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COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW

**The role of federal courts in enforcing human right
safeguards against arbitrary arrest in Ethiopia: Legal and
practical analysis**

**A Thesis Submitted to the School of Law, Addis Ababa University, in
Partial Fulfilment of Master of Laws (LL.M) in Human Rights Law**

By:

YEMISRACH KINFE WOLDEZENA (Id no GSE/2607/13)

January 3, 2024

Addis Ababa, Ethiopia



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YEMISRACH KINFE WOLDEZENA (Id no GSE/2607/13)

Advisor

Mizanie Abate (PhD)

January 3, 2024

Addis Ababa, Ethiopia

DECLARATION

I Yemisrach Kinfe W/Zena, hereby declare that this thesis is my own original work and has never been presented in any other institutions. I also declare that source which I used all are acknowledged.

With Regards!

Signature_____

Date January 3/2024

I, Mizanie Abate, have read this thesis and approved it for examination.

Signature:



Date: January 4, 2024

Examiners:

Name

Signature

1 Dr.-Simeneh Kiros

.....

2 Dr. Abdi Jibril

.....

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ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
APTD	Arbitrary Pre-trial Detention
CPCE	Criminal Procedure Code of Ethiopia
ECHR	European Convention on Human Rights
ECOWS	Economic Community of West African States
EHRC	Ethiopian Human Rights Commission
FDRE	Federal Democratic Republic of Ethiopia
HRC	UN Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic Social and Cultural Rights
IHRL	International Human Rights Law
ILC	International Law Commission
NISS	National Intelligence Security Service
PTD	Pre-trial Detention
UDHR	Universal Declaration of Human Rights
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
WGAD	The United Nations Working Group on Arbitrary Detention
FFIC	Federal First Instance Court
FHC	Federal High Court
FSCC	Federal Supreme Appellate Court

Abstract

The role of the judiciary in the administration of the criminal justice system is established in country's legal system. Ethiopia's legal system is a hybrid of common law and civil law. In certain cases, the procedure appears adversarial, while in others, it appears inquisitorial. The Ethiopian laws do not declare the power of the judiciary in the criminal investigation process; courts have the authority to issue arrest, search, and seizure warrants, and in the criminal investigation process, they give or deny remand for the police at their discretion power. The criminal and criminal procedure of Ethiopian law does not have a time limit or specific timeframe for requested remand during which it must demonstrate the legitimacy of an arrest. Despite this, there are many cases of arbitrary and illegal detention as well as other violations of human rights. There are claims that the criminal justice system does not adhere to international human rights principles when it comes to bail and habeas corpus, the right to be freed from a lawful arrest. Courts are expected to take proper action when someone's liberty is violated. The FDRE Constitution imposes a duty and responsibility on judicial organs in each level federal and state courts to enforce human right laws and to be the guardian of the human rights safeguards against arbitrary arrest. As per Article 9/4/and 13 of the constitution stated that, the judicial organs in all level have to be interpreted in accordance with the principle of universal declaration of human right, international convenient on human right and international instruments adopted by Ethiopia.

The research focused on the practical and legal aspirations of the criminal justice system, as well as how the federal courts enforce human rights safeguards against arbitrary arrest, to what extent and what role they have to play in criminal investigations before and after arrest, and how they rule on pre-trial detention, and highlight the legal and practical deficiencies in the criminal justice system.

Key words; Role of court, Arrest, arbitrary arrest or detention human right, Safeguards, enforcement, Crime, court judge, suspect, bail, Liberty

CHAPTER ONE

Introduction

1. Background of the study

The right to liberty is recognized in numerous human rights treaties¹ and is backed by the constitutional provisions of the vast majority of states in the world.² Under article 6 of the ACHR an individual's right to liberty and security is also stated. Article 3 of the UDHR states that the right to security and liberty cannot coexist with the unlawful loss of an individual's freedom.

In compliance with international human right instruments Ethiopian constitution also recognizes the right to liberty. Article 17 of the FDRE Constitution clearly provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law in addition, no person may be subjected to arbitrary arrest and detained without a charge.

The implication which can be inferred from the above pieces of soft and binding laws is, the right to liberty is not absolute. There are grounds that may subject it to limitation. However, when deprivation of liberty is conducted, in all cases it must be carried out in accordance with the law and procedures stipulated, should not be arbitrary. Generally, deprivation of liberty refers to the infringement of the liberty of movement.³ If the infringement of liberty is not conducted through illegal means of detention, the arrest will be arbitrary. This is what we called arbitrary arrest.

This shows that the right to liberty could only be restrained on certain grounds. This is somewhat interfacing counterpart with provision in the Ethiopian Criminal Procedure Code (CPC, here in after). Article 51 of the Ethiopian Criminal Procedure Code provides reasons⁴ under which arresting someone is legally permitted. However, there are issues that are worthy of further discussion due to lack of clarity.

¹ Art. 9(1) of the ICCPR, Art. 6 of the, ACHPR Art. 7 of the AHR and Art. 5 of ECHR recognize Right to liberty.

² Marcello DI FILIPPO, The human right to liberty in the context of migration governance: Some critical remarks on the recent practice in the light of the applicable legal framework, 8 September 2018,

³ ICRC, To Serve and To Protect, Human Rights and Humanitarian Law for Police and Security Forces, p. 224

⁴ Criminal Procedure Code of Ethiopia, proclamation No.185 OF 1961, Article 51 (1, A) provides reasons like the act of committing a breach of the peace

By and large, arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.⁵ It must also be conducted by following the principle of legality which is embraced under Ethiopian constitution. The principle of legality stipulates that the grounds for arrest and detention must be established by law.⁶ The Human Rights Committee states that the legality principle will be violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation. Legality principle has two aspects.⁷ These are the formal aspect and the material aspect. The material aspect indicates that the police can arrest individuals only for reasoned circumstances for the cases mentioned in the law. On the other hand, formal aspect shows that arrest could only be done in accordance with the laws or procedure established.⁸

Article 17 of the FDRE Constitution recognized these two aspects of the principle of legality. It provides that there must be the justification or reasons explicitly defined by law as grounds of deprivation of liberty. It also shows that arrest shall strictly adhere to or complies with the procedures objectively set forth in the law.⁹ Therefore, arrest is said to be compatible with the constitution if it complies with both material and formal aspects of deprivation of liberty. Under criminal procedure code also arrest without warrant may take place as provided under Article 50 in flagrant offences and where the circumstances of article 51 of the code are materialized.

Therefore, in these scenarios the role of courts is very significant in ensuring the liberty and security of individuals. The courts have a duty to enforce human right safeguards stipulated under the domestic as well international laws against arbitrary arrest in Ethiopia.

In this paper, all aspects of the role of judiciary, specifically, the role of federal courts in the enforcement of human right in criminal proceedings and the extent to which they are discharging their obligations will be discussed.

⁵ Communication No. 458/1991, A. W. Mukong v. Cameroon, UN doc. GAOR, A/49/40 (vol. II), p. 181, para.8, emphasis added

⁶ Communication No. 702/1996, C. McLawrence v. Jamaica (Views adopted on 18 July 1997), in UN doc. GAOR, A/52/40(vol. II), pp. 230-231, para. 5.5.

⁷ Isaiah Berlin, Two Concepts of Liberty, page.161

⁸ Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, proclamation 1/1995 herein after FDRE Constitution

⁹ Ibid, Art.17

2. Statement of the problem

The FDRE Constitution provides that the judiciary at all levels has responsibility and duty to respect and enforce the human right stated under the Constitution federal courts should interpret each human right provisions under chapter three of the constitutional rights in accordance with the principle of universal declarations of human right, international covenants on human right and international instruments adopted by Ethiopia as per article 13 and 9/4/of FDRE constitution. There are, however, legal and practical problems the researcher observed

The issue at hand is that when the court issues a warrant or order remanding the police to continue their criminal investigation the police make decision based on their desire or needs rather than conducting additional investigation. The police also only provide the court with a single page of application without police investigation file it is challenging for courts to determine whether the police have provided the legally required justification or reasons for depriving someone of their liberty.

Our criminal procedure law does not define arrest, the reason for arrest. Warrant is an essential tool to construct a ground of preserving individuals right of liberty from illegal and unlawful infringement. Despite these facts the Ethiopian laws are not consistent in affirming this principle.

The court before which the arrested person is brought shall decide whether such a person shall be kept in custody or be released on bail. Where the police have not completed the investigation police may apply for remand for sufficient time to enable the investigation to be completed. According to CPC Article 59/3/ courts for one occasion they give fourteen days¹⁰.

