No 2000-516 of 15 June 2000 Article 1 Official Journal of 16 June 2000 (here after FCPC)

²²⁵ *Ibid*

²²⁶ Saguil, Paul J. Forum: Criminal Procedure: Improving Wrongful Conviction Review : Lessons From A Comparative Analysis of Continental Criminal Procedural *Alberta L. Rev.* 117(2007) p,5

at the time of the events and new interpretation of a fact already known.²²⁷ The applicant is responsible for initiating the proceedings and presenting evidence that a miscarriage of justice occurred. There is no limit to the number of times a review can be requested.

The revision may only be demanded by Minister of Justice, by convicted person in the case of incapacity, by his legal representative and after the death or formally declared disappearance of the convicted person, by his spouse, children, parents, heirs or any person who had been expressly mandated to do so.²²⁸

In addition to these grounds the court will revise a case after a referral from European court of human rights with regard to France's violation of the European convention on human rights.²²⁹ The *Cour de Révision* examines not only questions of law, but all issues related to facts brought up by the parties. If a new trial seems possible, the former verdict is canceled. In this case, the *Cour de Révision* has the power to find the convicted person innocent or guilty again, or to confirm the previous verdict.

If the former verdict is overturned, either by the *Cour de Révision* or by the court that had been in charge of a new trial the effect will be that any criminal record is cancelled and if the penalty was fine it will be paid back. In addition any civil damages and interests, to the extent that they were based exclusively on the criminal responsibility of the convicted person, will be revoked retroactively. The court after due considerations to claims finally decide cases from which no appeal is allowed on its decision.²³⁰

2.2.2.5. Germany

The German criminal justice system is also inquisitorial like that of France. Factors leading to miscarriages of justice which include the reluctance of courts to hear expert witnesses on the reliability of confessions and eyewitnesses have been part of the problem in the German criminal justice.²³¹

²²⁷ Lester, Supra Note 206 at 251

²²⁸ FCPC, Supra Note 224, Section 623

²²⁹ Article 626(1) of FCPC provides that retrial can be conducted subsequent to a decision of the European Court of Human Rights, if the Court finds that French courts have violated ECHR. Article 2 of the 7th Protocol to the European Convention on Human Rights 1988 which recognized the right of any person convicted of a criminal offence to have that conviction re-examined by a superior court.

²³⁰ Section 625 of CPC

²³¹ Informants, Supra Note 85, at 7

The German Code of Criminal Procedure provides the specific grounds on which a judgment cannot be appealed any further.²³² It is known for its German term” *Wiederaufnahme*” which means extraordinary appeal or petition for retrial. It allows both prosecutor and defendant to apply to have the case reopened to guard against errors of fact-finding happened at the pre-trial and trial stages in the spirit of the rules of criminal procedure.²³³

The grounds for review of a final judgment on the application of a defendant are indicated under the German criminal procedure.²³⁴ These grounds listed in the code as the followings:

“ If a document used to convict the prisoner was false or falsified, if a witness who testified to the disadvantage of the prisoner gave false testimony; if a judge who participated in the judgment violated his official duties to the extent that a judicial criminal punishment is provided for the violation; if the criminal judgment is based on a civil judgment that has been reversed or if new evidence is discovered that tends to justify the acquittal of the defendant or a lesser punishment for a less serious crime.²³⁵”

In addition to the German extraordinary appeal, there are two other review mechanisms available to the convicted defendant. The first is to file a constitutional complaint to the Federal Constitutional Court to address violations of constitutional or procedural rights by acts of the deciding court; the remedy for a successful application is a *trial de novo*.²³⁶ The second mechanism is to apply to the European Commission of Human Rights and finally to the European Court of Human Rights as the European Convention on Human Rights is part of German federal law, the jurisdiction of the European Court to interpret the application of the Convention in Germany has been recognized.

A final judgment may not be reopened to provide a different punishment for the same crime or for the purpose of mitigating the punishment because of diminished responsibility of the defendant rather to review error of facts that had not been part of the litigation. Upon considering the application the court will receive evidence and hear arguments to determine if the original

²³² Article 359 of the German Code of Criminal Procedure in the version published on 7 April 1987 ,Federal Law Gazette Part I p. 1074, 1319), Amended by Article 3 of the Act of 23 April 2014, Federal Law Gazette Part I p. 410 (Here after GCPC)

²³³ Osner, Nigel Anne Quinn & Giles Crown, *The Royal Commission on Criminal Justice: Criminal Justice Systems in Other Jurisdictions* (London: HMSO, (1993), p, 102-103.

²³⁴ FCPC, Supra Note at 230

²³⁵ Informants, Supra Note 85 at 7

²³⁶ Id, at 6

judgment should be quashed.²³⁷ Finally successful extraordinary appeal will result in an acquittal or a new trial. Therefore it can be summarized that the German criminal procedure is designed and in fact structured, to balance the principle of finality in cases where there is a concern that a miscarriage of justice would probably result.

2.3. International Legal Framework on Right to Compensation for Wrongful Convictions

2.3.1 Theoretical Justifications for the Right to Compensations

The consequence of wrongful conviction is multi-dimensional that result in loss of civil, political and socio economic rights of the individuals wrongly convicted.²³⁸ The vast majority of newly freed individuals have been unable to obtain any compensation for lost wages, legal fees, psychological damage, or other economically-cognizable injuries caused by their wrongful imprisonment from the authority that wrongfully imprisoned them.²³⁹ The movement for the right to indemnity by the state for erroneously convicted persons has visibly begun toward the end of the 18th century in France.²⁴⁰

There are arguments on whether states have any liability to compensate persons who were convicted and imprisoned as a result of wrongful convictions.²⁴¹ Citizens obeying law of states are naturally endowed to enjoy their right to liberty and freedom free from interference by states. Deprivation of that right by arrest or imprisonment is justifiable only when that citizen has engaged in conduct so damaging to the interests of others, or society as a whole, as to warrant application of the criminal law. In cases where innocents are found convicted and imprisoned it is a great injustice administered by governments.²⁴² Such victims are recognized as having suffered what may be a great injury at the hands of the state and it is accepted as just that the state, representing the public at large, should make fair compensation.

Eminent domain principle is also another basis for imposing liability on the state to redress harms caused by its agents.²⁴³ The principle claims that the government shall redress the victim's

²³⁷ Ibid

²³⁸ Howard S. Master, Revisiting The Taking Based Argument For Compensating The Wrongfully Convicted, NYU Annual Survey of American Law Vol. 60, (2004),p. 98

²³⁹ Ibid

²⁴⁰ Id, at 100

²⁴¹ Ibid

²⁴² Martinez,Supra Note 111 at 20

²⁴³ Ibid

injury as a result of wrongful convictions of individuals irrespective of whether any government agent has played a culpable role.²⁴⁴

When property is taken from individuals for the public use our fundamental law prescribes that just compensation must be paid. On the other hand, when in the administration of the criminal law, an equally sovereign right, society takes from the individual his personal liberty, a private right at least equally as sacred as the right of property, it dismisses him from consideration regardless of the gross injustice inflicted upon an innocent man without even an apology, much less compensation for the injury.²⁴⁵ Hence there shall not be distinctions on compensation between takings of individual's property for public use and erroneously depriving one's life or liberty.²⁴⁶ These theories had put basic foundation for the recognition of right to compensation for wrongful convictions as redress.

2.3.2. International Standards on the Right to Compensation for Wrongful Convictions

International human rights guarantee the right to compensation for persons unlawfully deprived of their liberty by unlawful arrest or detention as a redress for the harm they suffered by the act of state officials.²⁴⁷ The ICCPR provides remedy for unlawful arrest and detention of individuals in the process of criminal investigation under article 9 and 14. In the same way the right to compensation for innocent persons wrongly convicted is also protected.

The reason to provide compensation as redress for persons both wrongly convicted as well as unlawfully arrested or detained is the recognition that they suffered from deprivation of their liberty and the states failed to fulfill their human right obligation to respect the right to innocents. These rights are separately governed under article 9(5) and 14(6) of the ICCPR.²⁴⁸ The right to compensation for wrongful conviction in criminal proceedings is clearly recognized.²⁴⁹ Among these instruments the main source for guaranteeing the right to compensation for wrongful conviction is the ICCPR.²⁵⁰ Article 14(6) of the ICCPR states:

²⁴⁴ Edward Borchard ,M, *Compensations of Persons Erroneously Confined By The State*, University of Pennsylvania Law Review Vol.118, (1970) p,1092

²⁴⁵ *Ibid*

²⁴⁶ Borchard, *Supra* Note 39 at 685

²⁴⁷ Article 9 (5) of the ICCPR states that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation

²⁴⁸ *Ibid*

²⁴⁹ UDHR, *Supra* Note 137

²⁵⁰ ICCPR, *Supra* Note 139, Article 14(6)

“When a person has by a final sentence been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”²⁵¹”

It states that an individual must have been convicted by a final decision of a criminal offence including minor offences to qualify for compensation for a miscarriage of justice in particular for wrongful conviction.²⁵² A conviction is considered to be final when no further judicial reviews or appeals are available either because they have been exhausted or because the time limits have passed subjected to punishment as a result of the conviction.²⁵³ The punishment imposed may be a sentence of imprisonment or any other type of punishment for whatever crime convicted for. Legitimately imposed pre-trial detention does not constitute punishment and cannot qualify to claim compensation. Individuals legally convicted can claim compensation if their convictions are excused or had their conviction reversed on the grounds that new or newly discovered facts showed that there had been a miscarriage of justice provided that the non-disclosure was not attributable to the accused.²⁵⁴ The burden of proving that the non-disclosure was attributable to the accused rests with the state.²⁵⁵ The committee boldly stated that there is no legal frame work developed domestically and forwarded that states must enact laws which generally regulate the procedures for granting compensation.²⁵⁶ The committee had also emphasised that states should specify amounts to be paid as compensation to the victims of miscarriages of justice.²⁵⁷

In addition; the Committee indicated that compensation should be paid only on the basis of newly discovered facts showing a miscarriage of justice and it should not be paid where the grounds for quashing a conviction were that the individual had been subjected to an unfair trial.²⁵⁸ Here the intention is that States would be obliged to compensate persons only in clear

²⁵¹ Ibid

²⁵² Id , Article 14(6) , Article 18(6) of the Migrant Workers Convention, Article 3 of Protocol 7 to the European Convention, Section N(10)(c) of the Principles on Fair Trial in Africa

²⁵³ Ibid

²⁵⁴ Irving vs. Australia, HRC, UN Doc, CCPR/C/74/D/880/1999 (2002) Para 8.3-8.4

²⁵⁵ UNHRC GC -32, Supra Note 144 at Para 53

²⁵⁶ Id at paragraph 52

²⁵⁷ Ibid

²⁵⁸ Protocol 7 of EC, Supra Note 252

cases of miscarriage of justice, in the sense that there would be acknowledgement that the person concerned was clearly innocent. So, the provision is not intended to give a right of compensation where all the preconditions are not satisfied like where an appellate court had quashed a conviction because it had discovered some fact which introduced a reasonable doubt as to the guilt of the accused and which had been overlooked by the trial judge.²⁵⁹

The ICC Statute also grants the Court discretion to award compensation when it finds that there has been a grave and manifest miscarriage of justice, if the individual has been acquitted by a final judgment or the proceedings have been terminated on grounds of the miscarriage.²⁶⁰ Hence International standards require states to compensate victims of miscarriages of justice.²⁶¹

2.3.3. Regional Standards on the Right to Compensations for Wrongful Convictions

There are regional instrument which guarantee the right to compensation for unlawful arrest and arbitrary arrest and detention in similar way with provisions in the ICCPR.²⁶² State parties to ECHR are duty bound to redress individuals who have been the victim of arrest or detention in contravention of the provisions of the convention.²⁶³ Apart from compensation for unlawful arrest or detention ECHR protects the rights of individuals to claim compensation in case their liberty or other rights are deprived as a result of wrongful conviction by its agent particularly by the judicial organs.²⁶⁴

Furthermore, the right to compensation under Article 3 of Protocol No 7 is almost identical with article 14, paragraph 6 of the ICCPR.²⁶⁵ These provisions require that in case of a miscarriage of justice the person is entitled to compensation “pursuant to the state law or practice”. This phrase implies the obligation of states parties to these acts to include in their domestic legislations rules on the procedure to be followed by victims for obtaining compensation, in order for such right to

²⁵⁹ UNHRC GC -32, Supra Note 144 at paragraph 52

²⁶⁰ Article 85(3) of the ICC Statute

²⁶¹ Article 14(6) of ICCPR, Article 18(6) of the Migrant Workers Convention, Article 10 of the American Convention, Article 3 of Protocol 7 to the European Convention, Section N(10)(c) of the Principles on Fair Trial in Africa, Article 85(2) of the ICC Statute

²⁶² Article 3 of protocol No 7 to the ECHR, Article 10 (c) of Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, Article 25 of Inter-American Convention on Human Rights, Article 25 of Inter-American Convention on Human Rights, Article 19(2) of the Arab Charter, Article 5(5) of ECHR

²⁶³ Article 5 Para 5 of the ECHR.

²⁶⁴ Article 3 of Protocol 7 of ECHR

²⁶⁵ Article 14(6) of the ICCPR provides that : The person has been convicted with a final decision for committing a criminal offence; the convicted person has served the sentence pursuant to the issued decision; the conviction has subsequently been reversed, or the person has obtain pardon, on the grounds of a new or newly discovered fact, which shows conclusively that there has been a miscarriage of justice, as well as When it has not been proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to said person.

be effective. However, this does not imply that such right cannot be obtained due to lack of provisions in the domestic legislation or a states' practice. What is important in this context is the establishment of an effective system, guaranteeing compensation for cases regulated by Conventions.²⁶⁶

In the African system, the right to compensation for a miscarriage of justice is also enunciated in the Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa.²⁶⁷ More specifically, the Principles list a series of measures to be implemented, including the guarantee that anyone who has been the victim of unlawful arrest or detention is able to claim compensation.²⁶⁸ In the Inter-American system, the American Convention on Human Rights enshrines, in its article 10, the right to be compensated in the event of a miscarriage of justice and, in its article 25, the right to judicial protection.²⁶⁹ Such right is distinct from the right to compensation for unlawful detention. With the exception of Article 10 of the American Convention, international standards contain similar language.²⁷⁰

Article 10 of the American Convention does not require the miscarriage of justice to be based on new or newly discovered facts.²⁷¹ Most international standards do not require states to pay compensation if a charge is dismissed or an accused is acquitted at trial or on appeal as there has been no final conviction.²⁷² However, under some national systems compensation is even payable in such circumstances. In addition, the Arab Charter guarantees the right to compensation to anyone whose innocence has been established by a final judgment.²⁷³ The European Court had also concluded that non-pecuniary damages, such as distress, anxiety and inconvenience, should be compensated as well as financial losses.²⁷⁴

The Special Rapporteur for the right to fair trial had also called upon States to adopt and implement a definition of remedy for a miscarriage of justice that is comprehensive and not

²⁶⁶ Article 6,13 and 41 of European Convention for the Protection of Human Rights and Fundamental Freedoms

²⁶⁷ Article 10 (c) of Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa

²⁶⁸ Id , article (M, 1 (h))

²⁶⁹Article 25 of Inter-American Convention on Human Rights, See also Human Rights Committee, General Comment No. 35,Para 52

²⁷⁰ Article10 of ACHR, ECrtHR held that where the basis for reversing a final conviction was a reassessment of the evidence, rather than new or newly discovered evidence, the requirement to pay compensation did not apply

²⁷¹ Article 10 of the ACHR

²⁷² UNHRC,GC -32,Supra Note 144, Para 53

²⁷³ Article 19(2) of the Arab Charter

²⁷⁴ Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13 Para 16

limited to criminal cases, in order to provide effective remedies to persons whose human rights have been violated.²⁷⁵ International and regional standards recognize the civil responsibility of the State by ensuring effective remedies for persons whose human rights have been violated owing to wrongful conviction or miscarriage of justice.²⁷⁶ As Compensation is one form of reparation for damage caused following a personal error made in criminal justice process those regional instruments guarantee for the right.

2.3.4 Legal Framework on Selected Jurisdictions

Most of the states recognize the right to compensation in the case of wrongful conviction as a matter of domestic or international human rights law.²⁷⁷ The payment of a civic debt to the wrongly convicted for the taking of their liberty for the public use either automatically or after judicial and bureaucratic processes, is intended to repair and compensate for as much of the damage wrought by miscarriages of justice as possible.²⁷⁸ The intent of payment for their unjust conviction is to make amends for the miscarriage of justice, to allow the victims of it to recoup financial losses, to reduce the economic vulnerability of the victims, and to increase self-sufficiency upon release.

Paying compensation for the wrongly convicted is to repair the damage caused by States which can clean their public legitimacy and retain public respect for the criminal justice system and rule of law.²⁷⁹ In addition to these mentioned above purposes of compensation, as the observer of miscarriages of justice performed in the name of the public, it also restores public confidence in the ability of judicial, correctional, and legislative institutions to exercise good judgment and fairness.²⁸⁰

Canada recognizes a right to apply for compensation for wrongful conviction, although an administrative or judicial body ultimately decides whether or not to grant an award. In 1988, Canada adopted the Federal-Provincial Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons. The guidelines expressly state that compensation should only be

²⁷⁵ Ibid

²⁷⁶ Article 8 of UDHR, Article 2 and 14 of the ICCPR

²⁷⁷ Jason Costa, Alone in the World: The United States' Failure to Observe the International Human Right to Compensation for Wrongful Conviction, *Emory International Law Review* (2005), p, 57

²⁷⁸ E. Borchard, M, .European Systems of State Indemnity for Errors of Criminal Justice, 3 *J. AM. INST. CRIM. L. & CRIMINOLOGY* 684, 706 (1913)

²⁷⁹ Ibid

²⁸⁰ Jon B. Gould, *The Innocence Commission: Preventing Wrongful Convictions and Restoring The Criminal Justice System* (2008), p, 5

granted to those persons who did not commit the crime for which they were convicted. These guidelines were to some extent modeled after Article 14(6). After concluding that an individual has been wrongfully convicted, Canada is quick to establish public inquiries to evaluate the causes of conviction and to assess the issue of compensation.²⁸¹

The United Kingdom has employed various frameworks for compensating the wrongfully convicted. Mostly *ex gratia* payment is used as discretionary schemes accorded to victims of wrongful convictions.²⁸² Comparative fault approach is used in determining the amount of compensation for wrongful convictions. Thus, compensation may be provided even when the government is not at fault as in strict liability.

With reference to Article 14, paragraph 6, Human Rights Committee of UN expressed regret that there was no statutory basis in the United Kingdom for the right of compensation for miscarriages of justice and urged that appropriate measures be taken to ensure full compliance with that article.²⁸³ After such critique by the committee United Kingdom has directly incorporated article 14(6) into its domestic legislation under the Criminal Justice Act 1988 (UK), Section 133. A wrongfully convicted person must make an application to the Secretary of State who determines applications for compensation on the criteria set out in Section 133.²⁸⁴

Compensation is granted based on the recommendation of independent assessors. In determining the amount of compensation, the assessor considers the extent to which the situation might have been contributed to by the accused person's own conduct. Accordingly, the United Kingdom does not automatically bar compensation to wrongfully convicted individuals who have contributed to their conviction. Instead, such conduct is relevant for determining the amount of compensation.

In England, Section 133 of the Criminal Justice Act 1988 partially replaced the practice of making *ex gratia* payments with a statutory scheme.²⁸⁵ Under both section 133 and the *ex gratia*

²⁸¹ Michael Zander, *Cases and Material on The English Legal System* (10th ed. 2007), p, 730–31, An *ex gratia* payment is a payment of money made or given as a concession without legal compulsion.