When court gives 14 days remand for how much time with what standard it's not clear and cannot presume. there are a legal and practical gap in enforcing this law by the discretion power of the judge the liberty right of the suspect abuses and violation made or the court denied the remand and give bail with surety for the suspect the police denied to full and release the suspect in order to court bail judgement or warranty are many cases practically can mention.

¹⁰ 1961 Ethiopian Criminal Procedure Code, Article 59.

In current situation the police denied to release the suspect by bail or bond when the court permits bail right for the reason of appeal or the federal police transfer to Addis Ababa police and if they want by saying the suspect need by other offence they transfer from one to other sub police station or to other place they denied to respect court orders, they abuse the power of courts in each level and we can't see when they(courts) take measures on the police who refuse to respect such right's we can mention so many case Federal courts must have to be exercising their constitutional power in order to safeguard such human rights violation and arbitrary arrest.

On criminal investigation there is also claim of bail, the right to be realize from in legal arrest (Habeas corpus) right it's not still managed in accordance with international human right principle and standards this mean to make arrest or deprive some one's liberty without law courts expected to make appropriate measure.

The other problem is arrest made by other institutions established by ordinary regulation.

The legal problem is the inconsistency of the criminal procedure code Article 25, 26, 50, 51, 52, and 54, vagrancy proclamation Art.6, new Anti-terrorism proclamation Art. 39 and the practice done show the arrest without warrant is as the rule when the police have reason or when the police officer has a reason to believe she/he has committed crime the police may go directly to the suspect location and affect the arrest or he may make the arrest by police summons¹¹.

On the other hand, Article 49 of the criminal procedure makes warrant principle. The notion of this provision is individuals will not be subject to arrest or detain without prior authorization from the court which can be affected through warrant. Article 17 of the constitution also has declared the same issue. Therefore, the main problem is which one of the above ways of detention is principle and which one is exception.

In the current criminal legal system, the arrest of Oromia judges who has immunity arrested by court warrant, electorate of parliament and other known case are one incident how court expected to be prudent. This kind of operation is completely deviant from the notion of law and general jurisprudence. But before arrest made by the police and when the courts issue warrant, they expected to examine whether there is a reasonable suspicion? Is there conviction against the suspect or not? Courts expected to play a great

¹¹ Ethiopian criminal procedure law, text book, Wondwossen Demise Kassa, page.87

role in order to respect and safeguard human right against arbitrary arrest in accordance with the principle of international standards.

3. Literature Review

Here under tray to cite illustrative reference researches done related to the role of courts in protecting individuals' liberty right against arbitrary arrest and Many scholars' analysis on the area. the writer will try to address some of the national and foreign scholar's outlook.

Wondwossen Demissie wrote in the Right to Bail in Ethiopia and Respective Roles of the Court and the Legislature The outer discuss in detail about bail principle and compatible international human right laws and the ruling of court. the law maker is concerned there is no constitutional issues with a prior legislative denial of bail to category of suspects the basis of the offence or the punishment attached to the offence, they are suspected of such laws is in perfect conformity with the FDRE constitution and relevant human right instruments. the bail right is not absolute right in both the FDRE Constitution and relevant human right instruments which recognize the right but the court simply refers to the punishment prescribed by the provision alleged to have been violated as a sole basis for a ruling on issue of bail in effect but not courts decide whether an accused should be release on bail or not. The courts abstention from weighing evidence of the prosecution with a view to determine whether there is prima facie case during a bail hearing does not serve any legitimate purpose allow its restriction in accordance with law.

Arrest without warrant results violation of individual right to liberty. That's why arrest with warrant must be a rule. Under Ethiopian legal context Simeneh Kiros (simeneh 2009) and Wondensen Demissie (Wondwessen 2012) argued that arrest without warrant should be exception by setting arrest with court warrant as rule. Out of Ethiopian jurisprudence the writer will assess different writer's position on the matter.

Fahed Abul-Ethem write in the role of the judiciary in the protection of Human Right and Development in A middle eastern perspective depending on the judicial system of Jordan made an assessment and conclude one of the vital ways to keep human right safe is by preserving the privilege role of judiciary. stands developed by the judicial have a

significant beneficial in liberty right effect of making the lives of people better and accomplishment government goals easier.

Daniel Weber wrote a book on the terrorist's way of detention. For him issuing of warrant in such kind of circumstances (upon confrontation with dangerous terrorists) can't be reasonable to protect the interest of the public. Therefore, in these kinds of offence warrant may not be given for interest of the public.

As per Simeneh Kiros, in the same manner Wondesen argued, the right to liberty is the rule. The Ethiopian Constitution is good in its statements for the recognition and protection of the right to liberty as a sacred right which is inviolable and inalienable. Any ground of restriction on the right to liberty is an exception to the rule and is required to be interpreted strictly. According to the Constitution, a person may not be arrested arbitrarily; she may be arrested where she is suspected of violating the substantive law, the penalty of which entails jail. Furthermore, the arrest must be made in accordance with the procedure as laid down in the procedure law. So, for Simeneh, arrest on summons is an anomaly in the Ethiopian criminal process. The rule is the right to liberty. When it is found to be necessary, the restriction should have been based on arrest warrant. He also assesses that, there are many confusing provisions with respect to arrest warrant and the way it is enforced. Therefore, for him, in order to make sense out of the provisions of criminal procedure code, the roles and responsibilities of various actors in the criminal justice system have to be seen in context. He finally generalizes that Restriction to the right to liberty is an exception; therefore, we have to have an arrest warrant in restricted situation.

Clair Macken states that, preventive detention refers to detention by executive order as a precautionary measure based on predicted criminal conduct. For him executive order is any order got from Executive body. It also includes warrant. Clair's position is the same with Simeneh and Wondesen in Ethiopian context. So, for detention which is without criminal charge or trial is unconstitutional and it's purely arbitrary.

Monica Macovei has written on a guide to the implementation of Article 5 of the European Convention on Human Rights. On this writing, she states that although the suspected commission of an offence, the need to prevent one from being committed or the possible flight of the suspected offender constitute the basis on which deprivation of someone's liberty can be contemplated. So, the court should recognize four reasons as

relevant for detention, where there is still a reasonable suspicion of his or her having committed an offence the risk of flight, the risk of an interference with the course of justice, the need to prevent crime and the need to preserve public order. These reasons raised by her constitute a series act of the suspect. If so, the way to detain the suspect is her point of crux. Issuance of warrant as expressed above in a narrow term is not appropriate for her. Warrant should be given also to individuals to express what is going on about. Many people deprived of their liberty will not either the intellectual capacity of a person or have either the intellectual capacity or professional experience to disentangle the complexities of the law. The overriding consideration is that the person affected must understand what is happening to him or her and therefore there will always be a need to take into account the specific capacities of an individual. Such an objective may be achieved where official documents such as a warrant or court order authorizing deprivation of liberty are expressed in language that is generally intelligible. For Wondesen Ethiopian law thus lacks an appropriate mechanism for ensuring that the right to liberty is restricted only when there is a tangible and objective reason to do so. The procedural laws give plenary power to a police officer to arrest solely upon his own evaluation of the existence of reasonable suspicion that the person to be arrested has committed a crime. For him the fact that arrest without a warrant is the noun, the effectiveness of the provisions of the Cr. Pro. Code is questionable in enforcing provisions of the FDRE Constitution and other human rights instruments that prohibit arbitrary restriction of liberty.

For Abdi Jibril Ali Ethiopian scholar also say arrest would be arbitrary if not made in a manner the law prescribed. Also, shouldn't be incompatible with the principles of justice or with the dignity of the human person.

The assertion of the writers the researcher in some miner focused on the protection of individual right against arbitrary arrest as rule am supposed to agree with and my research focused in the practical and legal aspiration of the criminal justice system and how the federal courts enforce human right safeguards against arbitrary arrest and what is their role in criminal investigation before and after arrest have been made.

3. Research question

In light of the general and specific objective of the research the research will address the following questions.

1. What are the legal and practical gaps in enforcing human rights safeguards against arbitrary arrest in Ethiopia?
2. What is the role of federal courts on ensuring individual's right to liberty before and after arrest?
3. What are the role federal courts in enforcing legal safeguards of legality of arrest? How is the principle of arrest with warrant enforced by federal courts?

1. Methodology and methods

The paper employed both doctrinal and non-doctrinal methodology in order to answer the research questions of the study. They will undertake a rigorous systematic and practical analysis, exposition and critical evaluation of the role of federal courts of Ethiopia with regards to safeguarding the liberty of individuals. Accordingly, the researcher will use a qualitative research method to critically analyze the issue.