²⁸² *Ibid*

²⁸³ The Report of the Human Rights Committee (A/40/40) in 1985 on United Kingdom Available at <http://www.law.emory.edu/.../Cost>.(Accessed on January 15,2015)

²⁸⁴ Section 133 of the U.K's Criminal Justice Act ,1988 available at: <http://www.logiclaw.co.uk/Acts/.../crimjust198> (Accessed on February 10,2015)

²⁸⁵ Section 133 of the U.K's Criminal Justice Act provides: When a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice, the Secretary of State shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result

scheme, the decision as to entitlement is made by the Home Secretary; an independent assessor then determines the amount of an award. Section 133 is only as wide as Article 14(6) of the ICCPR and provides for compensation only after quashing of a conviction on an appeal out of time or following a reference to the Court of Appeal by the Criminal Cases Review Commission or the granting of a pardon.²⁸⁶

After a number of authors have provided vivid accounts of individuals who were wrongfully convicted and incarcerated, USA has come to admit the assumption that its criminal justice system does not convict only guilty persons and necessitated to design methods of redressing persons suffered harm as a result of wrongful convictions.²⁸⁷ Individuals who have been wrongfully convicted have three ways to seek compensation. They can sue the government, persuade the legislature to pass a private moral obligation bill, or file a claim under a statutory compensation scheme.²⁸⁸ A federal civil rights lawsuit is a method to bring a federal civil rights lawsuit against the municipality and the police.²⁸⁹

A common law tort suit is also another mechanism of seeking compensation from the government which can be brought in state court or in federal court.²⁹⁰ A plaintiff for instance may bring a state court tort suit against police or prosecutors based on malicious prosecution or Brady due process claim alleging that the prosecutor's failure to disclose material evidence relying on Brady requirements.²⁹¹

Germany and several countries in Europe provide compensation to defendants who have been detained in custody and then acquitted at trial.²⁹² Eligibility criteria under these compensation schemes tend to be far broader than those under the English statutory scheme or the interim criteria adopted in other jurisdictions. In Germany, an Act of Parliament²⁹³ passed in 1971 specifies that whoever has suffered damage as a result of a criminal conviction which is later

²⁸⁶ Ibid

²⁸⁷ Adele Bernhard, A Short Overview of the Statutory Remedies for the Wrongly Convicted: What Works, What Doesn't and Why, 18 B.U. PUB. INT. L.J. (2009), p.405

²⁸⁸ Ibid

²⁸⁹ Section 1983 provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ...

²⁹⁰ Adele Bernhard, Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated, Drake Law Review, Volume, 18 (2009) p.726-28

²⁹¹ UN HRC, Supra Note 283

²⁹² German Criminal Procedure, Supra Note 232, Ibid

²⁹³ German Act of 1917 on Compensation for Criminal Prosecution Proceedings

quashed or lessened the applicants shall be compensated by the state.²⁹⁴ The state's obligation to compensate is determined by the court at the conclusion.

The state's obligation to compensate is determined by the court at the conclusion of the criminal case, or after a subsequent hearing of the parties.²⁹⁵ The state shall also compensate a person who has suffered damage as a result of a remand order or certain other types of detention, provided he or she is acquitted or the prosecution is suspended or abandoned.²⁹⁶ There is no requirement in the Act that the applicant show innocence; but compensation is only paid to the extent that it is equitable in the circumstances of the case. Under Article 8 there is a right of appeal against the court's decision regarding compensation.²⁹⁷

Under French law compensation may be granted to those recognized as innocent after being convicted subsequently acquitted and to persons detained in custody pending trial.²⁹⁸ In the case of detention pending trial the person charged does not have to prove his innocence. In fact the accused may have escaped being convicted merely by receiving the benefit of the doubt.

If compensation is granted it is not limited to financial loss but covers all non-pecuniary losses suffered by the accused as well.²⁹⁹ There is no limit on the amount of compensation which can be awarded. In respect of a person who has been wrongly convicted, his spouse, ancestors or descendants may claim compensation as well as the wrongly convicted person.³⁰⁰ If the applicant so requests, the decree declaring his innocence will be displayed in the place where they lived and advertised in five newspapers chosen by the court.

²⁹⁴ Id , Article 1

²⁹⁵ Id ,article 8

²⁹⁶ Id article 2

²⁹⁷ Id ,article 8

²⁹⁸ Lester, Supra Note 206 at 277

²⁹⁹ Dehays, Supra Note 224, Article 626 provides that a person who has been convicted but is then recognized to be innocent, under the provisions of the present title, has the right to full compensation for the material and moral damage that the conviction caused him.

³⁰⁰ Id

CHAPTER THREE

SAFEGUARDS AGAINST WRONGFUL CONVICTIONS UNDER THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM

3.1 Introduction

Wrongful conviction of innocent individuals is being acknowledged in an increasing number of countries around the globe.³⁰¹ The problem of wrongful conviction is now framed as an international human rights issue.³⁰² Ethiopia is also facing the problem of convicting innocent persons as a result of erroneous convictions rendered by courts.³⁰³ In other jurisdictions like England, Wales, Northern Ireland, Scotland, Norway, Canada, the United States and others have substantial new mechanisms in place to better identify, correct and redress wrongful convictions.³⁰⁴ The legitimacy of the criminal justice system is based largely upon both its effectiveness and its fairness.³⁰⁵ Its effectiveness is judged by its ability to investigate and detect crime, identify offenders and mete out the appropriate sanctions to those who have been convicted of offences. Its fairness is judged by its thoroughness and the efforts it makes to redress the resource imbalance between the accused and the state at the investigatory, pre-trial, trial and appellate stages. The system does this by providing evidentiary protection and effective legal representation at all stages.³⁰⁶

Wrongful convictions undermine the legitimacy of the criminal justice system.³⁰⁷ If someone is wrongfully convicted, that person is punished for an offence he or she did not commit and the actual perpetrator of the crime goes free. As well, public confidence in the system declines when wrongful convictions are identified. Wrongful convictions undermine both this fundamental legal value and this public expectation.³⁰⁸ In this section the writer will examine the substantive

³⁰¹ Hoel Adrian 'Compensation for Wrongful Conviction' [2008] (356) Trends and Issues in Crime and Criminal Justice 1; Nancy Petro, '2012: A Banner Year for Cause of Reducing Wrongful Conviction' on Mark Godsey (ed) The Wrongful Convictions Blog at <http://wrongfulconvictionsblog.org> (Accessed on March 24,2015)

³⁰² Miranda Jolicoeur ,International Perspectives on Wrongful Convictions: Workshop Report, September 2010,p,5

³⁰³ Shume Regassa vs. Federal Public Prosecutor File No 65177. There are numerous cases of wrongful convictions in Ethiopia and some of those cases were discussed under chapter four of this paper.

³⁰⁴ Lynne, weathered, The growing Acknowledgment of Wrongful convictions , The Australian Response with in an International Context, Griffith University Innocence Project April 2011,P, 12

³⁰⁵ Philip Rosen, Wrongful convictions In the criminal justice systems, library of Canadian parliament,1992,P, 2

³⁰⁶ Jacqueline McMurtrie , Symposium: Wrongful Convictions and Systemic Reform: The Role of Social Science in Preventing Wrongful Convictions, American Criminal Law Review Fall, 2005,P 3-5

³⁰⁷ Id, at 7

³⁰⁸ Ibid

and procedural safeguards afforded to arrested and accused persons and under the Ethiopian criminal justice system.

3.2 General Overview of the Ethiopian Criminal Justice System

The historical evolution of the Ethiopian criminal justice goes back to the period of Fetah Negest.³⁰⁹ Pre and post introduction of Fetah Negest there were customarily developed rules of criminal investigation to identify wrongdoers from the community. These traditional methods of investigations were Lebashayi, Awuchachign and Afersata.³¹⁰ Despite their importance in settling criminal disputes and suppressing the commission crime they were ineffective and inadequate in providing fair treatment among the citizens. Particularly the Lebashay system was used to harm persons who were innocent of alleged crime but systematically manipulated to punish these as revenge for their personal conflict.³¹¹ This particular incident with overall abuse of the process had revealed the disadvantages of the institution which had urged Empress Zewditu to abolish Leba shay as a technique of criminal investigation.³¹² This can be an indicator for the miscarriage of justice during the Ethiopian customary criminal justice period. Since 1950's there were radical change in modernizing Ethiopian laws.³¹³

Post 1961, the Ethiopian criminal procedure had been a source for criminal investigation in Ethiopia. Even though there were some varying power and duties among these institutions police, prosecution office and the judiciary have been important organs in the Ethiopian criminal justice system.³¹⁴

The concept of criminal justice system is interpreted in many ways by different scholars.³¹⁵ It can be defined as a system of law enforcement, the judiciary, corrections and probation that is

³⁰⁹ Stanley Z. Fisher (1969), Ethiopian Criminal Procedure, A Sourcebook (Addis Ababa: Haile Selassie I University), Introductory part

³¹⁰ Simeneh Kiros,, Notes on the Ideal process in the Ethiopian criminal procedure, Mizan law review Vo.1, No 1, 2007, p 150. (Aferseta was a device by which all male members of a community would assemble to identify an offender in which the elders would call upon each person to tell whom he suspected)

³¹¹ The chief of Leba shay hinted to the intoxicated boy to indicate someone as the person who had stolen the garment. The person thus picked was a well-known personality among the imperial courtiers but he was not on good terms with the chief of Leba shay. This incident triggered a lot of controversy among the imperial courtiers, particularly when it was later discovered that the garment had been found after it was offered for sale at the market and that it had been stolen by a maid of the palace.

³¹² Ethiopian Criminal Procedure Teaching Material Prepared by Aderajew Teklu Kedir Mohammed, Sponsored by: Justice and Legal System Research Institute March, 2009 Addis Ababa, p ,61

³¹³ Legal History and Traditions Teaching Material Prepared by Muradu Abdo Prepared under the Sponsorship of the Justice and Legal System Research Institute 2009, p, 292

³¹⁴ Andergachew Tesfaye ,The crime problem and its corrections, volume II, (2007) p,81-85

³¹⁵ Kazuko Ito, Wrongful Convictions and Recent Criminal Justice Reform in Japan, 80 U. Cincinnati Law Review. (2012) p,1249

directly involved in the apprehension, prosecution, defense sentencing, incarceration, and supervision of those suspected of or charged with criminal offences.³¹⁶ In the Ethiopian context it can be defined as the sum total of society activities to defend itself against action it states as criminal.³¹⁷ This definition shows that a given state criminal justice system consists of various institutions which take part in process of administering criminal justice.

There is a general assumption by our community including legal professionals that organs forming part in the criminal justice system include police, Ministry of Justice, The judiciary and prison administration only.³¹⁸ However, the system encompasses other institutions broader than such assumptions since there are different institutions that are categorized under the components of the Ethiopian criminal justice system.³¹⁹

The Ethiopian justice reform material prepared by Ethiopian Ministry of Capacity Building indicates the components of the Ethiopian criminal justice system are; House of Peoples Representative, Regional State Councils, House of Federations, Federal and Regional Courts, Police, Public Prosecution, Prison Administrations of Federal and Regionals, Legal Research and Training Institutions, Associations of advocates and Civic Associations.³²⁰ The program provides that these institutions should work in cooperation in accordance with their power and duties in achieving the desired goal of the system.³²¹ They are also expected to be bind by basic principles provided in International Treaties, Constitution and other domestic laws. In the enforcement of the laws the main responsible organs under the Ethiopian Justice system are assigned with their respective power and duties and shared responsibility. These main organs are the judiciary, Public Prosecution, Federal Police, and the Federal Prison Commission including those similar organs established at regional levels. These stake holders together form the criminal justice system of the country.³²²

³¹⁶ Ibid

³¹⁷ Training Material on New criminal code, prepared by Federal Justice Organs professionals Training Center for public prosecutors, p,5 (Unpublished)

³¹⁸ Andergachew, Supra Note 314 at 5

³¹⁹ Teaching material, Supra Note 312 at 5

³²⁰ Material prepared by Ministry of Capacity Building on Ethiopian Justice Reform Program,2002

³²¹ Ibid

³²² See Proclamations, No 720/2004,25/96,471/2005 of Federal government and 141/2000 of Oromia region Regional State

The Constitution recognizes the establishment of an independent judiciary that has a dual judicial system.³²³ It also provides for the establishment of federal courts and the state courts with their own independent structures and administrations. Judicial powers, both at federal and state level, are vested in the courts.³²⁴ The Constitution states that the supreme federal judicial authority is vested in the Federal Supreme Court. Correction institutions are agencies whose main objective is to execute the sentence imposed on criminals.³²⁵

One of the goals of the Ethiopian criminal justice system is to ensure that no innocent should be wrongly convicted for the crime they did not commit.³²⁶ To build public confidence and sustain the trust of the community; the system shall work by engaging the community as an active and effective partner in solving crime and ensuring the provision of remedies by Communities to acquire accessible, speedy, impartial and quality justice and in particular the appropriate remedies for their grievances.³²⁷ Unless these components of criminal justice are working in line with the standard required by the system they cannot realize their goals which might be either failure to convict the factual guilty offenders or wrongly convict the innocent. Despite the existence of all requirements to run the process and the legal safeguards developed to bring fair trial the risk of convicting innocent is inevitable since bias and subjectivity might not be avoided in the process.

The writer had not come across previous researches which touch upon the issue after the introduction of modern criminal procedure in the Ethiopian context. Similarly it is rare to find out government publications which recognize the occurrences of wrongful convictions of innocent individuals in Ethiopia. However it is an undeniable fact that few or more cases of wrongful convictions had happened since perfection is rarely achieved by human beings despite the introduction of the formal criminal justice system.

³²³ Article 78 of Constitution of the Federal Democratic Republic of Ethiopia, Proc. No. 1/1995, (Hereinafter the FDRE Constitution), See also Federal Courts Establishment proclamation No 25/96

³²⁴ A Proclamation to provide for Re-establishment of Oromia National Regional State Courts Proclamation No 141/2008, Megeleta Oromia 16th year No. 10

³²⁵ Andergachew, Supra Note 314 at 159

³²⁶ Council of Ministers of the FDRE (2011), The Criminal Justice Administration Policy of 2011, (Hereinafter Crim. Policy), Sec.1.4

³²⁷ Ibid

3.3 Human Rights Obligations of Ethiopian Criminal Justice Organs

All components of the Ethiopian criminal justice system have their own and joint powers and duties in fulfilling their respective obligations.³²⁸ The overall objectives of these organs are keeping peace and order of the state by controlling and preventing crimes by apprehending the offenders.³²⁹ They are under obligations to ensure the protection of the fundamental rights and freedoms of individuals by bringing offenders to justice. Human beings are the holder of the rights and these organs are the principal duty bearer of human rights conferred on individuals.³³⁰ So, Ethiopia is duty bound to protect, respect and fulfill obligations of human rights guaranteed in the international instruments and domestic laws.³³¹

Currently the police institution is established both under the federal and regional levels.³³² The main mandates of the police are crime control and prevention of crimes.³³³ In addition they have also the obligation to conduct crime investigation. In doing so they have the human rights obligation of respecting and protecting the rights of person either arrested or accused of crime.³³⁴ Of course such duty of the police is against all persons including foreigners residing in Ethiopia. Similarly the Federal Prison commission is responsible for the management and administration of prisons and rehabilitation of convicted persons.³³⁵

The methods of criminal investigation they employ should be based on the principle of the criminal justice.³³⁶ They shall not use illegal mechanism of obtaining evidence. Interrogation of suspects shall be conducted and after notification of Miranda warning rights of the suspects. They cannot manipulate coercion obtain confession from the suspected persons.³³⁷ Any method of torture or cruel, in humane and degrading is universally prohibited to be used on human beings. Both physical and psychological means of torture are prohibited.³³⁸

As confession is admissible before court to prove the commission of the accused most of the time the police men want to obtain this confession without opting to other evidences that can

³²⁸ Criminal Justice Policy, Supra Note 326 at section 2

³²⁹ Id , section 3.1

³³⁰ Article 2(3) of the ICCPR

³³¹ FDRE Const Supra Note 323 , Article 13

³³² Id, Article 52,

³³³ Article 6 of proclamation 720/2004 and Regulation 96/2003

³³⁴ FDRE Const, Supra Note 323, Article 13(1)

³³⁵ Ibid

³³⁶ Criminal policy, Supra Note 326, section 1.4

³³⁷ FDRE Const, Supra Note 323, Article 18 and 20(5), See also Article 2 of UNCAT

³³⁸ Article 4(2) of ICCPR

prove the guilty of the suspect.³³⁹ The rationale for the admissibility of confession is the basic assumption that a person confessed to the crime is real actor whom his mental status has obliged to regret what s/he has committed.³⁴⁰ However confession may be obtained under different circumstances. It may be given by the suspect with his own free will based on his intention to relieve somebody from liability for committed crime.³⁴¹ This mostly happen when there is dealing with the person really committed the crime. There also suspects who want to be held responsible for certain crime that they thought to show their identity to boast with.³⁴² There are also persons who are psychologically affected and simply confess to crime for which they are suspected.³⁴³ These scenarios show that due consideration should be given to interrogation as there are numerous grounds which affect the reliability of confessions.

In addition these situations confession can be also obtained under duress or fraud employed by police officers which are illegal mechanisms. When there is no evidence for the crime under investigation or the investigation is somehow complex the police are so eager to get confession at any cost. Once confession obtained it will be brought as evidence against the suspect confessed to crime.³⁴⁴ Obtaining confession by use force is a wide spread act in the Ethiopian Criminal Justice System.³⁴⁵ Confession given before court by use of force on the suspect at the police station is difficult for the accused to prove that he confessed to crime under coercion.³⁴⁶

Ministry of justice is another stake holder in the criminal justice which is empowered for prosecution.³⁴⁷ It has the role of guiding the investigation process by counseling the police in ensuring and protecting fundamental rights and freedoms of persons arrested and accused of crime.³⁴⁸

³³⁹ Human Rights Watch , They Want a Confession” Torture and Ill-Treatment in Ethiopia’s Maekelawi Police Station,2013, p, 27-29

³⁴⁰ Kimberly Coffman, Anne Jenkins, Confession, Coercion, Procedural Error and the Juror (2001), UNF Theses and Dissertations, Paper 202. <http://digitalcommons.unf.edu/etd/202/> (Accessed on March 12,2015)

³⁴¹ Article134(2) of the Criminal Procedure Code of Ethiopia, Proclamation 185/1961, (hereinafter ECPC)

³⁴² Coffman, Supra Note 340 at 48

³⁴³ Ibid

³⁴⁴ Interview with Filiphos Ayinalem An advocate at Federal courts on March 12,2015 at his Office in Addis Ababa

³⁴⁵ Human Rights Watch, Supra Note 339 at 32, See also HRC Concluding observation on Ethiopia 2011

³⁴⁶ Ibid, see article 31 of the 1961 criminal procedure which prohibit such act by the police men

³⁴⁷ Proclamation No 471/2005,Definitions of Powers and Duties of the Executive Organs of the FDRE, 12th Year No. 1 Addis Ababa 17th November, 2005

³⁴⁸ Id, article 23

There are various human rights obligations imposed on judicial organs in the process of criminal proceedings.³⁴⁹ They have the duty to respect rights of arrested persons as well as accused person by themselves in taking appropriate measures which they are guaranteed by law and at the same time courts are also expected to protect rights of these persons not to be violated by police and other organs who may interfere in the process. They are the primary organ to protect and respect rights of persons arrested and accused of crime against violation either by police or prosecutors.³⁵⁰ Serving charge to the accused, enabling to understand the charge, enabling to provide state counsel for the poor, examining witnesses ascertain facts that require to clarifications, consideration of bail rights are among the basic obligations of the judiciary to mention few.³⁵¹ Unless courts are not capable to enforce and ensure the enjoyment these rights they are not meeting obligations imposed on them. It is also the duty of the court to ensure fair trial among the parties in taking successive measures depending on case by case basis.³⁵² In case there is any doubt as to the commission of the crime the accused individual shall be benefited from such doubt. This has the assumption that government has ample power and resources to prove the commission of the crime beyond reasonable doubt.³⁵³

Since these organs are established as state machinery the obligation imposed on states are also their obligations.³⁵⁴ Therefore all organs that participate in the criminal justice at federal and regional levels are under obligation to respect and protect fundamental human rights and freedoms that are guaranteed under FDRE constitution and other international human rights treaties that are adopted by Ethiopia..

Now it has been depicted in many instances that persons have been convicted for the crime they did not commit due to different factors that will happen at the time of investigations.³⁵⁵ Therefore it is the duty of all criminal justice organs to protect the rights of innocent persons not to be deprived of their liberty. Even though all stake holders will have their own contribution;

³⁴⁹ FDRE Const, Supra Note 323, Article 19, 20 and 79

³⁵⁰ Ibid

³⁵¹ Ethiopian criminal procedure code, Supra Note 341 , Article 127,129

³⁵² Id, Article 149

³⁵³ Id, Article 40

³⁵⁴ Article 78 of FDRE constitution, See also Supra Note 26 at section 2.3

³⁵⁵ Mengesha Tilahun et.al vs. Oromia Regional State prosecutor (Criminal File No10695, at Southern Region Oromia Supreme Court) , Debelu Taye et.al Vs. Oromia Regional State Public Prosecutor (Criminal File No 266/90, Ilu Aba Bora High Court)

Investigating Police Officers and the prosecutors are the primary responsible organs to protect rights of innocent persons from the outset.