A. Data Types and Data Sources

The researcher will use both the primary and secondary data sources by applying the essential data collection techniques. Hence, the primary sources of data which are legal documents and interview to address issues related to gaps in regulating the right to liberty of individuals and the role of courts in its enforcement. In particular, the FDRE constitution criminal procedure code of Ethiopia and other special laws will be analyzed.

b. Methods of Data Collections

The researcher will use document analysis, and key informant interviews as a tool of data collection to get important data and information from the respective sources. The interview will be conducted with selected population three judges from FFIC, 2Judges from FHC, and one judge from FSC and four attorneys, criminal suspected persons and public prosecutors by using purposive or judgmental sampling technique. The researcher will use to recruit participants who can provide in-depth and detailed information about the phenomenon under consideration.

c. Methods of Data Analysis and Interpretation

The data collected through the specified techniques will critically be analyzed and interpreted based on the basic tools of legal reasoning to come up with a relevant conclusion that will answer the questions presented and the objectives stated by the

thesis. To achieve this researcher will employ narrative analysis technique. Using this technique, the researcher will interpret interviews, and text data to draw a concrete meaning.

2. Significance of the research

- To make distinction between observed confusion on the criminal procedure code of Ethiopia. And giving the hint to legislature to make clear demarcation on the arrest laws and arrest principle must to be arrest with warrant has to be rule in order to protect individual human right. Unless arbitrary arrest takes place and it became feature impact on liberty right.
- The draft Ethiopian criminal procedure and evidence law in on progression of ratification these laws also not give the standard of the reason to arrest and also never clear the confusion stated above if it's possible and got chance to aid the legislature it has significant.
- By making detail assessment introduce the constitutional power and duties of federal courts or introduce the competence and jurisdiction of Ethiopian court of law to award remedies for breach of individual liberty.
- By resolving the legal contradiction brings uniform application of laws in federal court.
- Define arrest and arbitrary arrest in accordance to international human right laws.

3. Scope of the study

The scope of this research is limited criminal investigation and the pre-trial stage in which mostly arbitrary arrest and detention cases associated. The research focused on the pre-trial on remand application, the claim of arrest warrant administers mostly in federal first instance court in Arada bench, federal high court in Arada bench of appeal and the appellate court of supreme court. The research has administered the 2014- and 2015-years court cases and carried out with the legal framework of the relevant national and international human right law and literature review in the area.

4. Limitation Limitations

As the research use primary data the source of the data is government organization like police, public prosecutors judge it may be difficult to convince them to participate in the process when we talk about arbitrary arrest the issue seems politically sensitive and they

may be reserved. Due to current situation getting the exact figure of opened files or data in police, public prosecutor and in both federal first instance, high courts and the supreme court.

5. Organization of the Research

The paper contains 4 chapters. The first chapter is an introductory one. It includes the background of the study, objectives of the research, scope of the study, methodology employed, review literature and etc. Chapter two is about the role of the judiciary in the enforcement of human rights in criminal proceedings. In chapter three human right safeguards against arbitrary arrest under global and African regional human rights system will be discussed. Under chapter four the role of federal courts in enforcing human right safeguards against arbitrary arrest in Ethiopia will be consulted. This will be discussed from the legal and the practical aspect. Under the last chapter conclusion and recommendation will be referred.

CHAPTER TWO

The Role of the Judiciary in Enforcement of Human Rights Safeguards in the Context of Administration of Criminal Justice

Introduction

The role of the judiciary in enforcing human rights safeguards in administration of criminal justice system to ensure the due process of law include the enforcement of the suspected person's right to fair trial, the presumption of innocence, and the right to free from any arbitrary detention or arrest. The judiciary has also the power to examine the actions of law enforcement agencies and hold them accountable if they violate human rights as well as role to check and balance the powers of the executive and the lawmaker. By virtue of its power in context of administration of criminal justice system, the judge can exclude evidence obtained through unlawful methods and can impose a sanction on the prosecutors or the law enforcement officials who made the violation of individuals human rights. Effective enforcement of human right require access to legal

advice and assistance, a robustly independent judiciary, a robustly independent legal profession, and muscular human right institution.¹²

This chapter highlights the judicial system and structure, the role of judiciary in enforcement of human right safeguards in criminal proceeding, the role of court in interpreting laws, constitution, international human right laws, ensuring compliance with international human rights standards in criminal justice administration, and holding law enforcement officials accountable.

2.1 General overview of the judicial system and structure

The judiciary is the branch of government which administer justice according to the law. The judiciary have a task in ensuring equal justice under the law. It must be independent, impartial and neutral in administration of criminal justice system by ensuring fair dispute resolution, uphold human rights and access to justice. An independent judiciary refers to a system of courts that separate from other branches of government such as executive and legislative branches. In this situation the judges are free from outside influence and can make decision based on their interpretation of the law and facts, without interference of other branches or individuals.

2.1.1 Judicial independence

Judicial independency refers to the principle that judges should be able to make impartial decisions without interference or influence from other branches of government individuals or external force. It is a crucial aspect of fair trial and legal system. To determine the independency of the judiciary certain requirements and indications can be considered. The first one is appointment and tenure of judges should be transparent and merit-based process, ensuring their selection is free from political influence.¹³ The tenure also should be secure and protected against arbitrary removal. Second, the financial security adequate funding should be provided to the judiciary to ensure its function independently, without relying excessively on other branches of government for financial support. Thirdly, to ensure its administrative autonomy, the judiciary should

¹² House of Common Lords Joint Committee report on human right enforcement tenth report session, 2017-19 1134 printed in July 2018 p. 33.

¹³The role of judiciary in the promotion and protection of human right by Charles Ohene-Amoh / [legal-protection-of-human-rights access in 28/05/2023](#).

have the power to establish its own administrative and disciplinary rule and have control over its budget, staffing, and court management. The fourth requirement is impartial and non-discrimination which is that judges should be free from bias or favoritism, ensuring equal treatment for all parties involving in a legal proceeding, regardless less of their social status, wealth, or political influence.¹⁴ And also, an independent judiciary require a system of checks and balances among the three branches of government and ensure constitutional compliance. These are some of the broad requirements that contribute to judicial independence and the specifics may vary depending on the legal framework and constitutional provisions of different countries.

2.1.2 The structure of the judiciary: a general overview

The judiciary structure varies from country to country and legal system. Both the common law and civil law legal system differ in their system but both share common features. The common structure of the judiciary briefed as follow.

Supreme court: is the highest authority within judicial system and have final say on legal matters. Usually, it handles cases which have error of law or cases decided without rule of law by lower courts.

High court or appellate court: these are intermediate -level of courts that review the decisions made by lower courts to determine if there were any errors of law or procedural irregularities. These courts have material jurisdiction to see or handle direct cases which is given by law. But they primarily focus on appeals field by parties dissatisfied with the judgments or rulings of lower courts.

Trial Courts: these are also known as district courts and the lower level of courts where cases are heard, evidences are executively heard, trials are conduct trial and judgements are delivered.

Specialized courts: these courts deal with specific areas of law in some jurisdiction such as family, tax, labour, commercial and administration laws. These courts have jurisdiction over matters related to their respective fields.

Magistrate or the lower courts: in some legal system, such kind courts have a power to handle minor civil and criminal cases. There may be separate courts led by magistrate's

¹⁴ Ibid

or judges who handle less serious offence, minor disputes, or petty offenses with limited jurisdiction.

2.2. The role of judiciary in the enforcement of human right safeguards in the context of administration of criminal justice

The judiciary have a role in protecting and enforcing the suspects right before and after arrest in criminal justice system; judges perform their role by applying the law to specific cases. In criminal proceeding there is pre-trial stage at which the legality of arrest review and ensuring due process is mandatory. Due process including both the right to fair trial and effective remedy.¹⁵

A discussion on crucial role of courts in the enforcement of human rights safeguards against arbitrary arrest in administration of criminal justice system is order below.

2.2.1 Interpreting the laws, constitution and international human right laws

The judiciary plays avital role in interpreting laws, the constitution and international human right laws.

Interpreting laws is the main function of judiciary. When dispute arises, they are responsible for analyzing and applying appropriate legal provisions for specific cases. Judges are expected to examine the language, intent, and the purpose of the law to determine its meaning and how it should be applied in a particular situation. The judiciary also often has the power to interpret constitutional provisions. This includes determining the constitutionality of laws and government actions, ensuring and align with the principle and rights enshrined in the constitution. Through this process the judiciary acts a check on the legislative branches.

Moreover, courts have the power to interpret international human right laws. International human rights instruments will share important features of enforcement. International human right treaties are applied at the national level of the state parties in various ways. The first way is the direct application of the international human right laws by the domestics or national courts¹⁶. In many jurisdictions, international human right laws are considered binding domestically. The judiciary may be called upon to

¹⁵ <https://www.humanrights.is/en/human-rights-education-project/comparative-analysis-of-selected-case-law-achpr-iachr-echr-hrc/the-rights-to-due-process/what-is-due-process> last visited 01/06/2023

¹⁶Malcolm shaw QC, international laws p, 284 (15th ed.2003))

interpret and apply these laws with their national law to safeguard and enforce human rights standards in their respective countries. Mostly such application is available when a given country makes the international human right laws as an integral part of the national laws. In such scenarios the interested parties in the disputes ask the courts directly to apply the international instruments for domestic human right issues at hand. the second way is talking the international human right instruments as the source for interpretation of the national laws.¹⁷

Overall, the judiciary's role in interpreting laws, constitution, and international human right laws helps to ensure the rule of law, to protect individuals' human rights, and maintain a balance of power with in a legal system.

2.2.2. Apply the law and ensure compliance with international human rights standards

Applying the law and ensuring compliance with international human right standards in criminal proceeding is crucial for upholding justice and protecting individuals' rights. The judiciary plays this key role in several ways. In the way of Adjudication, the judiciary interprets and applies all legal principle and procedures are followed during criminal proceedings. This including ensuring due process, fair trial rights, and protections against torture.¹⁸

Due process: due process is the totality of fair justice the judiciary which ensures the individual's right or accused of criminally suspected including the right to fair and speedy trial, public trial and impartial jury, access to legal advisor /counsel, presumption of innocence, and protection against self-incrimination, the right to confront and explanation of all the charges against a defendant.¹⁹

Generally due process ensures the level of fundamental fairness for the individual from governmental overreach specially in criminal justice system to balance and safeguard such rights.

¹⁷Bian Leopard, customary international law anew theory with practical application p.112/2014

¹⁸The role of judiciary in the promotion and protection of human right by Charles Ohene-Amoh / <https://www.citizensadvice.org.uk/law-and-courts/civil-rights/human-rights/how-are-your-human-rights-protected-by-the-courts/accsesd in 07/4/2023>

¹⁹ IBD

Judicial review: the judiciary reviews the actions of the executive branches and other state actors to ensure they comply with the law and respect human rights. Administrative decisions are reviewed by courts either directly after exhaustion of all administrative remedies or by appealing the administrative decisions. This is done to examine legislator, the administrative agency decision, the police criminal investigation and decisions that may impact criminal proceedings and nullifying or modifying them if they are found to be inconsistent with established legal principles and human right norms.

Fulfilment of international obligations: the judiciary ensure that the state fulfills its international human rights obligation in its criminal justice system. This involves considering relevant treaties, conventions, and customary international law when adjudicating cases and making decision that impact individuals right and freedom.

precedent setting: judicial decisions play a significant role in setting legal precedents, which guide future cases and help establish consistent standards for human rights in criminal proceedings. This precedent contributes the development and evolution of human rights jurisprudence.

To perform these functions effectively, the judiciary must be independent, impartial, and knowledgeable about domestic laws and international human right standards. Judges need to apply their expertise and legal reasoning to ensure that justice is served while upholding individuals' rights throughout the criminal process.

2.2.3. Holding law enforcement officials accountable

The judiciary ensures that the law enforcement officials follow the law and act within their legal authority. By oversight and accountability, the judiciary holds individuals and entities accountable for any violation of human right occur in criminal proceedings through reviewing complaints, conducting investigation and if necessary, imposing appropriate remedies or sanction to address human rights abuses. The judiciary functions through a hierarchical structure of courts with higher -level courts having the authority to review and reverse decision made by lower-level courts and decision given by executive bodies²⁰. judges who are authority to impartial and independent, presides over cases, consider evidence and making decision based on the laws and legal principles.

²⁰ IBD

The judiciary primarily responsible for providing equal justice under the law and ensure the protection of individual right to liberties.

The judiciary can review the actions of law enforcement agencies and determine the legality and constitutionality of arrest, detention, and other related measures. This review helps safeguard against arbitrary arrest of individuals in criminal proceeding in investigation process before and after arrest.

2.3.1 judiciary role in criminal investigation process in administration of criminal justice system

There are many ways how the judiciary enforce human right in criminal investigation process before and after arrest effects by issuing the arrest warrant, reviewing the legality of arrest ensure the due process, access to justice, fair and speedy trial and appeal in pre-trial stage.

In criminal justice administration the legality of arrest and detention is essential proceeding for human right safeguards. Human right is universal which infer to the dignity of every individual person irrespective of colour, sex ethnic, or social origin, religion, language, nationality, disability or other distinguishing characteristic and human right are in alienable, indivisible and interdependent²¹. Without protecting of fundamental human right of an individual it is impossible to acquire justice and equity in a society.

The police can arrest the suspect principally with court warrant or exceptionally without court warrant in keeping with the principle of presumption of innocence. The legality of arrest can review by judiciary whether the arrest made based on reasonable suspicion or probable cause and that they are not arbitrary or discriminatory. We say arbitrary as human right committee stated “arbitrary” includes elements of inappropriateness, injustice, unreasonableness, capriciousness, disproportionality, lack of predictability and due process of law²². This mean in communication No. 458/199, A.W. Mukong V. Cameroon case arbitrary is define well in this case the prohibition of arbitrary arrest

²¹ United nations office of high commissioner, human Rights hand book for parliamentarians, 2016, p 21

²² Communication No. 458/1991, A. W. Mukong v. Cameroon (Views adopted on 21 July 1994), in UN doc. GAOR, a/49/40 (vol. II), p. 181, para. 9.8

shows that remand in custody must not only be lawful but also reasonable and necessary of arresting individual is indeed²³.

In the criminal justice system, the court may issue warrant of arrest when requested by the investigating police officer. The court must consider two requirements when making decision to grant or refuse warrant of arrest ²⁴ . these two requirements must be fulfilled cumulatively to issue warrant of arrest. The first one is the attendance of the person before the court is absolutely necessary and the second one is the attendance cannot be obtained by any other means unless by arrest. To issue a warrant the judges must be satisfied that there is reasonable ground to believe that the suspect has committed a crime within the jurisdiction of the domestic laws they examine the ground the evidence that shows the suspect situation where he committed a crime or not.

2.3.1.2. Redress for violation of human right

As mentioned above in criminal justice system when any violation made it is mandate of judiciary to protect citizens human right and take action in each case in many countries the supreme courts and high courts are empowered to take action to enforce human right safeguards in such cases courts are empowered to issue appropriate order, direction, and writs of habeas corpus.

2.3.1.3. Writs of Habeas Corpus

The judiciary has power to issue writs of habeas corpus to allow individuals who have been unlawfully detained or arrested to challenge legality of their detention before a court. These acts of court are an important safeguard against arbitrary arrest and unlawful detention. The purpose is to safeguard an individual's security and freedom. This a right to speedy or expeditious decision by court of law regarding to the legality of the arrest or detention.

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceeding before a court may decide without delay as to the legality of his detention and order that such court may decide without delay as to the legality of his arrest and order his release if the arrest or detention is not legal" ²⁵ . when a person is denied by a court such right that person right is deemed to have been violated. To avoid

²³ Ibid

²⁴ Simeneh Kiros Assefa, rules and practice. USA 2009, p.11 1

²⁵ ICCPR Art.9/4/

incommunicado detention, one must have the ability to protest and argue the legality of their liberty deprivation. in both civil and criminal situation wrongful detention is frequently used but more so throughout the course of a criminal investigation²⁶. As mentioned before the only the approach and remedy that legal system follows rapid court order to free the suspect once the court recognizes that the detention or arrest is improper.

CHAPTER THREE

Safeguards against Arbitrary Arrest under Global and African Regional Human Rights Systems

Introduction

Arrest is the act of taking a person into custody by a law enforcement officer, in order to hold them for questioning, charging or trial. An arrest made when there is probable cause to believe that the person has committed a crime, or about to commit a crime²⁷. The body of principle for the protection of all person under any form of detention adopted by the UN general Assembly or resolution 43/173 define arrest as the act of apprehending a person for the alleged commission of an offense or by the action of an authority. ²⁸ This includes the period from the moment that the suspect or accused is physically restrained and placed under custody up to the time that he is brought before a court that is competent to order his continued custody or his release²⁹ An individual's right might be deprived for the purpose safeguarding the national security or for the public order³⁰. The law fulness of arrest recognized by law it has its own legal principle the legal context and conditions have to be fulfilled by state authorized officer who take the mandate to effect arrest.

Arbitrary arrest on the other hand refers to an arrest that is made without legal justification or due process. It is an arrest made at the discretion of arresting officer without any evidence or reasonable suspicion that the person has committed a crime.