As the day to day activities of these organs are associated with direct application of the concept in practice it requires great emphasis from these institutions. In cases where innocent persons are found convicted for crimes that they have not committed and these innocents are deprived of either their life or liberty these organs are failed to protect rights of these innocent individuals which amounts to breach of their duties stipulated in the constitution to respect and protect fundamental human rights.

3.4 The Ethiopian Criminal Justice Model

The historical emergence of criminal justice model goes back to 1960's³⁵⁶ since the introduction of packer's model of criminal justice system.³⁵⁷ It has been recognized that the competing interests in controlling crime by using sanctions as measure and at the same time protecting the constitutional rights of the individuals of accused of crime as a conflict between society's interest in convicting the guilty and the rights of criminal defendants.

Due to the reason that both theories have their own weaknesses in balancing interests of individuals well as keeping peace and order of the society in apprehending criminals, most states don not opt to use purely either crime control or due process model rather they are used in combination parallel to balance the both sides.³⁵⁸ However what makes states different in adopting the model is their own margin of accommodating these models. Some states give more emphasis to crime control model whereas others will focus more on the recognition of due process or high integration of due process and less emphasis to crime control model.³⁵⁹ Literatures provide that more integration of crime control in given state's criminal justice system will result in the challenge of respecting the rights of individuals accused in the process of enforcing criminal justice.³⁶⁰ Having said this much about criminal justice model concepts it is necessary to examine the situation under the Ethiopia criminal justice system specifically which

³⁵⁶ Herbert L. Packer, *The Limits of the Criminal Sanction*, Stanford University Press, 1968, p 5-8

³⁵⁷ Ibid

³⁵⁸ Farkhanda Mansour Zia, *Reassessing Packer in the Light of International Human Rights Norms*, Connecticut Public Interest Law Journal, 2005 p, 290

³⁵⁹ Ibid

³⁶⁰ Mirjan Damask, *Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study*, 121 U. PA. L. REV. 506, 576 (1973) (There is a conflict between these two desires: the more we want to prevent errors in the direction of convicting the innocent, the more we run the risk of acquitting the guilty.... This inner tension is part and parcel of the dialectics of any criminal process.)

model of criminal justice is more emphasized in our criminal justice system. In examining the criminal justice model that Ethiopia follows, it is vital to evaluate both substantive and procedural legal frameworks.

The FDRE constitution is the core instrument in determining whether the individual right or public interest are equally protected or one is more protected than the other. The constitution guarantees the rights of persons arrested and accused of crime in a very detailed manner. The right to bail is provided as a principle though it can be prohibited under exceptional circumstances. Remand is also exceptionally allowed to serve the interest of justice under which the investigating police officer is under obligation to conduct necessary investigation in limited period allowed by the court for each case. The right to remain silent and presumption of innocence are also another core rights which indicates the interest of the constitution to protect the rights of individuals.

The prohibition of bail rights and remand for additional investigations are also aimed to protect further commission of crime by restraining the accused under custody which will also enable law enforcement to investigate and collect evidences against persons suspected for the crime. This shows that the constitution fairly treats both rights of individuals on one side and the interest of the public one other side. Hence the FDRE constitution upholds both crime control and due process fairly by compromising the interests.

Apart from the constitution the subsidiary legislation also provided for certain standards in enforcing the criminal justice. The Ethiopian criminal procedure provides for a wide discretion of the police power in arresting persons whom they reasonably suspected to have committed or to commit crime without court warrant.³⁶¹ Reasonable suspicion is crude to define which might vary from police to police in enforcing the law which gives them broad discretion in arresting persons as they like whom they suspected for committing or to commit since the justification is reasonable suspicion which is not objective. Conferring such wide power to the police is an indicator of aligning to the crime control by preventing crime at the cost of rights of the individuals.

³⁶¹ Ethiopian criminal procedure code, Supra Note 341, Article 51(1)(a)

In addition, the recent trend of statutes on Vagrancy, Anti-Corruption and Anti-Terrorism reflect the inclination of the system to crime control model.³⁶² These laws have come up with some reforms concerning the burden of proof on the part of the prosecutor in which the burden is shifted to the accused to prove that they shall prove that they are innocent of the crime charged with. Right to bail is also prohibited in these cases and the admissibility of evidences has also come to evolve in which hearsays are allowed including information obtained from unknown sources will be accepted as a valid evidence in deciding on guilty of the person accused of the crime.³⁶³ In case of information from unknown sources the constitutionally guaranteed right to examination of evidence brought against the accused is violated.³⁶⁴ Remand period was also increased to twenty eight days which can be extended up to four months period.³⁶⁵ Though the period is fixed to a total of four months, all cases will not take four months as there are cases which can be finalized within days and it will expose arrested person to stay up to this period which increase pre-trial detention time.

Long decades after the introduction of the modern legal systems in Ethiopia, the country had adopted its first criminal policy in 2003.³⁶⁶ There have been questions raised by legal professionals on the necessity for adopting the policy in the presence pertinent laws in all aspects.³⁶⁷ Some question the need for the policy arguing that the Ethiopian criminal justice system had been working for long period without having a criminal policy while the substantive and procedural rules were used for implementing the criminal justice system with appropriate amendments in cases of legal loopholes. There are many reasons that had necessitated the adoption of the policy. Amending laws previously in force for the uniform application,

³⁶² The Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 236/2001, the Vagrancy Control Proclamation No. 384/2004, and the Anti-Terrorism Proclamation No 652/2009 ...

³⁶³ Article 23 of the anti-terrorism proclamation No 652/2009 provides for the admissibility of evidences under its sub articles as " Without prejudice to the admissibility of evidences to be presented in accordance with the Criminal Procedure Code and other relevant legislations, the following shall be admissible in court for terrorism cases:

1/ intelligence report prepared in relation to terrorism, even if the report does not disclose the source or the method it was gathered; 2/ hearsay or indirect evidences;..... "

³⁶⁴ FDRE Const, Supra Note 323, Article 20 (4) provides that accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defense, and to obtain the attendance of and examination of witnesses on their behalf before the court.

³⁶⁵ Article 20(3) of anti-terrorism proclamation provides that each period given to remand the suspect for Investigation shall be a minimum of 28 days; provided however, that the total time shall not exceed a period of four months. The dangerous vagrancy law extended the period of remand form to 28 days (Art 7)

³⁶⁶ Council of Ministers of the FDRE (2011), The Criminal Justice Administration Policy of 2011,

³⁶⁷ Interview With Ato Assefa Kesito A Former Minister at FDRE Ministry of Justice ON April 15,2015

accommodation of newly emerging crimes and incorporating modern and new mechanisms to be enforced in Ethiopia are among the purpose of the policy.³⁶⁸

Protection of the innocents is duly concerned by the policy in enforcing criminal justice that a system should work in identifying offenders from innocents.³⁶⁹ The criminal policy adopted recently had also provides for the shift of burden from the prosecutor to the accused in certain crimes. However the policy envisages for the circumstances that accused is required to prove his innocence after some facts are ascertained by the prosecutor which had modified the onus of the proof required from the prosecutors.³⁷⁰

Similarly the draft criminal procedure code has also included provision which shift the burden of proof to the accused as an exception in crime related with constitutional order, terrorism and corruptions.³⁷¹ By denoting currently evolving subsidiary legislations some scholars also share the idea that the Ethiopian criminal justice system emphasizes more to the crime control model than de process.³⁷² The standard of criminal proof in these cases is also lowered to be sufficient proof from proof beyond reasonable doubt principle.³⁷³ However the rational for the requirement of presumption of innocence and standard of criminal proof are developed to guarantee fair trial of the proceeding and protecting the rights of innocent individuals from wrongful convictions as well.³⁷⁴

Therefore as it can be observed from subsidiary legislations came into effect recently there is a change in upholding the constitutionally guaranteed rights of individuals by providing flexible protections in the administration of the criminal justice. The recent development of our criminal justice system model reflects more of crime control model that emphasis more on suppressions of crime comparing with due process which will have also an impact on increasing the degree of wrongful convictions of innocent individuals.

³⁶⁸ Criminal policy, Supra Note 326, Section 1.1

³⁶⁹ Id, at section 1.4

³⁷⁰ Id at section 4.6

³⁷¹ Article 5(3) and 396 of Draft Criminal Procedure Code, Ministry of Justice (2003 E.C), (Unpublished)

³⁷² Interview with Ali Mohammed, Judge at Federal Supreme Court Cassation Division on

³⁷³ Criminal policy, Supra Note 326 , at section 4.4 which provides that where the accused is charged with crimes against terrorism, constitutional order, corruption or conspiracy, or when the law provides, the burden of proof may shift to the accused upon the prosecution proving the primary facts (translation mine)

³⁷⁴ Human rights committee ,General Comment No 13 on Article 14 of the ICCPR (twenty first session,1984) Para,1, see also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007) section IV

3.5 Safeguards against Right to Life and Liberty in Ethiopia

The state has the primary responsibility of identifying and prosecuting offenders for the prevalence of the rule of law.³⁷⁵ In this process, the accused always faces a severe situations which also challenges the fairness of the criminal justice system. Using various tools, the law tries to maintain the balance between the searches for truth and ensure the fairness of the process.³⁷⁶ The criminal justice system is expected to maintain the rights of the individual even when this at times seems to go against the search for truth. The law does so by affording the individual certain protections, such as, the presumption of innocence until proven guilty before a competent, independent and impartial court and by imposing on the state the duty of proving each ingredient that constitutes the crime.³⁷⁷

The expectation from outcome of any criminal proceeding is to convict the guilty persons and acquit those who are innocents of the crime charged with which are the basic indicators of effective criminal justice.³⁷⁸ As there are many stake holders in the process there may be situations in which guilty persons can be acquitted by irregularities in the law though they are factually guilty of the crime. Acquittal of guilty persons is a great threat to the community.³⁷⁹ It is a failure of prosecution and investigation in proving that these are really criminals. Despite such regularities still it can be tolerated in the system.³⁸⁰ The criminal justice may produce in convicting innocent persons for crimes they have not committed.³⁸¹

The right to life, liberty and security of the person are among the core rights guaranteed by the constitutions from which all other rights can be inferred.³⁸² The constitution confers upon every individual's right to life. However, it is subjected to limitations. The right to life can be deprived for purpose of public interest as a result of criminal convictions for serious offences. The deprivation of right to life by court of law requires certain standards of fair trial rights.

The right to liberty is also governed under the FDRE constitution.³⁸³ It prohibits the arbitrary deprivation of liberty.³⁸⁴ However the right to liberty is not absolutely protected and the

³⁷⁵ FDRE Caonst, Supra Note 323, Article 13

³⁷⁶ Article 9,14 of the ICCPR , Article 19 and 20 of the FDRE constitution on fair trail principles

³⁷⁷ Ibid

³⁷⁸ Simeneh, Supra Note 310 at 153

³⁷⁹ Id at 153

³⁸⁰ Ibid

³⁸¹ Ibid

³⁸² Id ,Article 15 and 17

³⁸³ FDRE Const, Supra Note 323, Article 17

³⁸⁴ Id, Article 17(2)

constitution provides for exceptional mechanisms under which it can be derogated. Such right is also guaranteed with its exceptions. Deprivation of liberty can be possible for the purpose of enforcing criminal law. A person can only be deprived of his liberty by procedures provided by the law.³⁸⁵ Hence every criminal justice should have mechanisms to safeguard the right of the innocent individuals against wrongful convictions. There shall be procedural mechanisms to avoid and minimize the risk of wrongful convictions.

3.5.1. Rights of Persons Arrested, Accused and Convicted of crime in Ethiopia

The fundamental rights and freedoms guaranteed in the constitution particularly right to life, liberty of persons shall be respected and protected in reality except for deprivations justified by law under certain circumstances. Deprivations of these rights certain conditions permitted by the law also require the fulfillment of minimum standards to be followed to ensure fairness.³⁸⁶ The system shall be capable of reconciling the rights of individuals on one side and public interest on the other side.

The minimum standards to be respected in the course of criminal proceedings are widely recognized under the FDRE constitution.³⁸⁷ They are designed to protect the rights of innocent individuals by curbing miscarriage of justice in the process. Rights of persons arrested and accused are among those rights which are associated with criminal proceedings. These rights are separately governed under the constitution to protect rights of individuals at pretrial stages and during the course of trial.

Arrested persons do have numerous rights guaranteed in the constitution.³⁸⁸ The right to habeas corpus or petitions for physical release, not to be forced to give confessions and the right to bail are some of the rights conferred to individuals arrested for suspicion of crime.³⁸⁹ They are also given the benefit for the exclusionary rules of evidences obtained as evidences by use of force not to be admitted as evidence against the person upon whom coercion is made.

The right to fair trial, right to know particulars of the charges, Rights to examination of witnesses produced brought against the accused and representations by legal counsel are among the rights

³⁸⁵ Id, Article 17(1)

³⁸⁶ Id, Article 19 and 20 , See also Article 9 and 14 of the ICCPR

³⁸⁷ Id, Article 19 and 20

³⁸⁸ Id, Article 19

³⁸⁹ Id, Article 19(1) –(6)

of the accused persons.³⁹⁰ The respect and protection of these rights in the criminal proceeding have benefits of guaranteeing fair trial among the accused and the prosecutor. To the contrary the breach of these rights in the enforcement will result in unfair trial which hamper the rights of innocent persons. The existence of these rights on paper is worthless unless it is not implemented in practice. Rights of persons convicted for crimes are also protected by the constitution and subsidiary legislations.³⁹¹

The enjoyment and fulfillment of these rights will increase the fairness in the administration of criminal justice system and the breach of these rights will result in the negative consequences. Therefore the existence of these rights and their practical enforcement before independent judicial organs will positively reinforce the protection of fundamental human rights and freedoms recognized in the constitution by safeguarding and reducing the chance of convicting innocent persons though it is impossible to totally avoid wrongful convictions as mistakes are always inevitable.

The FDRE constitution provides for numerous human rights and freedoms of individuals.³⁹² As mentioned above the basic rights of person accused are : presumption of innocence, prohibition of self-incrimination (right to remain silent), right to bail ,public trial ,examination of witnesses produced against the accused , right to legal representation, right to appeal and exclusion of evidences improperly obtained and others not mention all .³⁹³

Rights of the accused persons protected in the constitution are designed to serve purposes of balancing the power of state to protect public interest with rights of individuals that may go beyond their power.³⁹⁴ As far as these principles are practically enforced by respective stake holders as required by the law, it is presumed that there will be a leveled field for both parties in achieving the outcome required by the criminal justice system.

³⁹⁰ Id, Article 20

³⁹¹ Id, Article 21

³⁹² Id, Article 13 to 44

³⁹³ Id, Article 19

³⁹⁴ Id Article 20

3.5.1.1. Presumption of Innocence

The right to be presumed innocent is one of the fundamental fair trial rights which is guaranteed under global, regional and under the FDRE constitution to protect the right of persons charged for criminal matters.³⁹⁵ The concept was first developed by Thayer and further clarified by dean wigmore.³⁹⁶ Those scholars agree that presumption of innocence is required for public purpose that a person accused of crime shall be treated with utmost fairness by shifting the burden of proof on the side of the state. As Wigmore argued, accused persons are given the benefit of all reasonable doubts in the process to ensure the absence of prejudice for the mere fact that they were arrested or subjected to trial.³⁹⁷ He forwarded that presumption of innocence is synonym with the concept of burden of proof that the accused is presumed to be innocent and the prosecutor has a burden of proof. The rationale behind presumption of innocence is to avoid the risk of convicting innocent individuals that might be manipulated by state in the course of criminal justice administration by imposing the burden on the state to treat the accused as innocent until it is decided by fair trial proceeding that he/she is innocent.³⁹⁸

FDRE constitution provides that accused persons have the right to be presumed innocent until proved guilty according to the law.³⁹⁹ The constitution imposes the duty to presume persons accused of crime as innocent as long as no guilty verdict is rendered against them. So, in Ethiopia it is a constitutionally guaranteed right which shall be respected and protected by all organs of state at all levels.⁴⁰⁰

The constitution provides for accused right to be presumed innocent which is to show that it is a duty of the prosecutor to prove that the accused is liable for the alleged criminal offence. With regard to presumption of innocence and burden of proof Simeneh argues that presumption of innocence shifts the burden on the prosecutor to convince the court that the accused is

³⁹⁵ Id, Article 20(3) provides that during proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves. Article 14(2) of the ICCPR which provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

³⁹⁶ The Presumption of Innocence in Criminal Cases, 3 Wash. & Lee L. Rev. 82, Volume 3, Article 6, 1941, P, 82

³⁹⁷ Ibid,

³⁹⁸ Worku Yaze Wodage, Presumption of Innocence and the Requirement of Proof Beyond Reasonable Doubt: Reflections on Meaning, Scope and their Place under Ethiopian Law” in Wondwossen Demissie (Ed.), Human Rights in Criminal Proceedings: Normative and Practical Aspects, Ethiopian Human Rights Law Series, Vol. III, 2010, p. 118

³⁹⁹ FDRE Cons, Supra Note 323, Art 20(3) ,See also Articles of 11(2) UDHR and 14(2) ICCPR

⁴⁰⁰ Id, Art 13(1)

responsible for allegations brought against him.⁴⁰¹ He further contends that there are legislations found to limit this right by shifting the burden of proof to the accused despite the absence of any exception to the right of presumption of innocence by the constitution.⁴⁰² He also noted that neither general nor specific limitations are imposed on the right.⁴⁰³ The constitution has clarified grounds for restricting those constitutionally guaranteed rights.⁴⁰⁴ Creating exceptions to these rights by other legislation is unconstitutional since the constitution itself declares such laws null and void.⁴⁰⁵ Therefore the constitution does not allow for exception to the right to be presumed innocent like in the case of the right to life and liberty.⁴⁰⁶ It is to mean that there is no constitutional ground to create any restriction on the right to be presumed innocent.

The significance of presumption of innocence and its absolute protection by the constitution is to protect the rights of innocent individuals involved in the criminal proceedings. The current policy and move in shifting the burden of proof to the accused will create substantial impact on the right of innocent individuals charged of crime.⁴⁰⁷ It is quite clear that state and private individuals do not have equal power and resources in investigation and in gathering of evidences. Remanding individuals affect their right to produce evidence as defense while they are under custody. Hence the trend to shift the burden of proof to the accused will result in unfair trial of the proceedings which might also be erroneous conviction of individuals that could contribute for the occurrence of wrongful convictions.

In addition to the absolute protection of presumption of innocence there are contentions that there is a distinction on the beneficiary of the rights that the constitution provides for the right to be presumed innocent only for persons accused of crime that excludes persons arrested of crime not be presumed innocent.⁴⁰⁸ Such argument posits that the right to presumption of innocence is narrow in a sense that it is conferred for persons facing criminal trial and does not include persons in the pre-trial stages. However, rights provided in chapter three of the constitutions shall be interpreted in line with conforming to the international principles of human rights and article

⁴⁰¹ Simeneh Kiros Assefa, The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process, *Mizan Law Review*, Vol. 6, No. 2, (2012), pp. ,287-288

⁴⁰² *Id* at 288-289

⁴⁰³ *Ibid*

⁴⁰⁴ FDRE Const, *Supra* Note 323, Article 15 , 17(1) and (2)

⁴⁰⁵ *Id*, Article 9(2) states that the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

⁴⁰⁶ Simeneh, *Supra* Note 401 at 288

⁴⁰⁷ Criminal policy, *Supra* Note 326, section 4.4 ,See also *Supra* Note 371, Article 5(3)

⁴⁰⁸ Worku, *Supra* Note 398 at 126

20(3) of the constitution which is placed under rights of the persons accused should be understood within the principles of these international principles.⁴⁰⁹ International principles of human rights provide that the right to be presumed innocent should be applicable to both pretrial and trial phases of criminal proceeding.⁴¹⁰ They guarantee it to all persons under investigation and trial of criminal matters without any distinction on the scope of the right with respect to the beneficiaries of the right. It is a broadly conferred right to all persons arrested and accused of crime.