²⁶ [https://farheendhanjal.law.blog/2020/12/05/role-of-judiciary-in-the-protection-of-human-rights-human-rights-laws/acsesd in 05/4/2023](https://farheendhanjal.law.blog/2020/12/05/role-of-judiciary-in-the-protection-of-human-rights-human-rights-laws/acsesd%20in%2005/4/2023)

²⁷ DR.K. N CHANDRASHEKARAN PILLAI, R.V. KELKAR'S LECTURES ON CRIMINAL PROCEDURE 21(Eastern book company 4th ed. 2003)

²⁸ United nations General Assembly resolution 43/173/of December 9,1988(resolution 43/173)

²⁹ Study of the right of every one to be free from arbitrary, detention and exile, UNITED NATIONS NEWYORK, 1964 page 25.

³⁰ Ibid

arbitrary arrest violates the individual's liberty and security of person and is often used as a tool of repression by authoritarian government.³¹

The concept of freedom from arbitrary arrest and detention was historically established long before adoption of the United Nations Charter in the document called Magna Carta of 1215.³² The English Habeas Corpus Act of 1640 and 1679 and French Declaration of the Rights of Man and Citizen of 1789³³ acknowledge the privilege of freedom from arbitrary arrest and incarceration for the first time. Now a day the right to liberty of person and the legal context of arrest or the principle of legality found in the international, and regional human right legal frameworks. Under article 9 of the UDHR, arbitrary arrest, detention, and exile are prohibited. And individuals are guaranteed to remedy when their liberty to humane treatment are violated and fulfilment of certain minimum condition of pretrial detention are denied.³⁴

The basic principles and guarantees against arbitrary arrest are incorporated in regional and global human rights instruments which include the UDHR, a milestone document in history of human right and proclaimed by the UN General Assembly on December 10, 1948. Second, the ICCPR, adopted by UN General Assembly on 16 December 1966 and entered to force on 23 March 1976 also includes safeguards against arbitrary arrest. Third, CRC is an international human right treaty adopted in 1989. The concept of protections against arbitrary arrest are provided under the Convention on the Rights of the Child. According to Article 37 of the CRC, no child shall be subjected to torture or other cruel, barbaric, or degrading treatment or punishment. Arresting, detaining, or imprisoning a child shall only be done as a last option and for the shortest period of time necessary. And from the African human right instrument, ACHPR promotes human and peoples right and ensure their protection in Africa. The Luanda Principles for Human Rights Protection outlines procedure for the arrest method and enforcement procedure. It emphasises that any arrest or detention must be carried out in conformity with international human rights legislation and norms. This implies that a person must be told promptly and in detail of the reasons for their arrest or imprisonment, and they must

³¹ Study of the right of everyone to be free from arbitrary arrest detention and exile, UNITED NATIONS New York, 1964, page 25

³² <https://www.bl.uk/magna-carta/articles/magna-carta-english-translation> accessed in June 13/2023

³³ The right to protection from arbitrary arrest and detention by Laurent Marcoux JR under international laws, 5 B.C int'l and comp. 1. Rev.345(1982)

³⁴ Universal declaration of human right art. 9 G.A res 217A,3 U.N GAOR, pt. I, at 71, U.N. DOC. A/810(1948) or simply it can say as Universal Declaration hereinafter cited as UDHR

have access to legal counsel and other relevant aid. The person must also be entitled to a fair and public hearing within a reasonable time frame, and must be assumed innocent unless proven guilty.

Overall, the Luanda Principles' safeguards against arbitrary arrest are aimed at protecting the rights and interests of any person as well ensuring that any arrest or detention is carried out in accordance with international human rights standards. These precautions are critical in preventing authority abuse, safeguarding any one from harm, and supporting the rule of law.

The international human right laws allowed the deprivation of individuals liberty right by authorized body. Both international and regional human right laws have placed a wide variety of limitation upon the power to make arrest to control and minimize the violation the rights of suspects and abuse of power by law enforcement bodies.

Below is a detailed discussion of the specific safeguards against arbitrary arrest under global and African regional human rights systems.

3.1 Principle of Legality and Non-arbitrariness

The international and regional human right instruments recognized the right to be protected against arbitrary and unlawful deprivation of liberty. This protection applies for criminal proceeding through Reviewing Legality of Arrest to protect the individual's liberty. As the Human Rights Committee stated the term "arbitrary" includes elements of inappropriateness, injustice, unreasonableness, capriciousness, disproportionality, lack of predictability and due process of law. This mean the prohibition of arbitrary arrest shows that remand in custody must not only be lawful but also reasonable and necessary³⁵.

The prohibition of arbitrary deprivation of the right to liberty is guaranteed or protected under article 9 of UDHR, article 9 ICCPR, article 5 of ECHR, article 6 of ACHPR and article 7 of ACHR. All treaties declare an arrest is considered arbitrary if the arrest did not comply with national and international standards. The prohibition of arbitrariness also implies that deprivation of liberty must not be discriminatory, no person may be arrested except for reasons, cases and circumstances expressly provided in the law,

³⁵Communication No. 458/1991, A.W. Mokong v. Cameroon adopted on 21 July 1994, in UN doc. GAOR, A/49/40 vol. II, p. 181 para.9.8.

arrest must be affected only in strict adherence and compliance with the procedures established by the law or within due process of law.³⁶

It's important to use a case law to clarify how treaty bodies rule on communications involving arbitrary arrest. The communication no. 458/1991, A. w Mukong v. Cameron in this case the applicant (Albert Mukong) was a journalist and outspoken longtime opponent of a one-party system in Cameroon. In 1988 he was arrested after giving interview to BBC. he criticized the Cameron government and president. As a result, he was subjected to what he describes as cruel and inhuman treatment during his detention. He alleged that he had been arbitrarily arrested and detained for several months, he was not notified of the reasons for his arrest and no warrant was served on him. His allegation was rejected by the state party on the basis that the arrest and detention had been carried out in accordance with the domestic law of Cameroon. The African commission on Human and peoples right investigate the authors arrest and the it found out that the detention was neither reasonable nor necessary in the circumstance. The committee found out that he had been subject to arbitrary arrested or detained contrary to article 9 of ICCPR. In his detention no criminal charge laid against him.³⁷ The state party did not show that as the arrest is according to the domestic law and the remand in custody was necessary with regard to the legal principle and element of arbitrary arrest the committee meaning and explain article 9 of ICCPR arbitrary is not be equated with against the law but must be interpreted more broadly including the element of **inappropriateness, injustice, lack of predictability and due process of law**. This mean that the remand in custody pursuant to lawful arrest must not be lawful but the reasonable in the circumstances. Remand in custody must further be necessary in all the circumstance for example flight, interference with evidence of crime.³⁸ Finally, the Commission decided the journalist right to freedom of expression had been violated³⁹ and the arrest and detention were contrary to article 9 (1) of the covenants.⁴⁰ Generally this case noted as the ground of arrest and the element of arbitrary arrest clearly and cumulatively.

³⁶ International covenant on civil and political right general comment No.35 CCPR/c/GC/35 para 11,12, December 16 2014

³⁷ Communication No. 458/1991, A.W. Mokong v. Cameroon adopted on 21 July 1994, in UN doc. GAOR, A/49/40 vol. II, p. 181 para.9.8.

³⁸ Ibid

³⁹ Ibid para 9.6-9.7

⁴⁰ Ibid para 9.8

In criminal investigation process it may vary from country legal system but the court may issue warrant of arrest when requested by the investigating police officer. In both scenarios the term shows the discretionary power of judge's and police. Most of the time we observe when a police officer abuses the rights of individual liberty by the purpose of investigation and by this provision power but this discretion is not unlimited that's why courts review the legality of arrest in both cases.

The court must consider two requirements as discussed above when making decision to grant or refuse warrant of arrest. The two requirements must be fulfilled cumulatively to issue warrant of arrest: first the attendance of the person before the court is absolutely necessary and second this attendance cannot be obtained by any other means unless by arrest. To issue a warrant, the judges must be satisfied that there are reasonable grounds to believe that the suspect has committed a crime within the jurisdiction of the domestic laws they examine the ground the evidence that shows the suspects situation where he committed a crime or not. Asper article 9 of UDHR and ICCPR.

The role of Judiciary in reviewing the legality of arrest is expected to the judiciary to ensure that the arrest is based on reasonable suspicion or probable cause, and that they are not arbitrary or discriminatory.

3.2 Presumption of Innocence

The presumption of innocence is a fundamental principle of international human rights law. The Universal Declaration of Human Rights provides in Article 11 that "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defenses." The International Covenant on Civil and Political Rights also recognizes the presumption of innocence in Article 14(2), which states that "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."⁴¹ The general comment 13, in para. 7 reads as the HRC claims that by reason of presumption of innocence the result of the trial could not be prejudged by all public authorities. Before the result of the trial, attorney and police officer cannot make claims about an accused guilt or innocence. In all circumstance the

⁴¹UDHR, Art. 11, ICCPR, Art.14(2), ACHPR, Art. 7(1)(b) and para.2(D) of the African commission resolution, resolution, ACHPR/res.4(xl)92

starting point must have to be presuming innocent its international standard to upholding the interest of pre- trial arrested person⁴² .

The presumption of innocence means that the burden of proof lies with the prosecution, and that the accused is not required to prove their innocence. It also means that the accused has the right to remain silent and not to incriminate them self. Any evidence presented against the accused must be proven beyond a reasonable doubt, and any doubts must be resolved in favor of the accused.

3.3 Ascertaining Access to Justice, Fair and Speedy Trial

The right to have access to justice, a fair trial, and a speedy trial are fundamental human rights that are recognized in international and regional human rights law. The right to access to justice means that every person has the right to seek and obtain a remedy for any violation of their human rights. This includes the right to access the courts, tribunals, and other mechanisms of justice, and the right to effective and adequate remedies for any harm suffered. The right to a fair trial means that every person has the right to a fair and impartial hearing before a competent, independent, and impartial tribunal. The right to a speedy trial means that every person has the right to have their case heard without undue delay. This includes the right to a trial within a reasonable time, the right to be released on bail or other conditions pending trial, and the right to have any pre-trial detention reviewed regularly by a competent judicial authority.

The human right committee calls for the implementation of fair trials in both criminal and civil processes in its general comment no. 32 (2007). Such a statement is accurate in describing the procedure. The application of fair and public hearing before an independent and neutral tribunal, on the one hand the grant of equality of arms to both parties in a case on the other constitute the essential components of the right to a fair trial. The term equality arms in this context refer to a legal entitlement to equal treatment by the prosecution and accused at stages of tribunal case. To respect the values of fairness and transparency is another justification for making the hearing public. The” justice must not only be done but also seen to be done” as the saying in a nation where democracy is well practiced. Legal processes may occasionally be conducted in secret if justice so requires. It is a universal principle of law nonetheless and must be properly

⁴² Ibid

applied if justice is to be served for instance due to moral reasons public order national security and forth.⁴³ The judiciary must uphold their impartiality and independence through the whole criminal justice process. Independence in this case refer to a judge's ability to with stand outside pressure and to protect their selection process financial resource and term in office. Judges on the other hand are required to be impartial when considering a case before them which means they are never allowed to have personal or political biases.⁴⁴ When an accused individual is being detained in custody criminal proceeding must move much more quickly than other types of hearing. It is necessary to perform the proceeding right away since a delay in justice is viewed as a denial of justice.

3.4 Ensuring Legal Representation

The role of judiciary in ensuring the legal representation for who is arrested or detained includes the right to consult with a lawyer and have a lawyer presented during any questioning or legal proceeding. This right is enshrined in article 14 of ICCPR and have recognition in all human right laws.⁴⁵ In each pre-trial and at trial stage courts expected to recognize the proper representation of the suspect before he gives his word for police and in court room. One way to gain access to the judicial system is through legal counsel and as the cases of Airey and Nkuzi demonstrate there may be circumstance in which this is the only course of action that is required.⁴⁶ An unchangeable foundation for recognition to legal council is a right of access to justice as opposed to the court uses of implication from trial process in certain circumstance. a right to legal counsel will be recognized because everyone has a constitutional right to effective access to justice in every court at every location and at all times thus it won't depend on having a fair trial.

3.5The Right to be released on bail in Pre-trial criminal proceeding

The role of judiciary as per article 9(3) of ICCPR is ensuring the principle of the right to release on bail and remand procedure as all international and regional human right

⁴³ African Human Security initiative, volume 2 working group December 2006 p.141-146

⁴⁴ Ibid

⁴⁵ United Nations Human Rights Committee General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service CCPR/C/21/Rev.1/Add.7 available on line in https://www.jstor.org/stable/pdf/resrep20128.6.pdf?refreqid=excelsior%3Abce70d7978bb05ac101637761a27c8db&ab_segments=&origin=&initiator=&acceptTC=1/acsesd in 20/9/2023

⁴⁶ Ibid

recognizes in their legal frameworks. The ECHR article 5/1(b) permits law full arrest made by the order of courts to a chive lawful goal Pretrial detention should be exception according to Human right committee. Bail should be given in all situation barring those in which the accused is most likely to flee destroy evidence sway witness or leave the country.⁴⁷ The court must decide whether in light of these signs the national authorities' arguments for the prolonged imprisonment are relevant and sufficient to show that the detention was not excessive prolonged and in breach of Article 5/3/ of ECHR. The court has to acknowledge a number of reasons for detention to permit pretrial detention court shall permitted only if it related to the potentially dangerous that may need custody , if there is a significant risk that the feared event would occur if the defendant released on bail or if the defendant serious offender with the previous record to minimize the risk and to make balance the court must carefully consider whether the defendant commit based on prior conviction and other factors it is necessary and reasonable response to the defendant violation and the pretrial detention may be according to article 5/1/(c) and /3/ of ECHR.

3.6Upholding the right to habeas corpus

The purpose of habeas corpus is to safeguard an individual's security and freedom. The right to a speedy or expeditious decision by a court of law regarding the legality of the detention. "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that such court may decide without delay as to the legality of his detention and order his release if the detention is not legal," according to Article 9(4) of the ICCPR. This clause guarantees that everyone who is detained has the right to file a legal complaint. When a person is denied the opportunity to have his or her detention's legality decided by a court, that person's right is deemed to have been violated. To avoid incommunicado detention, one must have the ability to protest and argue the legality of their liberty deprivation. Therefore, complaints about detention filed to authorities other than judges or judicial organisations do not satisfy the criterion. To ensure impartiality and independence while assessing the legality of detention, the necessity that the complaint be decided by a court is inserted. According to the Human Rights Committee, it is generally advisable for a court of law to rule on a case as soon as feasible. This means that two categories of people those who are held in custody for reasons, situations, or circumstances not contemplated by law and those who

⁴⁷ New York Senate Research Service, Accused and convicted: A brief on bail practices, Albany New York,1978, p .9-15

are arrested in violation of the law's established procedure have the right to have the legality of the detention decided swiftly or without delay by a court of law or through the habeas corpus process. If the Court determines that the detention is unconstitutional, it may order the imprisoned person's immediate to release, accordingly.

Conclusion

As discussed above in detail, the grounds of arrest generally refer to the legal requirement that must be met for someone to be lawfully arrested. In many legal systems, some common conditions of arrest including the following three common grounds are applied:⁴⁸

- i. **Reasonable suspicions** - This means that to effect arrest the investigating officer have to be reasonable belief or suspicion based on objective facts and circumstance that the person to be arrested has committed or is about to commit a crime.⁴⁹
- ii. **Necessity of detention** - this idea is that there should be a compelling reason for detaining the person than alternative measure such as issuing a summons or conducting an investigation without arrest⁵⁰.
- iii. **Immunity of a person** - This refers the situations where certain individual may enjoy immunity from arrest based on their position or official capacity for example government official or diplomat and in our country Ethiopia member of parliament, judges in all level. The form of immunity is established by Vienna Convention on diplomatic relations adopted on 18 April 1961 and entered into force in 1964 it had 190 parties.⁵¹ The principle of immunity to day is with exception according Vienna convention the immunity right not extended to the most serious crimes like crime against humanity crimes against peace and crimes of genocide.⁵²

⁴⁸ Monica Macovei, the right to liberty and security of person a guide to the implementation of article. 5 of the European convention on human right, human right hand books no.5

⁴⁹ Ibid and ICCPR art. 9(3), article 5(1/c) and 5(3) of European convention on humans right, article, 7(5) American convention of human right.