In addition to international instruments on the broad protection of the right; international treaty bodies had forwarded and recommended that states should interpret the right to be presumed innocent broadly to include persons arrested in the criminal investigation.⁴¹¹ Therefore, though the constitution provides for the right to be presumed innocent under the caption of the rights of persons accused of crime; international jurisprudence provides that the right shall be interpreted to include individuals and the same shall be applied in Ethiopia.

3.5.1.2. Indigent Legal Representations in Ethiopia

In realizing fair outcome of the criminal proceedings; the right to indigent legal representation has a vital role in leveling the field of litigation with trained public prosecutor.⁴¹² Let alone the illiterates even intelligent and educated laymen might not have adequate skill to defend themselves. Hence persons who are financially unable to retain their own lawyers are provided with the right to state hired defense attorneys to avoid the miscarriage of justice that might exist in the case. The FDRE constitution also provides for such right in cases where persons accused of crimes are unable to afford hiring their own lawyer and miscarriage of justice would result in the case.⁴¹³ The constitution does not categorize for crimes that require the representation as it is

⁴⁰⁹ FDRE Const, Supra Note 323, Article 13(2) provides that fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the UDHR, ICCPR and International instruments adopted by Ethiopia.

⁴¹⁰ Article 11(2), 14(2),7(1) (b) of the UDHR, ICCPR and ACHPR respectively

⁴¹¹ UN, Human Right Committee General Comment adopted in its 21st session 13 May 1984, available at <http://www.unhcr.ch/tbs/doc.nsf> (Visited on February 12, 2015).

⁴¹² Article 14(3)(d) of the ICCPR states that ; in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

⁴¹³ FDRE Const, Supra Note 323, Article 20(5)

provided in the ICCPR.⁴¹⁴ ICCPR does not also categorize for the type of offense that require the right to such legal representation service. As of UN Human Rights Committee duly noted there shall be no difference to treat crimes which result in deprivations of liberty that deprivation is after all deprivation irrespective of the sentence. The grounds to be considered are the affordability of litigation cost and the miscarriage of justice that would result otherwise. Our constitution provides for the cumulative existence of these requirements. A mere inability of the accused to afford cost of his lawyer cannot be a sufficient ground to be represented with state lawyer. Rather the existence of miscarriage of justice should be presumed to provide the service. But the problem practically exist is method to ascertain the existence of miscarriage of justice. It is not clear who will assume the existence of such situation. Is that a discretionary power of the judge to rule out on case by case basis or the accused persons will have something to say? The enforcement of this provision lacks clarity. The law allows for the service to be commenced from the time of interrogation.⁴¹⁵

Practically the service is provided only at the trial stages for the crimes that require representations and will not also include appellate courts. The counsel who had represented an accused at trail stage will not assist the appellant to prepare their memorandum of appeal and discontinue the service appellate levels.⁴¹⁶ It is only by the request of the court that they appear to represent them again.⁴¹⁷ The provision of such service at Oromia regional courts is also similar with the federal courts. Accused who were represented at trail stages will not be represented at appellate courts. The appellants will prepare their appeal either by themselves or by any laymen who cannot have the skill mostly rappor writers. The counsels will not help them to prepare their appeals.

The writer had observed the practice of Oromia Supreme Court from his work experience there. Moreover, Oromia Supreme Court had established three regular benches at Adama, Sheshemene and Nekemte to make accessible the judicial service to the community. Despite their

⁴¹⁴ Id, 20(5) provides that accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.

⁴¹⁵ Ethiopian criminal procedure code, Supra Note 341, Article 61 that provides for any person detained on arrest or on remand shall be permitted forthwith to call and interview his advocate and shall, if he so requests, be provided with the means to write. See also Article 127 of the same code

⁴¹⁶ Interview with Ato Ali Mohammed Judge at Federal Supreme Court Cassation on April 20,2015 at Federal Supreme Court

⁴¹⁷ Ibid

jurisdictional power over criminal cases; still there are no attorneys who provide legal service to the indigent accused at these courts. It is questionable how these unrepresented individuals seeking the service can bring their appeal by framing legal issues for the breach of law as a basic error of law to be entertained at cassation bench for error. The practical provision of the service by state is not adequate enough. There are also some legislations which have come up with certain conditions on the provision of indigent legal service.⁴¹⁸ These legislations provide that an accused individuals accused of crime punishable with rigorous imprisonment of not less than five years and cannot afford to retain their own lawyers shall have the right to be provided with state defense attorney.⁴¹⁹ Proclamation No 25/96 is silent on legal representation of the indigent. With regard to the cases in Oromia, even though it is provided by law that persons accused of crimes entailing sentence of not less than five years; it is not yet enforced. By jurisdiction state Woreda courts can entertain crimes that can entail more than five years imprisonment.⁴²⁰ But still there is no structure which provides for the existence of defense attorneys at woreda level and there are no defense attorneys which might represent the indigent accused for these crimes. The same is true in Federal First Instance Courts. There is no structure for defense attorneys at lower level though they also entertain crimes which can entail miscarriage of justice. It is only upon the request of the court that the defense attorneys at Federal Supreme Court will be ordered to provide the service. But there shall be parallel structure to provide the service as any other structures.

The practical enforcement of the right to legal representation in Ethiopia is not adequate enough in providing the desired service for the indigents as the practice shows. The absence of the service at certain level and provision of the service at limited level will affect the rights of accused persons seeking the service. It will have an effect on the outcome of the proceedings in which the accused might face miscarriages of justice. Among those miscarriages the absence of legal representations for indigent will contributes for the wrongful convictions of innocents that would have been challenged from the outset. So the service shall be provided at stages which qualify for the representations. There shall be structural framework to institutionalize the service

⁴¹⁸ Defense Force proclamation No 343/2003 Federal Negarit Gazette Year 2nd No 15 and Oromia Regional State Courts establishment proclamation No 141/2008

⁴¹⁹ Article 17(2) of proclamation No 141/2008 and Article 19(2) of 343/2003 that provides for The State shall provide a defense counsel to a person charged with an offence punishable with imprisonment of not less than five years and is unable to retain a counsel

⁴²⁰ Article 555,620,626,669,589 of New Criminal Code to mention few

at federal first instance courts and at all levels of state courts where the service is not adequately available.

3.5.1.3. Standard of Burden of criminal proof in Ethiopia

The need for consistency in judicial decisions particularly criminal judgments to establish occurrence and on occurrence of the facts for the fairness in the criminal proceedings necessitated for setting standard of proof.⁴²¹ The standard is used to determine the criminal liability of the accused that they have committed the crime charged with.⁴²²

The common law countries' standard of proof in criminal matters is beyond reasonable doubt which is first introduced by Spanish Francisco Suarez.⁴²³ It was designed to determine with certainty that no person should be convicted of crime unless there is absolute certainty that he had committed the crime.⁴²⁴ It is the level of degree anticipated from the prosecutor to prove that the crime is really committed by the person accused of the crime.

Similarly administration of criminal justice in the Ethiopian context require standard of criminal proof to pronounce guilty verdict that the crime is committed by the accused. So, the standard of proof has a vital importance in identifying the duty bearer of the crime committed. The misapplication of the principle of burden of proof will either produce conviction of innocent persons or acquittal of guilty persons.

There is contention on the existence of the standard beyond reasonable doubt in the Ethiopian context.⁴²⁵ The absence of the phrase beyond reasonable doubt in any of Ethiopian laws either in substantive or procedural rules contributed for the disagreement on the existence of the standard in our legal system. Simeneh argues that there is no standard of proof set in the criminal proceeding. He also indicate that Federal Supreme Court Cassation division do not yet given any ruling on the applicability of the standard in the Ethiopian criminal justice system for enforcement of the rule by lower courts as binding decisions.⁴²⁶

⁴²¹ Thomas Christopher Rider, What is the Most Useful Standard of Proof in Criminal Law? Pragmatism Tomorrow 2013, Issue 1: No. 9,p, 2

⁴²² Ibid

⁴²³ , James Whitman Q, The Origins of Reasonable Doubt (2005), Faculty Scholarship Series. Paper 1, p 12

⁴²⁴ Ibid

⁴²⁵ Simeneh, Supra Note 401 at 293

⁴²⁶ Article 2(1) of Proclamation No 454/2003 amending proclamation 25/96 provides that interpretation of a law by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels.

Further Worku had also cited his article that there is no precise inclusion of the principle of proof in Ethiopia. But he argues that the right to presumption of innocence is an indicator for the existence of the standard proof beyond reasonable doubt that put prosecutor under obligation to bear the burden of proof that a given accused is guilty of certain crime.⁴²⁷

Though there are contentions on the existence of the standard in the Ethiopian law, it is better to examine the issue in line with related laws to determine the incorporations of the concept in our law. The Ethiopian Criminal Procedure Code provides that the prosecutors shall produce evidences to prove their charges.⁴²⁸ The prosecutor shall prove his charge that all elements of the crime have been committed by the accused. It also add that the court shall acquit the accused if finds that no case is made against the accused. If the standard the court employs in acquitting the accused by article 141 cannot be regarded as proof beyond reasonable doubt; what standard we are going to call it? Unless the commission or omission of the crime is proved beyond reasonable doubt; the court should not require the accused to produce defense witnesses. Defense witnesses are called to create a doubt against the prosecutors' evidence. So, when the courts acquit individuals accused of crime the standard to be employed is a beyond reasonable doubt standard.

Even though the procedure code does not state for the standard to be used in our case; it can be further inferred from Fisher's work that illustrate the decision rendered by Malayan high court that prosecutors are under obligation to prove their charge beyond all reasonable doubts.⁴²⁹ This decision was developed as precedent. By the same token, as our system is also a carbon copy of the Malayan code, it is not wrong to conclude that standard of proof beyond reasonable doubt is also included in our legal system. In addition to this, the Evidence Rule of 1967 had incorporated the principle which clearly shows that the intention of the law at time indicates that the concept of proof beyond reasonable is included in our system.⁴³⁰ Of course, the evidence rule is still a draft that cannot serve as a binding rule. But it will help to understand that the concept is developed in the Ethiopian legal system since 1960's. So, these will clear the confusion on the existence of the standard under the Ethiopian criminal justice system. The Rule of Evidence provides that the defense witnesses are expected to raise some reasonable doubts on the facts

⁴²⁷ Worku, *Supra* Note 398 at 129

⁴²⁸ Ethiopian criminal procedure code, *Supra* Note 341 ,Article 136

⁴²⁹ Stanley Z. Fisher (1969), *Ethiopian Criminal Procedure, A Sourcebook* (Addis Ababa: Haile Selassie I University), p , 311

⁴³⁰ Draft Evidence Rules, Art. 81, (1960 E.C., Unpublished).

proved by the prosecutor's evidence. It further states for the prosecutor's duty to prove each and every element of the crime on the charge.⁴³¹

Therefore the cumulative understanding from these arguments show that it is the duty of the prosecutor to prove beyond reasonable doubt that the accused had committed the alleged crime whereas the defense witnesses are required to create reasonable doubts on the prosecutors evidence which would warrant acquittal of the accused. A contrario reading of the phrase "defense witnesses shall raise reasonable doubt" indicates that the prosecutors are expected to prove their charge beyond reasonable doubt.⁴³²

Apart from the criminal procedure code, the FDRE constitution confers presumption of innocence.⁴³³ A person charged with a criminal offence has the right to be presumed innocent until he or she is proved guilty according to law.⁴³⁴ It is also another way of expressing the obligation of the prosecutor to prove elements of the crime in the charge beyond reasonable doubts.⁴³⁵ Hence it is possible to state that the standard beyond reasonable doubt is accommodated under the FDRE constitution.

International treaties ratified by Ethiopia acknowledge the right of the accused to be presumed innocent.⁴³⁶ HRC had also forwarded a general comment be complied by member state of the ICCPR on the presumption of innocence.⁴³⁷ In this general comment the Committee had clarified the obligation of state parties to the covenant that the concept of presumption of innocence requires the prosecutors to prove the charge beyond reasonable doubt so that the accused will be convicted of a crime charged with.⁴³⁸ Therefore despite the absence of standard of criminal proof under the Ethiopia criminal justice system, interpretation of these rules developed by international treaty bodies enable to argue boldly that the concept is incorporated and form part of the our legal system.⁴³⁹

⁴³¹ Id, Article 81

⁴³² Ethiopian criminal procedure code, Supra Note 341, Article 25 and 42

⁴³³ FDRE Const, Supra Note 323, Article 20(3) states that during proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.

⁴³⁴ Ibid

⁴³⁵ Simeneh, Supra Note 401 at 287

⁴³⁶ Article 11(1) of the UDH, Article 6(2) of the ECHR, Article 7(1)(b) of the ACHPR

⁴³⁷ UN Human Rights Committee (2007), General comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial, (23 August 2007, ICCPR/C/GC/32), Para. 30.

⁴³⁸ Ibid

⁴³⁹ FDRE Const, Supra Note 323, Article 13(2)

To finalize discussions on the standard of criminal proof under the Ethiopian criminal justice system, previous laws that were enacted in 1960's and the FDRE constitution inheres the principle of proof beyond reasonable doubt despite the absence of clear existence of the standard. However current trends in Ethiopia reveal that the principle is evolving.⁴⁴⁰ Recently adopted criminal policy of Ethiopia has come up with circumstances under which the burden of proof can be shifted to the accused despite the absolute protection of the presumption of innocence by the constitution.⁴⁴¹ Of course there is a pattern even in the 2004 criminal code.⁴⁴²

The Draft Criminal Procedure Code has also incorporated grounds for exception against presumption of innocence in certain crimes like crimes related with constitutional order, terrorism, corruption, and conspiracy where the burden of proof may shift to the accused requiring them to prove that they are innocent of the crime.⁴⁴³ Individuals who are charged with these crime are required to prove that they are not guilty of them which is against the rights protected in the Ethiopian constitution and internationally enriched principle of fair trial rights that everybody shall be presumed innocent until proved guilty by court. This trend is contrary to the constitutionally guaranteed right which presume accused persons that they are guilty until proven innocent rather than presumed innocent until proved guilty.

The main significance for shifting the burden to proof to the state is aimed to protect and minimize the risk of convicting innocent individuals from the miscarriage of justice that might occur in the dispensation of criminal justice particularly from wrongful convictions of innocent individuals. Such move in shifting the burden of proof to the accused in certain crimes affect the very purpose of the concept that presumption of innocence because of the reason that the presumption is here reversed to the side of the accused and they are presumed guilty until they are able to proof that they are innocent of the crime charged for.

Therefore the trend of shifting the burden to the accused in combination with irregularities that might happen in the process will contribute for the probability of convicting innocent individuals charged for crimes in Ethiopia.

⁴⁴⁰ Draft criminal procedure code, Supra Note 371, Article 5(3), 396, Supra Note 26, section 4.4, See also article 419 of the New Criminal Code which provides for presumption of possessing property shifting the burden of proof to the public servant charged for the crime.

⁴⁴¹ FDRE Const, Supra Note 323 Article 20(3)

⁴⁴² Article 419 of 1996 Ethiopian Criminal Code

⁴⁴³ Criminal policy, Supra Note 326, Section 4.4, See also Supra Note 371, Article 5(3)

CHAPTER FOUR

CASE STUDIES OF WRONGFUL CONVICTIONS IN THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM

4.1. Introduction

In the earlier chapters, it has been dealt that the world's criminal justice is facing problems of convicting and imprisoning innocents due to flaws in the system. Numerous instances of cases were also addressed to show the magnitude of the problem. Statistically, the frequency of the problem is acute that reveal the conviction of many innocent persons for the crime they did not commit. Wrongful convictions had been observed more in countries where economy is grown and technologically advanced.

Similarly, despite the existence of the rights of person suspected and accused of crime under the Ethiopian criminal justice system, practical examination of cases decided by courts have come to reveal that there are numerous cases which have subjected innocent individuals to serve sentences for the crime that was committed by other individuals or not committed at all. Every criminal investigation shall respect and protect the fundamental human rights that are guaranteed in the FDRE constitution as well as under international and regional treaties.⁴⁴⁴ Due concern is highly expected from criminal justice organs not to violate rights of individuals involved in the criminal investigation and proceedings. Particularly rights of innocents who are charged for the crime they did not commit shall be given due emphasis. However, it has been depicted that many persons have been found convicted and incarcerated for the crime they did not commit under the Ethiopian criminal justice system. Innocent individuals who are not figuratively few were deprived of their liberty as a result of erroneous convictions rendered by our courts.

Until recent period, it is possible to assertively put that there is no government report recognizing the occurrence of wrongful convictions. However the silence on the part of the government in responding to the issue does not assure the absence of the problem in the Ethiopian criminal justice. Though it is tough to express the magnitude and prevalence of wrongful conviction in Ethiopia, the assessment made by the writer indicates that there are cases in which innocent persons were wrongly convicted.

⁴⁴⁴ FDRE Const, Supra Note 323, Article 13(1)

In this chapter the writer will assess wrongful conviction cases in Ethiopia. The causes that contributed to wrongful conviction decisions and the impacts of these decisions on individuals wrongly convicted and on over all criminal justice system will also part of the discussion.

4.2. Wrongful Convictions in Ethiopia: Analysis of Selected Cases

As it was indicated in methodology part these cases going to be discussed here under were selected based on the information and personal work experience of writer related with the issue. Though there is information on the existence of numerous cases involving wrongful convictions; it was not possible to include those cases due to the absence of data bases to access the cases. Hence, only the analyses of cases accessed by the writer were covered by taking sample cases from different parts of the country to indicate the occurrence of convicting innocent individuals in the Ethiopian perspective to pursue for the possible legal remedies in dealing with the problem.

4.2.1 Shume Regessa Heyi vs. Federal Public Prosecutor⁴⁴⁵

Shume Regessa was charged for aggravated homicide at Federal High Court under New Criminal Code of Ethiopia.⁴⁴⁶ Federal Prosecutor had charged him for murdering the deceased named Workineh Kassa on 30 October 2000 E.C in Addis Ababa Bole sub-city by repeatedly beating on face and head of the deceased using stick as revenge for previous conflict related with business dealing among them. The prosecutor had attached names of four eye witnesses and medical examination of the deceased's corpse with the charge including photographs which show the injury on different parts of the deceased's body with the last word of the deceased contained in the charge.⁴⁴⁷ After his representation with state retained lawyer he pleaded not guilty stating that he had not committed the acts mentioned in the charge.

After prosecutor's witnesses had been heard the court ordered him to produce his defense witnesses since the witnesses' produced against him had proved his commission of the acts mentioned in the charge.⁴⁴⁸

Shume had requested the court to carefully examine his witnesses prove for him that he did not commit the alleged crime. He noted that he went home after buying some goods for

⁴⁴⁵ Federal Public Prosecutor vs. Shume Regassa, Federal High Court criminal File No 65177

⁴⁴⁶ Ibid

⁴⁴⁷ Ibid

⁴⁴⁸ Id, at 3

consumptions from market with his wife around 9:00 o'clock on the date cited in the charge and stayed at home till night that he did not commit the crime.⁴⁴⁹ He framed an issue that he had disagreement with the first prosecutor witness called Megersa Bededa that he falsely testified against him. He also explained to the court that the real killers of the deceased are his neighbors.⁴⁵⁰

His witnesses had testified that he did not committed the crime explaining that he was at home the whole night and the crime was committed by other persons. Specifically a defense witness named Fantu Lemma who is also wife of the accused had testified that their neighbors called Getu Assefa and his brothers left their home locked and escaped after they had heard the death of the deceased. Furthermore she explained that there is no disagreement between the deceased and her husband while there is a previous dispute between the accused and first witness of the prosecutor.

After considering all evidence brought to the proceeding from both sides the court had come to conclude that the prosecutors evidence and written documents proved that the accused had really murdered the deceased by beating on different parts of his body using stick whereas the evidence produced from the part of the accused was not found to discredit the strong evidence produced by the prosecutor. Hence the federal high court rendered the judgment that Shume was convicted for aggravated homicide and sentenced him to life imprisonment on October 26, 2002.⁴⁵¹

He also took his appeal to Federal Supreme Court arguing that the prosecutor's witnesses are self-contradictory that the charge was not proved; that there was no disagreement with the deceased and real actors of the crime were identified by his witnesses.⁴⁵²

After considering his appeal federal Supreme Court has convicted the appellant under ordinary homicide and sentenced to ten year of imprisonment on March 29, 2002 by reversing life imprisonment sentence previously imposed against him.⁴⁵³ It seems that Shume was hopeless in proving his innocence before courts and he did not take his appeal to the cassation division for the fundamental error of law. The three months period also lapsed and the decision became final and continued his service of ten years at Kilinto Prison. The writer had also inquired that the appeal was not lodged at cassation division from the data base of the court.

⁴⁴⁹ Id, at 4

⁴⁵⁰ Ibid

⁴⁵¹ Id, at 5

⁴⁵² Shume Regassa vs. Federal Public Prosecutor, Federal Supreme Court Criminal File No 52049

⁴⁵³ Ibid

After years; the prosecutors had obtained information that the real murderer of Workineh Kassa is another person called Getu Assefa.⁴⁵⁴ They conducted re-investigation as to the case and it was discovered that Getu had admitted to kill Workineh who is also in prison for committing another crime where he had also hid himself by changing his name. He freely confessed that he had murdered the deceased for which Shume had been convicted.⁴⁵⁵

The witnesses who had testified that Shume had killed the deceased have also appeared before police station and recanted that they had falsely testified against him as he had killed the deceased.⁴⁵⁶ The police had started investigation both on Getu Assefa the real culprit for homicide and witnesses Megersa Bededa et.al who had falsely testified for crime of perjury. The absence of legal mechanism under the Ethiopian criminal justice system like civil procedure code⁴⁵⁷ which allows for review of finally decided cases in cases where newly discovered facts had challenged the prosecutor to resolve Shume's case who had been crying to the court to prove his innocence throughout the whole proceedings. There is no any justification why he should stay in the prison. Hence as a solution the prosecutor sought the federal supreme court to conduct a retrial for his case indicating the fact that a miscarriage of justice had occurred in his case.⁴⁵⁸

The prosecutor had expressed in the application that they are unable to charge a real offender since the individual is serving wrong sentence for the act he did not committed.⁴⁵⁹

In addition the prosecutor had also based that a review of judgment in civil case should be used by analogy to this case to ensure fairness and just decision of criminal proceeding to save this innocent person from serving punishment for which he is not responsible. However the remedy opted by of the prosecutor was not successful because Federal Supreme Court had rejected the application for review of the case.⁴⁶⁰ The reason for rejecting an application requiring for review was the absence of legal procedure in the Ethiopian criminal procedure code that allows conducting a retrial of finally decided cases.

The final remedy that might provide a solution to regain Shume's liberty was Pardon Board. On the basis of applications submitted by the prosecutor and the victim; the board had finally

⁴⁵⁴ Application written to Federal Supreme Court by Federal Public Prosecutor Claiming for Retrial on 10/04/2004

⁴⁵⁵ Ibid

⁴⁵⁶ Federal public prosecutor Vs. Getu Assefa et.al Federal High Court Criminal File No 114735(Pending Case in which witnesses who had testified falsely were charged for crime of perjury in this case)

⁴⁵⁷ Article 6 of Ethiopian civil procedure code allows for a review of judgments upon the discovery of new evidence

⁴⁵⁸ Application, Supra Note 454, at 2-3

⁴⁵⁹ Ibid

⁴⁶⁰ Shume Regassa vs. Federal Public prosecutor, Federal Supreme Court Criminal File No 52049

pardoned him on January 29, 2004 declaring that he was pardoned after considering the time he had already served is sufficient pardon.⁴⁶¹ The then president of FDRE, Girma Woldegiorgis had approved his grant for pardon. He was finally released after wrongly imprisoned for around five years. He lost his five years as a result of the action of state machinery.

The primary cause that had resulted for the conviction of this individual is false testimony given based on the personal conflict between the convicted and the witnesses as revenge. Investigating police are expected to conduct deep investigation about the crime committed by using techniques of investigations. In this case the investigation process made by the police is not sufficient since there was clear indication by the victim as well as his neighbors who have been notifying about the innocence of the individual.

Of course, all organs in the process like witnesses, police, prosecutor, defense attorney and judges do have their own share in the case. Nobody has considered his claim that he is innocent of the crime. Even in the course of proceeding he had applied for the high court indicating the address of offenders and requested Addis Ababa Police Commission, Federal Police and Oromia Police Commission to investigate the case jointly.⁴⁶² But no one had accepted his application. Both courts had proved the guilt of the individual. However the file shows that the eye witnesses who had falsely testified called Megersa stated that Shume had beaten on the face of the deceased using stick. But the last word of the deceased attached in the file provides that the deceased was beaten with stone which contravened with the testimony given by the prosecutor witnesses.

He had also produced defense witnesses that they had confirmed that they were at home. The court failed to give any weight to the defense witnesses' testimony. The investigation conducted by the police about Shume's case is not constructive that failed to identify the real doers of the crime. To conclude even though all stake-holders will have their shares, the main factors that had resulted in conviction of the individual is false testimony and shallow police investigation of the case.

⁴⁶¹ A Certificate of pardon that shows Shume's official pardon for homicide crime signed by the then Ethiopian president dated 29/05/2004

⁴⁶² Shume, *Supra* Note 445, at 1-5

4.2.2 Undil Shiferew vs Benchi Maji Zone Public Prosecutor ⁴⁶³

In this case Benchi Maji Zonal Prosecutor had brought a charge against Undil Shiferew for violating Article 540 of the 1996 Criminal Code for murdering the deceased called Girma Bushayi on May 4, 1998. After hearing evidence called to testify from both sides, the court had found the accused guilty of the homicide charged for and sentenced him to twelve years of imprisonment on 7th January, 1999.⁴⁶⁴ He had been in prison since May 8, 1998. This decision had been confirmed by the appellate court and he had no other choice than serving the sentence by adapting himself to the horrible prison life in Mizan Teferi.⁴⁶⁵

Almost after four years period, a new hope started to flourish as new evidence was found concerning the crime that Undil was convicted for. The new evidence came to emerge were recantations made by those witnesses that had previously testified against the defendant.⁴⁶⁶ They indicated that they falsely testified against him though they know that another person had committed the murder on the victim. It was revealed that the deceased was killed by another person called Walo Boshu.⁴⁶⁷ These witnesses had repented for their actions that had subjected the accused to suffer imprisonment. This was the initial source for the reinvestigation of the case by the police.

Then the investigation concluded that the witnesses falsely testified against the defendant had admitted by recanting that they falsely testified against him. They freely confessed to the court that they had given their statements falsely as a revenge that Undil had attempted to abduct the deceased's sister called Workinash Bushayi who is also sister of the first witnesses.⁴⁶⁸

After investigation was resumed the prosecutor had brought two separate charges. The first charge contains crime of perjury for violating article 453(2) against witnesses for falsely testifying against Undil knowing that the crime was committed by another person Walo Boshu which subjected him to 12 years of imprisonment.⁴⁶⁹ The evidence used against them was their confessions obtained at station and before court with the testimony they gave on Undil

⁴⁶³ Benchi Maji zone public prosecutor Vs Undil Shiferew, Benchi Maji Area High Court Criminal File No 03000

⁴⁶⁴ Id

⁴⁶⁵ Interview with Assefa Kesito former Minister of FDRE ministry of justice on April 15, 2015

⁴⁶⁶ Benchi Maji Zonal PP vs. Fajiy Bushayi et.al, Benchi Maji Aka High Court Criminal File No 07405

⁴⁶⁷ Ibid

⁴⁶⁸ Benchi Maji Zonal Prosecutor vs. Fajiy Bushayi et.al, public prosecutor charge on Criminal File No 30065(Benchi Maji Aka High Court)

⁴⁶⁹ Undil, Supra Note 463

Shiferew's homicide file.⁴⁷⁰ The court had also heard further evidences in addition to their confessions. They were convicted for crime of perjury and sentenced to 12 years of imprisonment for subjecting innocent person to face rigorous imprisonment by false testimony though they knew that the act was really committed by Walo Boshu.⁴⁷¹

The other charge was brought against the real culprit of the murder, Walo Boshu Gorbola for committing ordinary homicide against Girma Bushayi by throwing spear on his back.⁴⁷² The content of the charge brought against him is similar with the previous charge framed against Undil except for the identity of the accused.⁴⁷³ The court had found him guilty of homicide for which Undil shiferew was wrongly convicted. He was sentenced to 12 years of imprisonment.⁴⁷⁴

It was recognized by the court that previous conviction passed against Undil was wrongly convicted for the act he did not commit as a result of false testimony given by revenge for the previous act of Undil's attempt to abduct a girl called Workinesh Bushayi.⁴⁷⁵

Wrongful conviction of this person was discovered as a result of witnesses recantations for which they were convicted for crime of perjury and sentenced to 12 years of imprisonment for their false testimony they had given against this individual.⁴⁷⁶ Had these witnesses refused to disclose the truth to the police and denied that they had committed crime of perjury it was difficult to prove the innocence of Undil Shiferew. The cause which had detrimentally necessitated for wrongful conviction of this case is false testimony.

At a time when this fact was discovered he had already half of the sentence imposed against him. Hence he was lucky that his innocence was proved as a result of witnesses recantations. Since the decision was confirmed by Federal Supreme Court it has become final that can be categorized as clear case of wrongful convictions.⁴⁷⁷ Federal Supreme Court had rejected the claim for review of judgment up on the discovery of that evidence.⁴⁷⁸ But later it was referred to State Supreme Court by State Council for revision and the court reviewed the case by acquitting the innocent wrongly convicted.⁴⁷⁹ The former Minister of Justice Assefa Kesito explains about

⁴⁷⁰ Ibid

⁴⁷¹ Id, at 7

⁴⁷² Benchi Maji Public Prosecutor vs., Walo Boshu, Benchi Maji Aka High Court, Criminal FileNo 07403

⁴⁷³ Benchi Maji Public Prosecutor vs. Walo Boshu, Prosecutor Charge , File No 30064(Benchi Maji Aka High Court)

⁴⁷⁴ Walo, Supra Note 473 at 11

⁴⁷⁵ Fajiye, Supra Note 468 at 5

⁴⁷⁶ Assefa, Supra Note 465

⁴⁷⁷ Ibid

⁴⁷⁸ Ibid

⁴⁷⁹ Ibid

this case by citing the absence of legal framework on how to review erroneous decisions had created a great challenge for the prosecutor to resolve similar issues. He stated that he himself had brought the case to the council after the claim for review was rejected by Federal Supreme Court. He also noted that this case was resolved after a hot debate in the regional state council on how to review the case. The two charges brought against the witnesses and the real actor of the crime had enabled to show that Undil was wrongly convicted. The cause for conviction of the individual in this is also false testimony given by public prosecutors witnesses.

4.2.3 Debela Taye et.al; vs. Oromia Public Prosecutor ⁴⁸⁰

These defendants were charged for violating Article 523 of the 1957 Ethiopian Penal Code for committing a crime of homicide against the deceased called Tefera Dibesa on July 29, 1987.⁴⁸¹ All of them had pleaded not guilty; prosecutor had brought three circumstantial witnesses and other two witnesses to prove that the accused had freely confessed to the crime by interrogation conducted by the police as per article 27(1) of the procedure code. As it can be observed from the transcript of the file, none of these circumstantial witnesses called by the prosecutor had testified that they had observed the commission of the crime by these defendants.⁴⁸²

All witnesses describe that the deceased was found lying on the ground and later died. They also explained that they had not observed the commission of the crime. Witnesses called to prove the confession they made at police station testified to the court that they attended the interrogation at the police station when these defendants had admitted the commission of murder against the deceased, Teferi Dibesa. Though they were ordered to defend themselves they replied that they do not have defense witnesses to defend them.⁴⁸³

After examination of the evidences brought to prove the case, the court evaluated that the circumstantial witnesses called by the prosecutor had proved that the murder was committed the accused individuals though it is not clearly proved the reason of murder.⁴⁸⁴ But the court

⁴⁸⁰ Ilu Aba Bora Zonal public prosecutor vs. Debela Taye et.al, Ilu Aba Bora High Court Criminal File No 266/90

⁴⁸¹ Ibid, Charge contains that they had made serious injury to the deceased by fracturing his head and different parts of his body by using their own sticks which had caused his death in Dorani woreda, Fani kebele administration.

⁴⁸² Id, at 25-27

⁴⁸³ Ibid

⁴⁸⁴ Id, at 29

pronounced the judgment that they are guilty of homicide and sentenced them to twelve years of imprisonment.⁴⁸⁵ They took an appeal up to the federal Supreme Court cassation division.⁴⁸⁶ But they were not successful since all the appeal courts had confirmed the decisions of the lower court.⁴⁸⁷

They were in prison since July 30, 1987 and proceeded to serve the sentence imposed on them without hope to prove their innocence then after since their conviction has got a final decision by federal Supreme Court and their application were not considered.⁴⁸⁸ After their convictions for the crime the public started to criticize the decisions of the court as a gossip that the decision was invalid to punish the accused persons. The community had openly condemned their conviction declaring that Debela Taye and his co-accused had not killed the deceased and the crime was committed by other persons.⁴⁸⁹ The court had not either made further examination of the case or acquitted the accused; though the witnesses produced were not convincing to render guilty verdict. Hence the decision was discredited by the community that the criminal justice organs are incapable of detecting real criminals and the investigation conducted by the police men is not competent enough to discover and illicit the truth.⁴⁹⁰

Such opposition by the community had made the police to re-consider the case.⁴⁹¹ It was later revealed by eye witnesses that the Tefera Dibesa was murdered by other persons who were not yet charged of the crime.⁴⁹² The re- investigation had come up with the discovery of new facts that was not produced at the trial of Debela Taye.et.al by which they were finally convicted for. They also indicated that Debela and his co convicted were erroneously imprisoned for his case though they are innocent of the crime.

The prosecutor had brought another charge similar case to the High Court of Ilu Aba Bora on Criminal File No 417/93 on May 01, 1993 after six year since the commission of the crime. The same facts used in the previous charge were mentioned in the new charge except for the

⁴⁸⁵ Id at 30

⁴⁸⁶ Interview with Rebuma Geja'a, on March 25,2015; A judge who had participated in the proceeding of the case at a time

⁴⁸⁷ Ibid

⁴⁸⁸ Certificate of pardon showing that Debela Taye is pardoned by the Oromia Regional state president on 13/09/1994

⁴⁸⁹ Rebuma, Supra Note 486

⁴⁹⁰ Ibid

⁴⁹¹ Ibid

⁴⁹² A new charge brought against real offenders of the crime for which Debela and his co accused were convicted for, Criminal File No 417/93, Ilu Aba bora High Court

difference in the accused. Confession and eye witnesses were used as evidence in the charge. After hearing the trial, the court had proved that these accused had murdered Tefera Dibesa and found them guilty of homicide for which Debela and his co accused were previously convicted for. They were sentenced to 15 years imprisonment.⁴⁹³

As it can be observed from the transcript of the court the prosecutor had brought two charges accusing different persons to have independently killed the same deceased, Tefera Dibesa.⁴⁹⁴

Even though they were not successful in proving their innocence those previously convicted persons had been claiming that they were free of the crime convicted for. Their voice was not heard by any one entertaining the case. However after the disclosure of the new fact that they were innocent the absence of the legal mechanism to review a finally decided case after the discovery of new facts had been a great challenge to the criminal justice organs particularly to the High Court of Ilu Aba Bora but failed to exonerate persons wrongly convicted of the case. Hence they have continued to serve the sentence imposed on them until they were later pardoned by the president of Oromia National Regional State in 1994. The appropriateness of the remedy provided by the government to wrongful convictions will be discussed under chapter five which deals with post-conviction remedies.

Finally after serving around six years they had restored to their liberty that they were wrongfully deprived for the crime that they did not commit. The impacts of being in prison for the persons convicted are quite clear that affects many aspect of one's life in general. Apart from civil and political rights, their socio economic rights will be lost. Such loss will also affect the whole family of the convicted.

As it has been discussed in the theoretical part; it has been put that false testimony is among basic common causes of wrongful convictions. Here too one of the causes for the conviction of these persons was false testimony. The interview made with a judge who had participated in ruling and deciding over the case at a time had expressed that there was a lack of adequate investigation of the case.⁴⁹⁵ The case shows that two different groups of persons were charged and convicted for the same crime. Prosecutors are also responsible for the adequate investigation of the case before framing charge. The guilty verdict passed against these persons is also

⁴⁹³ Id, at 20

⁴⁹⁴ Criminal Files No 266/90 and 417/93 at High Court of Ilu Aba Bora indicate the same victim and both charge do indicate that the crime were committed independently by those accused in both charges.

⁴⁹⁵ Interview with Rebuma Geja'a on March 25,2015 Judge who had entertained the case when he was at Ilu Aba Bora High Court Currently working at South West Shewa High Court

unconvincing. Because the witnesses produced by the prosecutor did not clearly testify that the crime was committed by those persons convicted for the crime. The commission of the crime shall be proved beyond reasonable doubt. The practical application of the standard of proof used in this case does not qualify for proof of beyond reasonable doubt.

Apart from these causes there was also a problem within the community where the crime had been committed. They should cooperate for the investigation in identifying the real culprit since community has a great share in crime prevention and investigation. In general false testimony, shallow investigation, negligent prosecution and misapplication of standard of criminal proof can be cited as the causes which had resulted in erroneous conviction of individuals in this case.

4.2.4 Mengesha Tilahun et. al vs Oromia Public Prosecutor⁴⁹⁶

Public prosecutor had brought a criminal charge on two defendants called Tuja Keda and Mengesha Tilahun before the West Arsi High Court.⁴⁹⁷ Both of them were charged as principal offenders for committing an aggravated homicide against the deceased, Remeto Geleto violating article 539(1)(A) of the new criminal code on the on July 12,2002 around 9:00 o'clock in west Arsi Siraro Woreda.⁴⁹⁸

The charge provides for the specific acts and the materials they used to commit the crime.⁴⁹⁹ Eye witnesses were the only evidence produced by the prosecutor to prove the charge. After they were represented by government legal counsel they denied that they committed the acts mentioned in the charge brought against them and read for them by the court.⁵⁰⁰ The court had registered plea of not guilty and proceeded to hear the evidences brought against the accused persons by the prosecutors.

Three eye witnesses testified that they had observed when these accused persons come out of desert where they had hide themselves from view and first accused repeatedly beat the deceased Remeto Geleto on his right neck with lethal metal called "Gejera" even after he fell down.⁵⁰¹

⁴⁹⁶ Mengasha Tilahun et.al vs. Oromia public prosecutor, Western Region of Oromia Supreme Court Criminal File No 118456

⁴⁹⁷ Mengasha Tilahun et.al vs. Oromia public prosecutor, West Arsi High Court, Criminal File No 10695

⁴⁹⁸ Ibid

⁴⁹⁹ Id, at 18 ,The defendants were joined in indicating that they have planned and pursued to murder him waiting him in a desert found on the way to the deceased home and killed him by beating on different parts of his body using lethal weapons together in a way that shows their cruelty and dangerousness by others not to take the body of the deceased and not to be examined by pathology

⁵⁰⁰ Id, at 19

⁵⁰¹ Id ,at 20-22

Similarly; they also testified that the second accused had also used the same material and fractured his leg on the ground. In addition they also gave their words that they were bare handed and failed to defend the deceased as well as themselves. Finally these eye witnesses testified that these accused took the deceased to their home after they had severely wounded him.⁵⁰² In cross examination the witnesses had expressed that all of them were chased by the accused and failed to defend him since they were bare handed.

The court had ordered the accused to defend them but after two adjournments their right to produce defense witnesses was waived as they failed to produce. However it was fortunate that the second accused witnesses arrived while the proceeding is pending. He raised alibi as defense and explained to the court that his witnesses will prove that he was not at the scene of the crime charged with and he was at a funeral ceremony of a woman called Worke Irkicho together with his defense witnesses.⁵⁰³

The witnesses testified that they were at funeral ceremony on date indicated in the charge from 8:00 to 11:00 o'clock with the second accused. Then the court ruled on the case by changing the prosecutor's charge to ordinary homicide arguing that the elements in the charge do not fulfill the requirements under aggravated homicide and found both of them guilty under article 540 and sentenced them to 15 years of imprisonment on January 20, 2003.⁵⁰⁴

They took an appeal to the next court to reverse both unlawful guilty verdict and sentence imposed on them by the lower court.⁵⁰⁵ The content of the application boldly argues that they were convicted and sentenced to 15 years imprisonment for the acts that they did not commit and in fact innocent of the alleged crime.⁵⁰⁶ The application of this appellant also argues that the prosecutor had charged them for an aggravated homicide without any medical evidence showing death of the deceased and subjected him to deprivation of his liberty by pretending that the corpse of the alleged deceased is not found. In addition he has also indicated that he was discriminated and charged for this crime due to his racial origin.⁵⁰⁷

⁵⁰² Ibid

⁵⁰³ Id at 23-24

⁵⁰⁴ Id at 26

⁵⁰⁵ Mengesha, Supra Note 497, at 6

⁵⁰⁶ Memorandum of appeal submitted to Oromia Supreme Court found at Western Region by Mengesha Tilahun et.al dated 09/06/2003. In this application they also criticized that the prosecutors witnesses did not proved that the crime was committed by them. Particularly the second accused at west Arsi High Court or first appellant (Mengesha Tilahun) had sought the appellate court to reverse and acquit him raising that his defense witnesses had already defended him that they were another area on the funeral ceremony of a woman on that specific date.