⁵⁰ Un commission on human right, the Siracusa principle on the limitation and derogation provision in the international convenient on civil and political right 28 September 1984, E/CN.4 para. 29-32 online available <https://www.refworld.org/docid/4672bc122.html> accessed 19 September 2023

⁵¹ The Vienna convention on diplomatic relations adopted on 18 April 1961 and entered into force in 1964 <https://guide-humanitarian-law.org/content/article/3/immunity/> accessed in 18/9/2023

⁵² Proclamation no.1233/2013 of federal judicial administration article 34/1-4/

And in both global and regional human rights instruments, safeguards principally prohibit arbitrary arrest and all shares the same principle. Even the element of arbitrary arrest can vary from country to country but the followings are common:

- I. ***Lack of legal ground*** - Here an arbitrariness occurs when there is no lawful reason for the arrest such as the absence of warrant, or when arrest is not based on reasonable suspicion of crime.
- II. ***Absence of due process*** - Arbitrary arrest often involves the violation of procedural safeguards, such as the right to be promptly informed of the reason for arrest the right to legal representation or the right to a fair trial.
- III. ***Political or discriminatory motives*** - Sometimes, individuals may be arrested arbitrary due to their political beliefs, social status, ethnicity or other discriminatory factors rather than any legitimate criminal activity.
- IV. ***Use of excessive force*** - In some cases an arbitrary arrest may involve the use unnecessary or disproportionate force by law enforcement officials during the apprehension or detention process.⁵³

Chapter Four

The role of federal courts in enforcing human right safeguards against arbitrary arrest in Ethiopia: the law and the practice

Introduction

Every individual has the right to tried by a competent, independent and impartial tribunals established by law. These rights are recognized in both international and regional and national laws.⁵⁴ Ethiopian courts are established by law. According to the FDRE Constitution Ethiopian courts have three level in both federal and state level: first instance Court, High court and supreme court. The power division of the supreme court decision is the last and final but the Federal cassation division which have power to

⁵³Professional training series No. 9 Human rights in the Admiration of justice: A manual on Human Rights for judges, prosecutors and lawyers, chapter 5

⁵⁴ When we see Art.14 (1) of ICCPR, Art.7 (1) of African Charter on Human and Peoples Right determine any criminal charge against you or any right and obligation in a suit at Law every one shall be entitled to fair and public hearing by competent independent and tribunal established by law and state parties have guarantee the independence of court .in same word the FDRE constitution under its Art. 20 provide the right to be tried by an independent and impartial tribunal.

review and overturn the decision issued by federal lower courts and state supreme court decision which have error of laws⁵⁵. The structure and power of courts is clearly provided under chapter nine of FDRE constitution article 78-81. The federal courts power is limited in to cases arising in Addis Ababa and Dire-Dawa. The Federal Courts Proclamation No. 1234/2013 also allocates subject matter on the basis of laws, parties and places, i.e., court have jurisdiction over cases arising under the constitution, federal laws and international treaties, and over parties specified in federal laws.

Safeguards against arbitrary arrest under both global and regional human rights instruments have already been covered in chapter three. This chapter is devoted to analyze how courts are enforcing human right safeguards against arbitrary arrest in Ethiopia. Mostly in pre-trial detention and remand benches regular activity specially in federal first instance court Arada bench, there are three remand benches (ጊዜ ቀጠሮ ችሎት). This bench manage's all pre-trial remand application submitted by police. When we see the statical data for 2014 EC without existing file the new file opened were 6151(six thousand one hundred fifty-one)⁵⁶. When we see again the 2015 statical data 7691 (seven thousand six hundred ninety-one)⁵⁷ were opened. This data includes file of remand, application of arrest warrant, application of search and seizure and application of habeas corpus write is seen in civil bench there are two civil different issues bench and it seen swiftly as sun as the application is appear before court. the application of habeas corpus can appear by the suspect himself or by his legal representative, family or by any other way. The researcher can also observe the flow of cases seen in federal high court here is only one direct remand benches in corruption and crimes related to terrorism and have power of appeal seen in first instance court this bench has greet power in order to respect any human right violation plus the right to liberty of individual. Yearly like first instance court high courts also exhaust so many cases when we see the data of 2014 **27** and 2015 **1,730**⁵⁸ this means many pretrial detentions is increasing than 2014 government budget year the violation also increase with the level of the data the thesis address in detail here under appropriate sub topic.

Generally, here under I will address cases of arbitrary arrest as well a brief over view of Ethiopian legal framework and judicial system. Despite this legal protection, sample

⁵⁵ Proclamation No. 540/97 article 2/1/ and FDRE constitution article 80/3//a/

⁵⁶ Annex 2 yearly data of FIC 1/11/2013 -30/10/2014 or Jul.18/2021 -Jul7/2022

⁵⁷ Annex 2 yearly data of FIC 1/11/2014 -30/10/2015 Or Jul 8/2022-Jul 7/2023

⁵⁸ Annex 2

data from justice institution, and reports of Ethiopian human right commission which can show reality, how police frequently detain people without having enough proof, detain without a warrant. The key role of judiciary in protecting people's right and upholding legal protections for human right.

4.1 A brief over view of Ethiopia legal frame work governing arrest

Ethiopia is a party to several international human rights treaties, and subjected to the International Covenant on Civil and Political Rights (ICCPR)⁵⁹ and the African Charter on Human and Peoples' Rights⁶⁰. These treaties include provisions that prohibit arbitrary arrest and detention, and require that any arrest or detention must be carried out in accordance with fair and transparent procedures.

Under Ethiopian criminal legal system there are many human right safeguards applicable laws which the judiciary enforce in pre-trial and in trial stage. It includes **FDRE constitution (1995), Criminal procedure code of 1961** which governs the procedures that must be followed in criminal proceedings in Ethiopia. The revised Criminal code of 1996, **New anti-terrorism proclamation,**

In 2021, the Ethiopian government passed a new anti-terrorism proclamation known as the "Ethiopian Anti-Terrorism Proclamation No. 1176/2020." The new law replaces the previous anti-terrorism proclamation that had been in place since 2009. The new law aims to address the challenges posed by terrorism while safeguarding fundamental human rights. It defines terrorism as any act committed with the intention of causing death, serious bodily injury, or significant damage to property, with the aim of intimidating the public or compelling the government to take a particular action.

The federal police commission Establishment proclamation No.7/2011 with other duties and establishment purpose the proclamation grants and investigate any threat and acts of crime against constitution and human right.⁶¹ **The federal prisons commission establishment proclamation No.365/2003 and the council of Ministers regulation No. 138/2007** the regulation enacted for the purpose of treatment of federal prisoners also have human right safeguarding mechanism even after trial stage.

⁵⁹ Federal Democratic republic of Ethiopia Combined report (Initial and four periodic reports) to the African Commission on Human and Peoples Rights implementation of the African Charter on Human and Peoples Right 2008 P.167 table 32

⁶⁰FDRE Accession to the African Human and People's rights Charter proclamation no .11/1998.

⁶¹ federal police commission Establishment proclamation no7/2011Art.5and 6

Now a day The Ethiopian Draft Criminal Procedure and Evidence Law, which is currently under consideration, contains several provisions related to safeguards against arbitrary arrest and detention with the standard and norms of human right principles.

4.2 Jurisdiction of Federal courts on Enforcement of Human Right Safeguards against Arbitrary Arrest

The act of a legal framework in a particular nation or jurisdiction that attempts to safeguard and uphold human rights by introducing international standards into national legislation, setting up oversight bodies that offer redress and legal recourse, and encouraging responsibility is known as human right enforcement. Courts are responsible with applying the law in this regard.

Ethiopian Federal courts primary responsibility to ensure protection of human rights, particularly enforcement of safeguards against arbitrary arrest emanates from the Constitution. Article 13 of the constitution reads:

1. All federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter.
2. The fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principle of the Universal Declaration of Human Right, International convention on Human Rights and, international instruments ratified by Ethiopia.

In addition, Article 9/4/ declares that ‘all international agreements ratified by Ethiopia are an integral part of the law of the land.’

The cumulative reading of these provisions illuminates that all courts, whether federal or state, are entrusted with responsibility in the protection and respect of human and democratic rights enlisted in the constitution. In applying this responsibility, the courts, not being limited to the constitution, are allowed to use international human rights instruments ratified by Ethiopia. The courts are also obliged to follow the principles in the instruments. This has led some scholars to argue that the constitution puts itself below International human right instruments in the hierarchy.

The federal courts proclamation no.1234/13 give the first jurisdiction to federal high court under art. 11/3/ " notwithstanding the provision of this proclamation and other relevant laws the federal high court may render decision, judgement or order in order to protect justiciable human rights specified under chapter three of the constitution. The proclamation also has created a limitation. Firstly, it has qualified the power of the court to entertain justiciable human rights disputes only. However, nowhere in the proclamation is this term defined. Another defect of the law is the discrepancy between the Amharic and English version. The English version states that the court has power to decide on human rights under chapter three of the constitution while the Amharic version broadens this scope by including fundamental rights and freedom under chapter three. The difference between the two lies on the inclusion or not of democratic rights. However, since the Amharic version will be the governing one, the discrepancy is easily solved.