⁵⁰⁷ Ibid

Pending the case on 1st March, 2003, the appellants had brought another application which indicates that the person said to have been murdered by them, Remeto Geleto is found alive, though he was alleged to be killed by them on July 22, 2002.⁵⁰⁸ They requested the court to deeply examine the existence of the alleged person said to be died for which they are suffering a prison life and order for their immediate release from prison.

The court had passed order to Oromia Police Commission and Oromia Justice Bureau to conduct re-investigation and respond to the court about the re-appearance of the alleged deceased alleged to have been killed by these appellants found prison.⁵⁰⁹ The outcome of the re-investigation revealed that the victim in the charge reappeared after seven months and he was not dead; rather alive.⁵¹⁰

The alleged deceased, Remeto Geleto appeared on March 29, 2003 in person before the court at the presence of the persons convicted for murdering him and explained that he was robbed by unknown persons and as a result he went to Welanchiti where he stayed for months.⁵¹¹

After it was proved about the existence of the alleged deceased the court had declared that they are innocent of the act.⁵¹² They were acquitted and ordered to be released from prison on April 20, 2003 when they finally regained their liberty after serving one year out of fifteen years imprisonment for the crime that had not really occurred. The cause of this case is quite obvious as the case indicates. The alleged deceased had turn alive. The witnesses who were called against this case intentionally testified that they saw the convicted persons committing the crime. They falsely testified to convict them.

The police had handed the file to the prosecutor without obtaining the body of the deceased and identifying where it was buried. The prosecutor had also charged without proving what happened to the body of the alleged deceased. Normally in homicide cases both police and prosecutors should attest the death either by medical evidence or relevant evidence showing that the person is really dead. The court had also convicted them based on such false testimony though the second accused had defended the charge. There was also a problem of applying standard of criminal

⁵⁰⁸ An application letter written to the appellate court by Mengesha Tilahun .et.al on 01/07/2003

⁵⁰⁹ Mengesha, Supra Note 497 ,at 8

⁵¹⁰ The report of the reinvestigation submitted by Oromia public prosecutor to Oromia Supreme Court which proved the existence of the alleged deceased alive dated 20/08/2003. Police had conducted reinvestigation as the real appearance of the alleged deceased with public prosecutor mainly focusing on the family of the alleged victim, local elders, their neighbors and from the victim himself, Remeto Geleto

⁵¹¹ Mengesha, Supra Note 497, at 11

⁵¹² Ibid

proof by the trial court. The court's rejection of defense of the accused is not in line with the principle of evaluation of evidence. The difference among the statements of defense witnesses related with time was not as such doubtful.

The re-appearance of Remeto was fortunate and had he stayed for some period before appearing there was high probability to assume that their appeal would be rejected which will make the decision final. The case was simply reviewed since it was pending on appellate level. Had it been confirmed by appellate courts their exoneration would have resulted in difficulty as it was observed in Shume's and other's case.

4.2.5 Nugusu Tegelu Fereja vs. The then Ethiopian Public Prosecutor ⁵¹³

Nugusu Tegelu was charged for committing homicide for violating Article 523 of the then Penal Code on 22 October, 1980. He was convicted for murdering the deceased and sentenced to life imprisonment on 29 January, 1980. The case was also confirmed by the then Supreme Court.⁵¹⁴

Even though he had been arguing that he had been convicted for the crime based on the false testimony given by the public prosecutor witnesses, he failed to prove his innocence. Almost on the final period when he is going to serve the whole sentence imposed against him, he had applied for pardon in 1999 to be released from prison.⁵¹⁵ Despite his claim for the pardon, he had insisted on to deny that he is guilty of the crime and indicated his application that he is not guilty of the crime even after spending 19 years in prison. Furthermore his application he had also indicated that the real offender is Getahun Kinato, who had also admitted that he had committed the murder and paid compensation to the family of the deceased in the form of "Guma".⁵¹⁶

Additionally he had also expressed that the witnesses who had previously testified against him admitted that they were falsely testified against him before the local elders. After indicating these cases he had claimed Ministry Of Justice to conduct for re investigation of the case. After considering his application the Ministry of Justice had ordered federal police commission to re-investigate the case in collaboration with SNNPRS region police commission. The police brought both the real offender and those witnesses who had falsely testified against the applicant. The re-investigation of the case had concluded that Nugusu Tegelu is really innocent of the crime and wrongly convicted as a result of false testimony given by prosecutor's witnesses.

⁵¹³ Nugusu Tegelu Fereja vs. public prosecutor, former Buta jira Awuradja High Court, Criminal file no 976/80

⁵¹⁴ Assefa, Supra Note 465

⁵¹⁵ Application submitted to Pardon Board at Ministry of Justice by Nugusu Tegelu Claiming for Pardon

⁵¹⁶ Ibid

After it was discovered the Nugusu was wrongly convicted by false testimony, Ministry Of Justice had requested Federal Supreme Court to conduct a re-trial of the case to prove innocence of the victim. However the court had rejected the claim for review of judgment basing that there is no legal mechanism which support the claim to review finally decided cases.

Finally this man was pardoned to be released from prison as there is no other procedure on the 11th June, 1999 after 19 years in prison. It is very shocking to serve this amount of period for a crime committed by other as a result of erroneous conviction passed by court of law.

As it was revealed in previous cases this case also shows that the statements given by the witnesses were false. According to my inquiry from the then official entertaining the case he assured me that those witnesses had murdered the deceased themselves and fabricated that Nugusu was the actor of the crime.⁵¹⁷ They have admitted the murder and resolved their case by arbitration with family of the deceased. Hence the cause in this case is also false testimony given by the real culprit to save themselves against the criminal liability.

In relation with the occurrences of wrongful convictions; Ato Ali Mohammed who is working as Cassation Bench judge at Federal Supreme Court speaks that ⁵¹⁸

“There are problems in the process of criminal justice dispensations are multi directional. It is directly related with the awareness of the community; ethics and competence of police, prosecutors, judges and other stake holders in the process. There are misconducts and incompetency among these institutions. In addition to these challenges there are also problems related with legal frameworks. The problems start with investigation which is mainly featured by over use of tactical evidence and less use of technical evidence. When the prosecutor comes with charge there are still challenges with the standard of proof which is different from case to case basis. The existences of these factors in the process will the outcome of the decisions which will generate wrongful convictions.”

Ato Ali is of the opinion that the Ethiopian criminal justice system is weak from every side that requires further reform to strengthen the system. He also added that he had recognized and experienced the existence of wrongful convictions when he had worked at Amhara Regional State.

⁵¹⁷ Assefa, Supra Note at 465

⁵¹⁸ Interview with Ato Ali Mohammed, on April 20,2015;A judge at Federal Supreme Court Cassation Division

From the analysis of those cases the cause that had contributed for the occurrence of erroneous convictions are false testimony, lack of proper investigations, false confessions, incompetence of the criminal justice organs including professional ethics. Corruption is also another cause to wrongly convict individuals. Even though there are different causes for wrongly convicting individuals the main cause that had been recurrently happened in the cases under the study is false testimony (perjury) given by the witnesses before courts.

The consequence of convicting innocent individuals for the acts that they are not responsible will result in deprivation of their liberty that limits their interaction and movement in all aspects. Loss of jobs and their family are among the serious effect of wrongful convictions. It also threatens the safety of the public as the real offenders are going free who can potentially capable to commit further crimes. In addition the situation will also bring the attitude that can shake the confidence of the public against the justice system.

Therefore, as it was also recognized in other jurisdictions the impact of wrongful convictions in the Ethiopian context is breach of individual human rights of the persons wrongly convicted which is potentially capable to shake the confidence of the public on the criminal justice system itself. So, the state shall work on strengthening the criminal justice system to minimize the risk of erroneous convictions and provide procedural mechanisms to correct and lessen these impacts. Generally; as the occurrences of wrongful conviction cases that had already discussed so far show; they enabled the writer to state that wrongful conviction is among the core problems that the Ethiopian criminal justice system is facing and the prevalence of the problem. As mentioned before, those cases were randomly sampled based on the information accessed by the writer. More research on similar cases the more number of innocents wrongly convicted for crimes will be revealed. Hence these cases might only represent just few among the potential conviction wrongful cases existing in the system in reality.

CHAPTER FIVE

POST- CONVICTION REMEDIES FOR WRONGFUL CONVICTIONS UNDER THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM

5.1 Introduction

In the human right discourse the term remedy can be regarded as a mechanism by which certain guarantees will be enforced or violation of the right can be protected, redressed or indemnified.⁵¹⁹ Numerous international, regional as well as national human rights instruments have incorporated the right to remedy for the breach of human rights.⁵²⁰ The mere guarantee of human rights is worthless without ensuring the right to remedy in the course of violation of these rights. Hence when rights exist there must be a remedy as obligations to be borne by individuals or institutions in case of breach

In the previous chapters and sections it has been discussed that irrespective of their economical and standard of criminal justice all states face the problem of convicting innocent individuals. But in most states the problem is duly recognized and certain legal mechanisms were developed to resolve wrongful conviction of innocents from prison.⁵²¹ Similarly; the situation of wrongful convictions in the Ethiopian context has also revealed that there are court decisions which indicate the existence of wrongfully convicting innocent individuals. Therefore existence of different safeguards to protect the rights of arrested and accused persons in the process did not secure the rights of innocent individuals from deprivation of their liberty and loss of their socio economic rights. In those cases studied by the writer it was revealed that innocents were imprisoned for many years without committing crimes charged and convicted for. They were deprived of their liberty for long years.⁵²² Those sampled cases can be taken as a benchmark to

⁵¹⁹ Victims' Right to a Remedy and Reparation: The New United Nations Principles and Guidelines, available at: <http://www.corteidh.or.cr/tablas/r26214.pdf> Accessed on April 12,2015

⁵²⁰ Article 8, of UDHR, 2 of ICCPR, 6 of ICEARD, 14 of CAT, 39 of CRC, 24 of ICPAD,13 of ECHR and 7 of ACHR

⁵²¹ Article 84(1) of the ICC Statute, Article 25 of the Rwanda Statute, Article 26 of the Yugoslavia Statute, Article 4(2) of Protocol 7 to the European Convention Guideline 11 section 55(b) of the Principles on Legal Aid Article 2(3) of the ICCPR, Article 25 of the American Convention, Article 7 of the African Charter, Article 23 of the Arab Charter, Article 13 of the European Convention, Article 48 of the African court of Human Rights Protocol

⁵²² Shume had served four years, Nugusu Tegelu was pardoned after serving 19 years in prison, Undil had served years, whereas Mengesha Tilahun and his friend had served more than years.

indicate that there could be many erroneous convictions of individuals for the crime they did not commit.

The problem that the Ethiopian criminal justice is facing and the experience that had already been developed to resolve the problem of wrongful convictions in other jurisdictions to the same problem will enable to formulate the solution for the breach of innocent individuals' rights. Hence, it requires permanent solution to minimize and correct wrongful convictions and incarcerations.

5.2 Review of Final Criminal Judgments in Ethiopia

Once an accused is convicted for committing a certain crime the court will impose sentence which can be in form of fine, compulsory work and imprisonment which shall be enforced by prison administrations until reversed by courts.⁵²³ After the exhaustion of all available appeal stages, the 1961 Ethiopian criminal procedure is silent on the possibility of review of criminal judgments after final decision is given as the last resort upon the discovery of newly obtained facts that was not presented at trial which can clearly prove the innocence of the already convicted persons. No other subsidiary legislation do also provide for a mechanism to seek a review of the case.

The phrase final decision in the Ethiopian context can be taken as the judgment which can no more be reviewed by appeal either it has exhausted all appeal stages or due to lapse of appeal period at any level courts.⁵²⁴ So as far as issue of the fact is concerned, decisions rendered by federal and state Supreme Court by regular division will become final.⁵²⁵ A given decision becomes final decision once it is decided by Federal Supreme Court Cassation Division or any decision that was decided by courts at any level both by federal and regional courts from which the period to take appeal is barred .

Both substantive and procedural safeguards employed in the administration of criminal justice are expected to further strengthen these safety valves to prevent and minimize the problem.⁵²⁶

⁵²³ Ethiopian criminal procedure code, Supra Note 421, Article 149(5)

⁵²⁴ Article 10 of Proclamation No 25/96 provides that Federal Supreme Court has the Power of Cassation over the final decisions of the Federal High Court rendered in its appellate jurisdiction; final decisions of the regular division of the Federal Supreme Court and final decisions of the Regional Supreme Court rendered as a regular division or in its appellate jurisdiction.

⁵²⁵ Ibid

⁵²⁶ Article 9 and 14 of the ICCPR

The judiciary plays fundamental role in both respecting and protecting rights of persons accused of crime particularly of those innocents.⁵²⁷

The Practical problems that courts are facing are the standard of proof and evaluation of evidence produced to prove the guilt of the accused by the prosecutors.⁵²⁸ There is disparity among courts and from case to case in applying the standard of proof to pronounce guilty verdicts.⁵²⁹ The admissibility of evidence is also another problem in deciding criminal matters.⁵³⁰ Whatever the strong structural system of a given criminal justice system; it was proved that wrongful convictions will happen since institutions are run by human beings who are not error proof.⁵³¹ Moreover, the possible reasons for the existence of the problem are interrelated and multi directional.⁵³² Hence the problems require permanent solution to reduce the causes for erroneous convictions and work on detecting miscarriage of justice in the whole process.

As it has been revealed in those cases of wrongful convictions occurred in Ethiopia many innocents were imprisoned for years from one to eighteen years without committing any crime on their part but served these years as a result of wrongful convictions passed against them by court of law.⁵³³ It was mandatory for them to serve the sentence imposed against them even though they are innocent of the crime. It seems that it was accepted that a final decision is unchallengeable despite the existence of new evidence which can rebut the final decision rendered by the court and the judgment cannot be subjected to review.⁵³⁴ Even though the concept of reviewing final criminal judgment was developed in other legal systems, it is unknown why the Ethiopian criminal procedure failed to accommodate such concept. To the contrary the 1965 Ethiopian civil procedure code, which was enacted at the same time provides for review of judgments upon the discovery of new evidences.⁵³⁵

To argue strictly review of judgment is neither allowed nor prohibited in the Ethiopian criminal justice system. It is possible to apply criminal law rules of interpretation that an act which is not

⁵²⁷ Id, article

⁵²⁸ Interview with Filiphos Ayinalem on March 12 2015, Former Judge at Federal High Court Currently An advocate at Federal courts

⁵²⁹ Ali, Supra Note 518

⁵³⁰ Filiphos, Supra Note 528

⁵³¹ Ibid

⁵³² Ibid

⁵³³ Mengesha, Supra Note 497 ,See also Supra Note 70

⁵³⁴ Interview with Ali Mohammed ,Judge at Federal supreme court Cassation Division on April 25,2015

⁵³⁵ Article 6 of 1965 Ethiopian Civil Procedure Code

prohibited is taken as admitted.⁵³⁶ But the claim for review is not recognized in our case.⁵³⁷ As it can be observed from case studies in chapter four the court had been rejecting the claim for review of criminal judgments. But courts are required to apply and base on domestic laws as well as international treaties in giving decisions.⁵³⁸ In addition article 9(4) of the FDRE constitution provides that international treaties adopted and ratified are part of the law of the land which imposes the duty on the Ethiopian courts to refer these laws in interpreting laws.⁵³⁹

Irrespective of the standard used by the court if once new evidence which genuinely proves the innocence of the convicted person is found those persons who were wrongly convicted do have a constitutional right to have access to justice.⁵⁴⁰ The existence of new evidences which disprove the previous conviction will enable them to have the right to the access to justice by establishing a cause of action to bring their claim to the court of law.⁵⁴¹ The FDRE constitution provides for the right to an access to justice and innocent individuals deprived of their liberty via court process can raise the right to access to justice so that their case will be subjected to review to determine the existence of miscarriage of justice in the process.⁵⁴²

There are also further obligations on the court to interpret the human rights provisions of the constitution in terms of international jurisprudence developed on review of judgment.⁵⁴³ Therefore basing such way of interpretation, Ethiopian courts are required to entertain claims for review of judgments upon the discovery of new evidences.

But in practice, mainly due the legal lacunae governing the issue in the system the claims were not considered. All states parties to the ICCPR and Ethiopia have the duty to take measures for the full realizations of the rights guaranteed in the Covenant.⁵⁴⁴ But in the Ethiopian context; no legal basis developed to claim for review of the case which can be viewed as Ethiopia's failure to meet the obligations imposed under international treaty.

⁵³⁶ Ali, Supra Note 534

⁵³⁷ Federal Supreme Court had rejected the application submitted by federal prosecutor „Shume Regassa vs Federal Prosecutor File No 52049, See also Gezahagn Tefera vs. Federal prosecutor Criminal File No 120/2000,Federal Supreme Court

⁵³⁸ Proclamation 25/96, Supra Note 524, Article 3(1)

⁵³⁹ Supra Note 323 ,Article 13 (2)

⁵⁴⁰ Id, Article 37

⁵⁴¹ Ibid

⁵⁴² Ibid

⁵⁴³ Id, Article 13(1)

⁵⁴⁴ Article 2(3) of ICCPR

The last resort is to claim before regional and international treaties which are not accessible in many aspects. The mechanism to challenge final conviction verdict given by Ethiopian courts might be lodging an individual complaint before African commission on human and peoples' rights which can deliver a decision as a recommendation.⁵⁴⁵ The African union had adopted a protocol establishing African court human and people's rights since 1998.⁵⁴⁶ But Ethiopia did not yet ratify the protocol so that the Ethiopian citizens might take their cases to the court to prove their innocence by reversing the decision of the Ethiopian courts.⁵⁴⁷

In similar way the UN Human Right Committee had also established for the protection and promotion of the rights in the ICCPR to which Ethiopia is party to.⁵⁴⁸ Even though ratification of the treaty is among one of the indicators of states' commitment to promote and protect human rights a mere ratification is worthless without the need to enforce and work for the better realization of these rights. Optional Protocol No.1 which enables the citizens of member states' to take individual communications on the violation of their rights protected in the covenant is not yet ratified by Ethiopia.⁵⁴⁹ So; Ethiopians who have become the victim of miscarriage of justice and wrongful convictions cannot bring their case to be reviewed by the committee of human rights.⁵⁵⁰ As a result the HRC cannot have a say on the enforcement of the ICCPR by Ethiopian courts except by way of report that will be submitted by the government for supervision.⁵⁵¹

So, it is possible to put that the system in Ethiopia prohibits the treaty bodies at African level particularly African court of human and peoples' rights and human rights committee of the ICCPR to provide sufficient and adequate interpretation on the enforcement of civil and political rights by the Ethiopian judiciary and measures taken by states in their obligation to respect, protect and promote the rights confined in these treaties.

⁵⁴⁵ Article 55 and 58(1) of the ACHPR

⁵⁴⁶ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights Adopted on 10 June 1998 Entered into force on 25 January 2004

⁵⁴⁷ Id, Article 5 on access to courts which accept communications from individuals and NGOs

⁵⁴⁸ Article 28 and 40 of the ICCPR

⁵⁴⁹ Article 1 of Optional Protocol to the International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 Dec 1966

⁵⁵⁰ Id, article 2 provides that Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

⁵⁵¹ Article 40 of the ICCPR

In general the current Ethiopian criminal justice system does not provide for the review of criminal judgments in the presence of newly discovered evidences as a remedy for persons wrongly convicted for crimes they have not committed. Such nonexistence of mechanisms for retrial of wrongful conviction cases could be regarded as the absence of effective remedy under the Ethiopian criminal justice system.⁵⁵² Therefore, it is possible to state that the Ethiopian system is not open to review wrongful convictions cases at domestic, Regional and International institutions as well. The absence of such legal frame work under the Ethiopian law had been challenging to review wrongful convictions occurred in Ethiopia. Hence these issues require an urgent response from the legislature in providing a mechanism to review cases of wrongful convictions whenever they happened.

5.3 The Practice of Correcting Wrongful Convictions in Ethiopia

As the discussion under chapter four of this thesis shows, the writer had disclosed about wrongful conviction cases that had already occurred under the Ethiopian criminal justice system. Almost in all cases discussed so far; the convictions pronounced against those individuals had resulted in loss of their liberty irrespective of the length of the time they served. The absence of any procedural mechanism to review cases of wrongful convictions based on newly discovered evidences will greatly challenge the claim of innocence by wrongly convicted persons. Even though there is no any legal framework which governs claims of innocence in the Ethiopian context those individuals wrongly convicted will not keep silent. After wrongly convicted persons had become hopeless to protect their liberty by the formal procedures they resort to secure their freedom by claiming pardon. They try their best to get out of prison. Hence the wrongly convicted persons usually apply for pardon indicating that they are not guilty of the crime where as some had applied for pardon procedure admitting that they had committed and served the sentence to regain their liberty at any cost.⁵⁵³ Most of wrongful conviction cases that were discovered in Ethiopia were revealed accidentally.⁵⁵⁴

The existence of the problem in the system will develop certain solution as an experience in dealing with the issue. Since there are wrongful convictions that had happened in our criminal justice system it is quite important to examine the practice that had been used to overturn

⁵⁵² Id, Article 2(3)

⁵⁵³ Assefa, Supra Note 465

⁵⁵⁴ Ali, Supra Note 518

wrongful conviction cases. The method of overturning as well as the appropriateness of the remedy provided will be assessed in this part.

The first wrongful conviction case discussed was Shume's one. After he was finally sentenced to ten years imprisonment he had applied for pardon indicating that he is innocent of the crime convicted for. In addition to his application for pardon, Federal Public Prosecutor also wrote a letter to Pardon Board declaring that Shume Regessa was wrongly convicted for the crime of homicide he did not commit.⁵⁵⁵ The prosecutor had claimed the board to reconsider his case so that he will be proved innocent that might be a means to release him from prison.⁵⁵⁶ The prosecutor had also explained in this application that they were unsuccessful in proving the innocence of the person as their claim for retrial was rejected by the federal Supreme Court and sought for the solution to the case so that they proceed to charge the real offender of the crime.

After considering both applications requested by the victim and the prosecutor, the pardon board had forwarded that Shume shall be pardoned based up on article 18 of proclamation No 395/1996.⁵⁵⁷ As per the recommendation of the board, the then head of state had declared Shume that he had pardoned for the crime convicted for considering that the sentence he had already served is sufficient.⁵⁵⁸ The certificate of pardon given to him provides that he was granted pardon basing his application to be released by pardon.

Debela Taye and his Co-convicted also requested the Regional Justice Bureau pardon office to be released. After considering their wrongful conviction they were later pardoned by Oromia Regional State president.⁵⁵⁹ Similarly in case of Nugusu Tegelu who had applied for pardon after 18 years of stay in Ziway prison administration; the board had also pardoned after recognizing that he was wrongly convicted as a result perjury. He was finally pardoned after serving 18 years in prison though he is innocent of the crime.

The other case that had been examined was Undil Shiferew's case which is a popular wrongful convictions case in the SNNP criminal justice.⁵⁶⁰ After the final conviction of the individual it was later discovered that the real doers of the homicide were others and Undil Shiferew was

⁵⁵⁵ A Letter requesting for Pardon on behalf of Shume Regessa by Federal public prosecutor dated 27/04/2004

⁵⁵⁶ Ibid

⁵⁵⁷ Proclamation No 395/96 which currently is repealed by proclamation No 840/2014, Federal Negarit Gazette 20th year No 68, AddisAbaba, 21st August 2014

⁵⁵⁸ Shume, Supra Note 452

⁵⁵⁹ Article 57(3)(I) of Oromia Regional State Revised Constitution ,Megeleta Oromia proclamation No 46/2001 with its Amendments No 94/2005 and 108/2006

⁵⁶⁰ Assefa, Supra Note 465

wrongly convicted based on false testimony. This case was also brought to the attention of the region's state council for solution which mandated justice bureau to provide a solution for the exoneration of the individual from wrongful imprisonment.⁵⁶¹ As per the deliberation of the council; Justice Bureau had requested the region's Supreme Court to conduct a retrial of the case to examine the claim of innocence and the court had reviewed the case and exonerated him from the crime wrongly convicted for.⁵⁶²

The other two cases of Mengesha Tilahun et. al vs. Oromia public prosecutor and Dejene Bekele and others were finally decided by the court to be acquitted as the new evidences which warrant their innocence were found in time when the case had been pending.⁵⁶³

The decision given by the SNNP supreme court on the case of Undil Shiferew might be regarded as a land mark decision in the Ethiopian criminal justice since it lays a ground for other courts that it is possible to review a finally decided case by a retrial process on the discovery of new evidence that had not been brought at the previous trial.⁵⁶⁴ As it was explained in section 4.2.2; the state Supreme Court had reviewed the case upon referral made by the state council on the basis of the discovery of new evidence that the individual in the case was convicted by the act committed by another person. After considering the conviction of the witnesses for perjury against the victim and the real offender who has committed the crime; the court had acquitted the victim by reviewing the already decided case. The case has a potential to break the attitude that a final decision cannot be subjected to review.

To the contrary Federal Supreme Court had repeatedly rejected the claim for retrial of the cases arguing that there is no legal procedure under Ethiopian law which allows for review of cases despite the fact that there were sufficient and convincing evidences produced for the retrial process.⁵⁶⁵ However criminal procedure is a means to an end for the criminal law and the courts should interpret the procedure in such a way that meets the purpose of the criminal law. Therefore claim for the retrial proceeding based upon newly discovered evidences should be permitted.

In dealing with wrongful convictions that had already occurred in the Ethiopian criminal justice, it can be possible to state that there were persons who might be released after serving full

⁵⁶¹ Ibid

⁵⁶² Ibid

⁵⁶³ Mengesha, Supra Note 496

⁵⁶⁴ Undil, Supra Note 463

⁵⁶⁵ Shume, Supra Note 452

sentence imposed upon them due to the absence of legal procedures that enable them to prove their innocence.⁵⁶⁶ Whereas there are persons who were wrongly convicted but later released from by way of pardon.

5.3.1 Appropriateness of Pardon as Remedy for Wrongful Convictions

The examination of the cases under the writer's survey had revealed that the possible remedy provided for wrongful convictions under the Ethiopian case is pardon procedure.⁵⁶⁷ Three of the cases used to reveal the existence of wrongful conviction in Ethiopia were resolved by the mechanism of pardon. It seems that Pardon proclamation is taken as a solution to provide a remedy for persons wrongly convicted.⁵⁶⁸ Why pardon is used as a method to release persons wrongly convicted? Is that appropriate to subject innocents to claim pardon from the government?

One of the powers of the Ethiopian Head of State is to grant pardon.⁵⁶⁹ The main objective of granting pardon to person convicted by final decision is to ensure the interest of the public and the offenders after it is ascertained that they have repented for their actions.⁵⁷⁰ Once an application for seeking pardon is lodged at the board, there are conditions that shall be taken into consideration to grant pardon.⁵⁷¹ The petitioner's confession and repentance, his effort to reconcile with the victim or his family and compensate them, or his ability and willingness to settle the compensation with the victim is among the basic requirement that shall be fulfilled to consider the application for pardon.⁵⁷²

Pardon shall be granted only for persons who admit that they had committed the crime convicted for and repented for their action.⁵⁷³ Unless applicants seeking pardon admit for the crime convicted for, they cannot be qualified for the pardon and they will be automatically excluded from the process. Hence a pardon shall not be granted for a person who is wrongly convicted and innocent of the crime convicted for according to the pardon proclamation. Rather the government shall request such a person an excuse for the harm he suffered as a result of state machinery.

⁵⁶⁶ Gezehegn Tefera vs. Federal public prosecutor Federal Supreme Court, Criminal File No 120/2000, See also Supra Note 375

⁵⁶⁷ Simeneh, Supra Note 379 and Supra Note 337

⁵⁶⁸ Pardon proclamation, Supra Note 557

⁵⁶⁹ FDRE Const, Supra Note 323, Article 71(7)

⁵⁷⁰ Pardon proclamation Supra Note 557, Article 3

⁵⁷¹ Id, article 20

⁵⁷² Id, article 20(5)

⁵⁷³ Id, article 3

Furthermore; the effect of granting pardon does not serve the interest of the person wrongly convicted. Because once persons are found guilty of the crime charged for, such conviction will form criminal records against them. Such record of the person convicted can only be removed by the court.⁵⁷⁴ A person with criminal record can apply for reinstatement based on article 218 and 219 of the Ethiopian criminal procedure code.⁵⁷⁵ The criminal code also lists for the ground to be reinstated his criminal record.⁵⁷⁶ Once reinstated the criminal record will be removed and presumption of innocence will be regained. In relation to wrongful convictions a pardon cannot remove the criminal record of the individual though the entire sentence imposed against them will be ineffective.⁵⁷⁷ However the effect of pardon cannot relieve the innocent wrongly convicted from bearing civil liability emanating from the criminal liability.⁵⁷⁸ Since the criminal record cannot be removed by a mere grating of pardon; such record can also be produced against such innocent as an aggravating circumstance for crimes that he might subsequently responsible for.⁵⁷⁹ Therefore pardon cannot be a proper remedy for wrongful convictions as the very objective of pardon does not cover innocents and the effect of pardon by itself cannot clear the criminal record of the person wrongly convicted. Even morally it is an inappropriate remedy to subject an innocent individual to claim for pardon. It is the government who shall request the innocent wrongly convicted for an apology if that can be a remedy.

Apart from pardon individuals who are either convicted or under prosecution can also be granted amnesty of their acts as indicated under article 230 of the new criminal code. Persons who are qualified for amnesty are not clearly provided by the code. The code provides that amnesty shall be granted to certain crimes or certain classes of criminals. Since amnesty can clear all records in case there is conviction it might be assumed as another solution for wrongful convictions. The subjects of amnesty are certain type of crimes and certain criminals and it does

⁵⁷⁴ Article 233 of the New Criminal Code

⁵⁷⁵ Ethiopian criminal procedure code article 218 (1) Where a convicted person or his legal representative is of opinion that the requirements of Art. 243 and 244 Penal Code are satisfied, he may apply for reinstatement to the court having passed the sentence the cancellation of which is sought, Article 219 (2) Where the application is allowed, the provisions of Art. 245 Penal, Code shall apply and the court shall order the entry of the sentence which it has cancelled to be deleted from the reinstated person's police record.

⁵⁷⁶ Article 235(2) of new criminal code provides that sine reinstatement cancels the sentence, it shall produce the following effects: (2) the sentence shall be deleted from the judgment register and for the future be presumed to be nonexistent

⁵⁷⁷ Pardon proclamation, Supra Note 557, Article 22(1)

⁵⁷⁸ Id, article 22(2)

⁵⁷⁹ Article 84(1)(c) of the New Criminal Code

not seem to include individual cases of wrongful convictions. The acts required for amnesty are broader than in case of pardon. Still there is no detail law which provides for procedure of amnesty like in case pardon. Any ways both pardon and amnesty cannot be appropriate remedies as they both subject individuals to request for the discretionary power government.

Concerning the claims which had been rejected by courts the writer believe that the prosecutor should have brought those cases to the attention of the federal supreme court cassation division so that the division should pass a judgment basing the newly discovered evidence which can also have the binding effect on all courts found at all levels.⁵⁸⁰

Until now the federal Supreme Court cassation volumes do not reveal any ruling on the possibility of review of final criminal judgments upon discovery of new evidences though there are cases of wrongful convictions where claims of review were repeatedly rejected by regular federal Supreme Court.⁵⁸¹ The manner of evaluation of evidence in passing judgment can constitute for fundamental error of law and in cases where conviction verdict is pronounced against innocent accused though the alleged victim is alive or proved that he was murdered by others; the cassation division can reverse the verdict on the basing evaluation of standard of proof. Had the cassation division delivered any ruling on the possibility of review it would have served as precedent on the subsequent cases to be decided by courts which will also solve the problem of exonerating persons wrongly convicted by saving innocent not claim pardon for the acts done by others. Though there are such legal remedies to review erroneous conviction cases it is unfair to subject innocent persons to claim pardon from the government.

5.3.2 Recent Trends on Review of Wrongful Convictions in Ethiopia

As discussed under chapter three of this paper Ethiopia had enacted her first criminal policy for the first time.⁵⁸² As mentioned before still now no eloquent instrument is designed to govern issues of wrongful convictions in Ethiopia. But this policy had come up with the right to claim review upon certain requirements. The inclusion of the concept in this policy is a big step towards formulating review of criminal judgments in our system. It is also hopeful solution to legalize the issue by signifying for the possibility of review of wrongful conviction cases in

⁵⁸⁰ Article 2(1) of Proclamation No 454/2005

⁵⁸¹ Shume, Supra Note 452, See also Supra Note 566 in which Gezehegn Tefera served five years as his claim for retrial was rejected by Federal Supreme Court. Criminal File No 120/2000

⁵⁸² Criminal Justice Administration Policy of 2011, Supra Note 326

Ethiopia. Plea bargaining is also among the newly introduced concept in the policy.⁵⁸³ The aim of the policy is to provide comprehensive concept that should be included in respective laws. It is a pioneer document to recognize the problem of wrongful conviction and urging to provide remedy to the problem in Ethiopia. The policy clearly recognized the possibility of review of a final criminal conviction upon the discovery of new evidence to prove the innocence of the person convicted by final decision. It also indicates that the concepts comprehended will be included in the pertinent laws.

Federal Supreme Court had rejected the claim for retrial of Shume's case which had based on the criminal policy. As to the writer, even though the policy will not have a binding effect on courts it is clear that shows the intention of the subsequent law (ongoing Draft Criminal Procedure) on the Ethiopian criminal justice and the court should have considered the case for review. In addition to the concepts introduced in the criminal policy, the draft criminal procedure of Ethiopia has also come up with more solution to the problem of wrongful conviction.⁵⁸⁴ The concept included in such draft code seems the result of the policy. The draft code provides that the objective of reviewing a final decision is to correct judgments which are pronounced against innocent individuals by miscarriage of justice so that those innocents shall not be punished.⁵⁸⁵ There should be judicial pro-activism for the enforcement of human rights. A mere absence procedure shall not be a ground to deny review of the case.

As the policy envisages any convicted person by a final decision can apply for the retrial of the case after obtaining convincing evidences that shows his innocence.⁵⁸⁶ Such an application can be lodged by the convicted person, legal representative, family or by the public prosecutor.⁵⁸⁷ Sub article 2 of this provision states for the type of newly discovered evidences that might be admitted to review the case. The evidences should have the potential to reverse the previous conviction had they been brought before. Of course the code had listed for the type of evidences which warrant for the retrial of the case.⁵⁸⁸ These are:

1. Relevant evidences which can acquit the convicted person
2. Truth discovered by scientific method

⁵⁸³ Id, Section 4.5.4

⁵⁸⁴ Ministry of Justice (2003 E.C), Draft Criminal Procedure Code, (Unpublished, Amharic),

⁵⁸⁵ Id, Article 466

⁵⁸⁶ Id, article 467(1)

⁵⁸⁷ Ibid

⁵⁸⁸ Id, article 467(2) (a-e)

3. If a judge entertained the case is convicted for the breach of his official duties
4. If the person acquitted from the case is genuinely confessed outside the court that he had committed the crime or
5. The evidences which had warranted the previous conviction are later found forgery or obtained by mischief.(Translation mine)

The introduction of such mechanism is really a good hope for the persons wrongly convicted and to the system in general. The code had exhaustive list of evidences that can be admitted to conduct the retrial. However there are numerous type of evidence that enable to review the case. Of course it is possible to include these evidences under the type of evidence which provides for relevant evidences that can prove innocence of the person convicted. The concept included in the policy with this regard is hopeful that it intended for the possibility of review of judgment after discovery of new evidence that are capable to disprove the previous conviction.

The application for review is lodged at the court which had finally entertained the case⁵⁸⁹ and after examination of the case it can either reverse or refer to other court for review.⁵⁹⁰ No time limit is also provided to bring the application.⁵⁹¹ Similarly the National Human Right Action Plan prepared for the first time upon the recommendations of the UPR⁵⁹² also includes the concept of review of wrongful conviction in the Ethiopian context.⁵⁹³ It simply provides that a mechanism of reviewing wrongful convictions after discovery of new evidence shall be included in the pertinent laws. The action plan is a document that aimed to monitor the enforcement of human rights nationwide and it is another indication for the recognition of the problem of wrongful convictions in our country.

5.4 The Right to Compensation for Wrongful Convictions in Ethiopia

Wrongfully convicted individuals have suffered severe harm as a consequence of their imprisonment. They lose their jobs and their good reputations and unable to earn income while

⁵⁸⁹ Id, article 467(3)

⁵⁹⁰ Id, article 469

⁵⁹¹ Ibid

⁵⁹² UPR Recommendation on Ethiopia no 3 forwarded from Canada and accepted by the government of Ethiopia available at The Universal Periodic Review Information Website at <http://www.upr-infor.org/> (Visited on March 12, 2015)

⁵⁹³ The Federal Democratic Republic of Ethiopia: National Human Rights Action Plan, 2013-2015, Draft Unofficial Translation. P.47

incarcerated. As it has been discussed in chapter four they were deprived of liberty, sometimes for years, and have suffered detrimental psychological consequences. Under existing law, if not all most of the individuals who are freed after being found innocent of the crimes for which they were convicted are unable to obtain any compensation or other sources for the losses they sustained from the state.

The institutions that are responsible for the payment of such compensation are not clear under the Ethiopian context. This is mainly due to the inadequacy of legal framework which specifically governs compensation for the victims of wrongful conviction in the Ethiopian criminal justice.

The FDRE Constitution provides for the protection of private property and guarantees for the right to commensurate compensation for the property in case of expropriation for the public purpose.⁵⁹⁴ The rationale behind providing compensation by the government to the property of individual expropriated is that the property is taken for the interest of the public purpose. Public prosecutors and stake holders in the process enforce criminal law to keep peace and order of the public in general. Such process results in punishing the alleged wrongdoers by imprisonment which is the cost that the convicted person will pay in the name of the general public.

When a property is taken by the government to build a new highway, the owner is constitutionally guaranteed fair market value compensation, whatever the amount might be. But when an innocent person is wrongly convicted by the criminal justice system, he or she is not guaranteed for compensation when the mistake is discovered afterward, despite the scars of long years of incarceration. If a person is paid compensation when his property is taken by the government there is no reason why a person whom liberty is wrongly deprived will not be prohibited compensation. Individuals can produce means of sustaining his life and family whenever they are free and at liberty using their labor or profession. Hence the person wrongfully convicted will serve the sentence imposed against the wrongly convicted as a result charge brought by the public prosecutor for the benefit of the public interest though there might be fault on the part of the professionals. The crimes that entail rigorous imprisonment are up on

⁵⁹⁴ Article 40(8) of FDRE constitution provides that Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property

compliant crimes which involve public interest. So, when innocent is convicted for those crimes it is for the interest of keeping peace and security of the public at large.

All criminal justice organs act on behalf of the state and the action of these organs might result in damage to the civilians or institutions in course of achieving their mandates. The damage caused by state agents shall be borne by the state itself. Wrongful conviction of innocents might happen due to the fault of these agents and the government shall bear the liability by providing compensation to the victims. The ICCPR provides the right to claim compensation for unlawful arrest and unlawful detentions.⁵⁹⁵ Likewise the covenant guarantee for the right to compensations for persons wrongly convicted.⁵⁹⁶ The FDRE constitution is silent on cases of unlawful arrest, unlawful detention and on the right to compensation for the victims of wrongful conviction. However it is protected in many instruments and constitutions of different states. So why does FDRE constitution fail to provide compensation for persons who are wrongly convicted on one hand and as a result of unlawful arrests and detentions as well? The right to compensations for unlawful arrest and detentions was also debatable at the time of drafting the constitution. Finally it was rejected by majority vote who argued that only those rights which can be realized shall be included in the constitutions.

Though the constitution does not provide for the right to compensation for wrongful convictions, it has already in built a golden provision which enable us to interpret the rights and gaps in the constitution.⁵⁹⁷ In addition the constitution also provides that international treaties are part and parcel of the law of the land and Ethiopia had ratified the ICCPR which will form part of the law of the country.⁵⁹⁸ Since the ICCPR clearly govern the right to compensation as a result of wrongful conviction it establishes the same right for the Ethiopian citizens to claim for compensation for erroneous convictions.⁵⁹⁹ The previous existing laws did not include the right to compensation, except the civil code which provides for liability of the state emanating from the fault of its employers.⁶⁰⁰ The civil code does not state wrongful convictions as cause of

⁵⁹⁵ Article 9(5) of the ICCPR

⁵⁹⁶ Id, Article 14(6)

⁵⁹⁷ FDRE Const, Supra Note 323, Article 13(2)

⁵⁹⁸ Id, Article 9(4)

⁵⁹⁹ Article 14(6) of the ICCPR

⁶⁰⁰ Article 2126 of the Civil Code provides that any civil servant or government employee shall make good any damage he causes to another by his fault. (2) Where the fault is a professional fault, the victim may claim compensation from the State, provided that the State may subsequently claim from the servant or employee at fault, see also article 2040 ,2032, 2042(3) 2090 of the same code

action but for the wrongful convictions there might be a fault on the part criminal justice organs. In such cases as far as the existence of fault is proved it is possible to claim the compensations from the part of the government on the basis of tort law. Unless it is applied by analogy to provide for remedies the tort law does not indicate for cases of wrongful convictions.

Institutionally the Ethiopian courts are duty bound to enforce the constitution in deciding on the violation of individuals' human rights. Courts are required to render their decisions basing the international treaties in addition to the domestic laws.⁶⁰¹ Therefore Ethiopian courts can only fill the remedies for the rights gap by directly applying the above provisions of the Covenant as grounds for the enforceability of the right it is possible to claim for compensation for wrongful conviction before the courts. The ICCPR⁶⁰² which provides for the right to compensations for wrongful convictions is ratified by Ethiopia and such law is also part of the Ethiopian law since the FDRE constitution dictates that all international treaties ratified by Ethiopia will form part of the law of the land.⁶⁰³ Courts are also duty bound to enforce rights protected in international treaties and in the constitution.⁶⁰⁴

In addition to these above mentioned basis to claim remedy the criminal policy had also further strengthened by containing that the right to compensation for wrongful convictions.⁶⁰⁵ Section 4.8.2 of the policy provides that;

“If a person who is convicted of a crime and subjected to a death sentence, imprisonment, or a fine, is later found actually innocent by a court through post-conviction proceedings, the person, their heirs, or their spouse is entitled to a commensurate compensation of moral and material damage suffered due to the decision which subjected the person to the sentence.” (Translation mine)

The policy provides that all persons who were convicted and punished for the crime but later proved innocent are supposed to deserve proportional compensation for the damage they

⁶⁰¹ Supra Note 524 Article 3(1) provides that Federal Courts shall have jurisdiction over cases arising under the Constitution, Federal Laws and International Treaties ; parties specified in Federal Laws and places specified in the Constitution or in Federal Laws

⁶⁰² Article 14(6) of the ICCPR

⁶⁰³ FDRE Const, Supra Note, Article 9(4)

⁶⁰⁴ Proclamation 25/96, Supra Note 524, Article 3(1),

⁶⁰⁵ Criminal policy, Supra Note 326, Section 4.8.2

suffered. According to the policy acquittal upon the retrial process will enable to claim compensation from the government.⁶⁰⁶

As it was contemplated in the policy; the draft criminal procedure code had also included the right to claim compensation for wrongful convictions.⁶⁰⁷ It states that if the court conducted the retrial has reversed or amended the previous decision such court shall order the government for the payment of both moral and pecuniary compensation to be paid for the victim.⁶⁰⁸ It also provides that the compensation paid shall be commensurate and paid to the descendants, spouse of family in case the victim is not alive as result of execution by death sentence.⁶⁰⁹ Apology to the family is also provided as one form of remedy in case of executions.⁶¹⁰

The inclusion of the right in the draft is appreciable. But the provision does not make clear which part of the government organ is responsible for the compensation since it simply says government. It is not indicated in the draft for the particular organ responsible to provide and effect the payment for the compensation Ministry of Justice, Police Commission, Finance or what else? The amount and method of assessment compensations are not regulated in the draft code. There shall be proper assessment of the compensation to be paid. If it can remedy the damage the compensation shall be proportional to the damage suffered. In addition; it does not seem that the descendants or spouse of the victim whom person had naturally died after serving sentence can claim for compensation since article 470(2) says when a person is executed as a result of death sentence. These issues were not addressed in the draft and they will form among the critical issues to be raised in enforcing the right in practice. There shall be clarity on the manner of effecting the payment and draft code itself or subsequent regulation should come up with detailed method of providing the remedy.

5.4.1 Role of Ethiopian Human Rights Commission to Remedy Wrongful Convictions

Apart from courts there are also NHRIs like the Ethiopian Human Rights Commission⁶¹¹ and the Office of the Ombudsman⁶¹² are institutions established specifically to play major roles in the

⁶⁰⁶ Ibid

⁶⁰⁷ Draft Criminal Procedure Code, Supra Note 584, Article 470

⁶⁰⁸ Id, article 470(1)

⁶⁰⁹ Id, Article 470(2)

⁶¹⁰ Id, Article 470(3)

⁶¹¹ Proclamation No. 210/2000 Ethiopian Human Rights Commission Establishment Proclamation

⁶¹² Proclamation No 211/2000 A Proclamation To Provide For The Establishment Of The Institution Of The Ethiopian Ombudsman

protection of human rights which are also established by the constitution.⁶¹³ With regard to providing remedy for wrongful conviction the role of Ethiopian human rights commission is limited to the amicable resolution of the grievance.⁶¹⁴ Unlike the Ugandan and Indian Human Rights Commission which can grant compensations for infringement of human rights, order the release of a detained person, payment of compensation, the EHRC does not have the mandate to grant compensatory remedies against breach of the right to physical liberty as a result of wrongful convictions.⁶¹⁵

The case brought before the Ethiopian human right commission for claiming compensation by Beyene Bellisa Amuma is also an indicative of the powerless of the commission to have a say over granting compensation. In this case a complaint brought that he was wrongly imprisoned for four years suspected of terrorism crime in 1990 and imprisoned till 1993 when he was finally acquitted by federal high court on 02/09/1993.⁶¹⁶

He was an employer at Ethiopian Telecommunication Corporation at time of his arrest and in the course of time they had terminated him from work.⁶¹⁷ After he was released from court he had brought a suit based tort law before court against Telecommunication Corporation to be reinstated him after paying him the four years' salary he lost including the benefits and carriers he should have got. But his claim was rejected by court and finally he brought his case to be granted for compensations. The court had rejected the claim for compensation based on the reason that the plaintiff was not imprisoned for the interests related with Telecommunication Corporation that they are not responsible to pay compensation.⁶¹⁸

The Ethiopian human right commission had also notified the complainant that there is no legal framework under the Ethiopian criminal procedure or in other legislations that makes government organs responsible for such acts and finally rejected his claim indicating the commission cannot provide for remedies requested.⁶¹⁹ Hence the EHRC cannot provide for remedies either in ordering for release or compensation for the erroneously convicted and

⁶¹³ FDRE Const, Supra Note 323, Article 55 (14,15)

⁶¹⁴ Proclamation 210/2000, Supra Note 611, Article 26(1) provides that the human right commission shall make all the effort it can summon to settle, amicably, a complaint brought before it.

⁶¹⁵ LoneLindholt, Lindsnaes, Birgit; Yigen, Kristine (eds.), National Human Rights Institutions: Articles and Working Papers, Danish Centre for Human Rights, 2001, P.28. see also Section 53(2) of the Ugandan constitution;

⁶¹⁶ Federal Public Prosecutor vs. Beyene Bellisa Amuma ,Federal High Court Criminal File 238/90

⁶¹⁷ Compliant submitted to EHRC by Ato Beyene Bellisa To EHRC on May 17/2007

⁶¹⁸ Ibid

⁶¹⁹ A Letter written to Ato Beyene Bellisa Amuma From Ethiopian Human Rights Commission on August 17/1999

remedy for wrongful conviction can be enforced before the courts of law and that required to be supported with adequate legal framework.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

This thesis has worked out primarily to investigate the existence of wrongful convictions and the remedies available to resolve the problem in the Ethiopian context. In doing so, the writer has reviewed meaning, evolution prevalence, causes and impacts of wrongful convictions in general. Wrongful convictions of innocent individuals have been one of features of criminal justice systems from the earliest days. It has resulted in execution of many innocent individuals apart from the rigorous imprisonment served by uncountable figures of persons. The problem was however fully recognized subsequent to Edward Borchard and his successors that had exposed the prevalence of the problem in different jurisdictions though the occurrence may vary from state to state. In addition to these studies the advancement of DNA technology had revealed the severity of the problem by exonerating persons who were executed posthumously and others who were under death row phenomenon. It enabled states to admit the occurrence of the problem.

Mistaken eyewitness testimony, false accusations, police misconduct and error, prosecutorial misconduct and error, inadequacy of counsel, faulty expert testimony, false confessions and community pressures are among the basic factors that were identified as the basic causes for the occurrences of wrongful convictions. The effects of wrongful convictions can result in either loss of life or deprivation of liberty of innocent individuals. It prohibits exercise of their civil and political as well as their socio economic rights. The family of the wrongfully convicted individual also unjustly suffers: wife without husband, children without father, mother and father without son. It also allows for the real offender to escape justice and may continue committing other crimes which will also shake the public confidence in the criminal justice itself for its failure to identify the real offenders.

After recognizing the impacts and prevalence of wrongful convictions there are international, regional and national responses on mechanisms to review and remedy the problem. International covenant on civil and political rights, international criminal court statutes including statutes for the Rwandan and Yugoslavians provide and allow for review of criminal judgment after final decisions are rendered upon the discovery of new evidence. The ECHR and African court of human and peoples' rights protocol are among the regional instruments which allow for the right to review of Criminal judgments after final decisions basing newly obtained evidence potential to reverse the previous convictions. Similarly the comparative study of foreign national experiences in USA, UK, Canada, Germany and France reveal that the problem of convicting innocents wrongly is recognized as main challenges in their criminal justice. The issue is well regulated and supported by legal framework and institutions working on miscarriage of justice and wrongful convictions either by way of innocence commissions as used in America or Criminal cases Review commissions in UK. There are also procedural mechanisms in those countries which permit for review of criminal convictions upon discovery of new evidence that had not been part of the previous trial as post-conviction proceeding. Likewise review of judgment the right to claim compensation for both pecuniary and non-pecuniary costs is also guaranteed in above mentioned instruments and domestic laws of states under focus. Of course the mechanisms to claim compensation vary from state states; but all provides for the right to an enforceable compensation.

The FDRE constitution provide for the right to life and liberty and security of persons that had already protected under the international and regional treaties particularly by the ICCPR to which Ethiopia is party. Despite their protection those rights are not absolute as they can be limited for the sake of criminal responsibility which shall be via due process of law. The proceedings that had fulfilled all the elements of fair trial rights of the accused persons is theoretically expected to deliver fair decisions; that is convicting the real offenders and acquitting the innocents. The law shall only punish the individuals who have really committed the crime. But laws in codes and laws in practice are different. The practical enforcement of laws pass through numerous challenges as there are multiple of organs involved in the process. The measures taken during the investigation stage greatly affects the process. Standard of competence ; reforms developed to strengthen the justice system; ethics required form the justice

organs and the provisions of adequate fund are among the main criteria that enable to realize fair, efficient and effective criminal justice system.

As it has been observed in other jurisdictions where there are sophisticated criminal justice systems and technologically advanced; the prevalence of miscarriage of justice particularly wrongful convictions has been revealed as prevalent and acute problem. Despite wrongfully convicting innocents is internationally recognized; the situation in Ethiopian is not yet recognized. When the situation comes to Ethiopia where there is lack of resource; technology is not advanced and standard of competence and ethics required are concerned in comparison with those developed criminal justice systems; the incidence of wrongful convictions in our case may get worse to speak logically.

In depicting the situation of wrongful convictions in Ethiopia the writer has come up with case studies of selected court decisions which reveal the scenario of wrongful convictions under the Ethiopian criminal justice system. The analyses of five wrongful conviction cases were made to reveal the existence of erroneous convictions in our system. The cases were selected from different parts of the country to show the existence of the problem in nationwide. The disclosure of these cases can be taken as the representative of other undetected cases for the existence of the problem in Ethiopia. Unfortunately all case exposed were homicide cases and individuals were sentenced to serve from one to nineteen years of imprisonment. They were unable to prove their innocence by appellate procedures.

The cause that had necessitated for the occurrences of these erroneous convictions are mainly false witnesses testimonies, inadequate investigation, and evaluation of evidence for criminal, incompetence of organs. But the common cause that had been revealed in all cases under the study was false testimony. In addition to case studies examination of the legal safeguards against wrongful convictions had been used to reveal the susceptibility of the system to wrongful convictions. Mainly the ongoing move to shift burden of proof to the accused in certain crimes; presumption of innocence and the standard of criminal proof including poor right to indigent representations in Ethiopia can be taken as some factors that can contribute for the occurrence of wrongful convictions. It was not possible to communicate the victims of wrongful convictions by the writer to assess the impact of the conviction against them as it was difficult to get their address. But the impacts of wrongful convictions are clear and that might not be different from

the already identified effects by previous researches. So the impacts of wrongful convictions are detrimental to the convicted persons themselves; their families; to the public at large and to the system itself by shaking the trust and credibility among the society due their failure to identify innocents and offenders.

As the case studies examined to show the situation of wrongful convictions in Ethiopia; the Ethiopian criminal justice system had failed to handle the problem. The system has not accommodated legal mechanisms which enable victims of wrongful convictions to claim review of judgments wrongly passed against them. Victims of wrongful convictions were subjected either serve the sentence or pardoned by the government as they had really committed the crime. Repeated claim for review of judgment before courts were also rejected due to the absence of legal procedure which allows for review of criminal judgments upon the discovery of new evidence which was not produced at the previous trial and potential to reverse the conviction. So the system cannot allow for persons wrongly convicted and the absence of legal procedure had subjected victims of wrongful convictions to seek and plead apology from the government for the fault done against them.

In similar way the right to compensations as a result of wrongful convictions is not also recognized under the Ethiopian law. Persons who had served sentence due to the conviction passed against them cannot bring a claim so that the government will provide them for compensations for their years passed in prison. Even though courts can decide on both case of review of judgment and compensation basing the provision of the Ethiopian constitution that proclaims for interpretations of human rights provisions inline of international instruments; it was not as such considered in relation with cases of wrongful convictions. Courts have been rejecting claims of review of criminal judgments.

The recent criminal policy of Ethiopia which had come up with the concept to legalize claims of wrongful convictions can be taken as one progress in resolving the problem. The draft criminal procedure which has included the right to review of criminal judgment and the right to compensations for victims can also be regarded as the outcome of the criminal policy.

6.2. Recommendations

Based on the above mentioned findings, the writer forwards the following points as recommendations.

1. There shall be clear and adequate legal mechanisms by which individuals wrongly convicted can claim for review erroneous judgment passed against them so that they will regain their liberty by reversing the decisions. The right to claim compensation as result of the damage caused by wrongful imprisonment shall also be clearly regulated by the law which allows the victims to bring an enforceable right to compensations. So the writer boldly recommends to the legislature to enact laws which allow for the right to bring claim for review of criminal judgment by persons wrongly convicted after the discovery of newly discovered evidence and the right to seek for compensations as the result of such convictions which had caused imprisonment or executions. The ongoing but delayed draft criminal procedure which has inbuilt remedies for wrongful convictions shall be approved by the house of people's representative
2. Considering the fact that causes of wrongful convictions start to happen during the investigation stages; investigating police officers shall on improve their investigative skill and methods to identify the actual offenders of the crime. They shall employ technical and biological evidence which are more persuasive than the widely used tactical evidence. Though it bases on the resource of the country attempt to introduce DNA will ensure for better quality of investigation report. It is better to reduce over use of eye witnesses' testimonies which can have the risk of false testimony based on certain interests. They shall also respect rights of arrested and accused persons and refrain from obtaining confession by coercion. There shall be criminal responsibility against officers for their misconduct and misbehavior in addition to administrative measures available.
3. The criminal justice system shall be equipped with more competent and ethical professionals (police prosecutors and judges) capable to identify factors contributing for the occurrence of wrongful convictions and prevent miscarriages of justice in the process of dispensing criminal justice. The system shall work to avoid the risk of wrongful

convictions from the outset by respecting rights of persons accused and implementing the standards to safeguard innocents involved in the proceedings.

4. The government shall provide adequate Training for criminal justice organs on wrongful convictions its causes impacts and remedies for the breach of human rights in general and to the cases of wrongful convictions.
5. Public Prosecutors shall play their role in respecting and protecting the rights of the accused and ascertaining the truth in criminal proceedings. The prosecutor shall prove the commission of the crime basing on genuine and credible evidence before framing charge. They shall prove their charge beyond reasonable doubts before courts.
6. Ministry of Justice, Regional Justice Bureau, Police and other stakeholders shall raise awareness among the community about crime of perjury and its severe consequence against the individual and against who testify by false. The community shall be taught so that the community will cooperate and participate in preventing crime of perjury. There shall be continuous criminal responsibility against individuals who falsely testify.
7. Judges shall convict accused if and only if the commission of the crime is proved beyond reasonable doubts by the evidence produced by the prosecutor. Standard of proof beyond reasonable doubts shall be applied by judges in deciding on convictions and all stakeholders in the criminal justice system including courts shall work to prevent false testimony and other evidence produced.
8. The government shall provide for legal representations for indigents at state cost for all crimes that result in serious deprivation of liberty from interrogation up to final appeal level. They shall establish for structure of defense attorneys at all level of courts entertaining criminal matters to provide the service in case needed.
9. Courts shall realize their duties to enforce the rights guaranteed in the constitutions and they apply international treaties by interpretive rule of human rights provisions in entertaining cases brought before them. They shall directly apply international treaties which have been ratified by Ethiopia to provide remedies for the breach of persons wrongly convicted. They should also consider extra contractual liability as justification to

provide compensations to the victims of wrongful convictions. The courts should take judicial pro-activism in enforcing and promoting human rights.

10. Laws which provide for admissibility of unknown source under anti-terrorism law and others shifting burden of proof to the accused should also be reconsidered by the legislature to decrease more emphasis on crime control which increase the risk of wrongful convictions to protect individual rights.
11. Government shall allocate budgets in their annual economic plan to be paid of for victims of wrongful convictions in form of compensations
12. In disclosing wrongful convictions there shall be an independent institution to investigate and expose cases that reveal erroneous convictions. As the foreign experience shows investigation of the case by police or prosecutor which was previously entertained might not be proper due partiality and bias exist in finding out the truth of the case. The reinvestigation of the cases upon claim shall be either given to the Ethiopian human rights commissions or independent organs which deal with the issue shall be mandated as innocence commissions in the United States of America or Criminal Cases Review Commissions in United Kingdom.
13. Government Institutions empowered with promoting human rights and non-governmental organizations shall enable by creating legal awareness to the community about wrongful convictions and the right to compensation for victims of wrongful convictions for the damage caused to them by state acts. The government shall also reconsider civil society establishing proclamation limitations in encouraging more civil societies to work on miscarriage of justice.

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5. Ilu Aba Bora Zonal public prosecutor vs. Debela Taye et.al, Ilu Aba Bora High Court Criminal File No 266/90and 417/93
6. Mengasha Tilahun et.al vs. Oromia public prosecutor, Western Region of Oromia Supreme Court Criminal File No 118456
7. Nugusu Tegelu Fereja vs. public prosecutor, former Buta jira Awuradja High Court, Criminal file no 976/80
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F. INTERVIEWS

1. Interview with Ato Rebuma Geja'a on March 25, 2015 Judge who had entertained the case when He was at Ilu Aba Bora High Court Currently working at South West Shewa High Court, at Addis Ababa.
2. Interview with Ato Assefa Kesito, A Former Minister at FDRE Ministry of Justice on April 15, 2015 at his office, Addis Ababa.
3. Interview with Ato Ali Mohammed, Judge at Federal Supreme Court Cassation on April 20, 2015 at Federal Supreme Court.
4. Interview with Ato Filiphos Ayinalem, Former judge at Federal High Court currently an advocate at Federal courts on March 12, 2015 at his Office in Addis Ababa.

ANNEX