Despite such limitations, the proclamation has introduced a new mechanism which permits federal courts to entertain disputes involving human rights. A practical instance in which this provision is utilized in the *case no 289389 Sibhat Nega vs Federal Police*.
The court concludes:

Since our country is a signatory of the above-mentioned international and continental human rights documents and the provisions contained in these documents are part of our country's law, the provisions regarding the right to movement are also applicable. ...our country has also the responsibility to fulfill the obligations set by the documents in terms of enforcing the right to move. Likewise, the constitution enshrines basic human rights, including the right to movement, and Article 13 (1) places responsibilities on federal and state governments at any level or legislative, executive and judicial bodies related to the right to movement. As a result, the government itself has the obligation to respect the human rights of citizens and others in its day today work and it also has the responsibility to ensure that these rights are not violated by other non-state actors and individuals. Therefore, in any case, if human rights are violated in the country, it is the responsibility of the government to stop it and take action against the perpetrators.... Therefore, it is an illegal act

for the 1st and 2nd defendants to restrict the applicant's right to move outside of the country to get better medical treatment.

We can conclude " the art. Said the justiciable human right what it means Which right? It says the human right provision all chapter three of the const. Additionally, Ethiopia is a signatory to various international human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR), which also provide for safeguards against arbitrary arrest. However, there are some constraints in enforcing these human rights safeguards practically. There is still work to be done to ensure that the rights of individuals are fully protected against arbitrary arrest and detention in Ethiopia Federal courts.

Who have the right to bring human right violation and how courts lead or interpret case the federal court proclamation 1234/13 art. 11/4/and /5/ clearly state that

Art.11 /4/ "any person who has vested interest or sufficient reason may institute a suit before the federal high court to protect the rights of his own or others.

/5/ the court may use as appropriate Article 176-179 of the civil procedure code for any proceedings mentioned under sub-3 and 4 of these articles. "

What about state courts jurisdiction whereas disputes emanating in regional states involving federal matters are entertained according to their constitutional delegation and by circuit benches of the Federal courts in instances where the state courts delegation has been removed.

The state courts judicial power over federal matters is more than a simple delegation of authority. The Federal Supreme Court cassation division in file No 181923 in the Burayu City Administration vs Ato Kebede Abebe case, regarding this issue, stated:

[As] the federal courts do not have judicial jurisdiction over regional cases... the regional courts cannot hear federal cases except by their powers of representation and jurisdiction. The Supreme and High Courts of the state have the authority given by the constitution to deal with federal cases by representation, so the cases cannot be submitted to the federal court until their

representation is established by law. If the cases are presented and heard in the federal courts, the result violates the mandatory separation of powers of the court, so when the case reaches the court at any level, the question of jurisdiction should be raised by the litigants and the court and the case should be dismissed.

From this stand that the federal courts and state courts are considered to have equal judicial power on federal subject matter. Unless the House of peoples Representative decides to revoke state courts judicial delegated powers, Federal courts are required to respect the power of state courts' jurisdiction to adjudicate issues of federal origin. As a result, judicial enforcement of safeguards against arbitrary arrest litigations may be raised in both federal and state courts.

4.3 Application of the principle of legality and non-arbitrariness In Ethiopia

The Ethiopian criminal justice system states that the arrest must, above all, comply with the due process of law, which judges are required to examine and determine. A police officer is first responsible for safeguarding the rights of a suspect in a criminal prosecution. Before going to summons or arrest, which are the legal ways of depriving the suspect's liberty, the police must ensure that there are legitimate grounds to issue a summons or, in the case of arrest, to arrest. When the police are confident that the process should continue, they must evaluate how to get the suspect to the police station. Summons and arrest are the two methods used to bring a suspect before the police in Ethiopia. While the first method of getting the suspect to the police station is a peaceful method of detaining a person, the second method may include force⁶². The police can request an arrest warrant from the court to hold or arrest the suspect. However, the courts are also accountable for determining whether the police have probable cause to make the arrest before issuing the warrant. While some contend that the remand bench lacks the authority to review evidence, others point out that courts are not generally very thorough in their examinations. Similar to the ICCPR and other regional human rights instruments mentioned above, the FDRE constitution states that in order to impose lawful restrictions on an individual's freedom of movement, certain "principles of legality" must be met. The FDRE Constitution also recognizes the importance of due process of law in protecting against arbitrary arrest and detention. If the grounds

⁶² Criminal Procedure Code 19 61 Art. 26/1/

specified in the previous substantive requirement are met and the processes outlined in the procedural requirement are adhered to. Article 2 of the Criminal Code, in addition to the constitution, reinforces the notion that judges must base their conclusions on the existing legislation when deciding to deny someone liberty.

Under Ethiopian legal system arbitrary arrest and detention is prohibited like the ICCPR, UDHR, and ACHPR, the Ethiopian constitution and criminal process acknowledge the validity of arrest and measure the ground of arrest in accordance with the law's substantive and procedural requirements. The law also accepts justification for arrest as well as absolute necessity.⁶³ When there is no evidence that a person has committed a crime, police officers do not apprehend them⁶⁴. The right to be free of arbitrary arrest and detention is not an absolute right.

Article 39 of the CPC requires that any person who is arrested must be informed of the reasons for their arrest and the charges against him, and must be allowed to communicate with a lawyer or family member. This means that any arrest must be based on legitimate grounds, and the person being arrested must be informed of the reasons for his or her arrest and the charges against them.

In addition to these provisions, the constitution also recognizes the importance of protecting the rights of vulnerable groups, including women, children, and persons with disabilities. Article 35 of the constitution states that "Everyone shall have the right to freedom and security of person. No one shall be subjected to arbitrary arrest or detention or be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law."

Article 25 of the constitution affirms that "All persons are equal before the law and are entitled to the equal protection of the law without discrimination and in particular, without discrimination based on race, national origin, or other status." This means that any arrest or detention must be carried out without discrimination, and that all individuals are entitled to the same legal protections regardless of their background or status.

⁶³ See CPC Article 25 ,50,51

⁶⁴ Ibid

The draft criminal procedure and evidence law (DCPC) Article 23 of the draft law states that "No person shall be arrested or detained except in accordance with the law." This means that any arrest or detention must be based on legitimate grounds and carried out in accordance with fair and transparent procedures.

Article 24 of the draft law requires that any person who is arrested must be informed of the reasons for their arrest and the charges against them, and must be allowed to communicate with a lawyer or family member. This means that any arrest must be based on legitimate grounds, and the person being arrested must be informed of the reasons for their arrest and the charges against them. In addition to these provisions, to recognize the practice let see court case.

The court case which can show how courts are ascertain the legality of arrest the case was started in FHC.

In file no. 010915, Adis Abeba police commission and Sintayehu Tefera and other 6 person the crime is preparing forgery government instrument to injure the government interest with intent to obtain un lawful enrichment for themselves or for others. The FHC remand bench opened file and the suspects appear before the court starting to 20/12/2014 and the court grant 14 days remand to four time again the police claim other 14 days remand to finalize and up to public prosecutor give decision in the police investigation file by application written in 09/01/2015 but the court refuse to give other 14 days remand and give order in 09/01/2015 to grant bail for all six suspect 10,000 birr for each other they pay in 10/01/2015. At this point, the police refuse to release and bring them in FFIC and opened second file in crime committed in public safety and interest in 10/01/2015 by FFIC file No.232682 the suspect and their attorney litigate by opposing the police remand request the standing to the FHC file the FFIC court accept objection and conclude the police arrested the suspect arbitrary and give order to release without giving remand and the file closed.

The FFIC here played a great role. The judiciary must take its leading role in ensuring firstly the arrestee is arrested in accordance of the provisions of criminal procedure. Secondly, the court has a duty in ensuring whether there is no human rights violations in time of investigation and search. The court has a duty in ensuring the investigation to be

completed in short period of time to ensure speedy trial and the court has a duty in ensuring the individual's right to bail unless it is prohibited by law. Over all the court has a duty to ensure the individual's right in the constitution and international and regional conventions. In doing so the court has also a duty to balance the individual's right and public interest.

4.4Presumption of innocence

At the suspect's initial court appearance, the judges were required to be impartial and free from both internal and external pressures, regardless of their own personal interests in the case. The Ethiopian constitution guarantees the right to presume innocence until proven guilty, much like regional and international laws do. "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 them," according to Article 20(3) of the FDRE Constitution. "Enforcing this principle is a duty of judiciary." This implies that only courts of law have the authority to determine a defendant's guilt or innocence after evaluating all relevant information given by the prosecution.

The federal courts, likewise most courts, are obliged to take the principle into consideration in every decision they reach at. Pretrial detentions frequently scratch the principle of presumption of innocence.

The courts' practice in permitting and denying bail, during pretrial and trial stages, is highly criticized for being inconsistent with the principle. This violation is observed in issue relating to non-bailable crimes. Article 63 (1) of the Ethiopian criminal procedure code prohibits release on bail of persons charged with a crime carrying death penalty or rigorous imprisonment for fifteen years and more and where there is no possibility of the person in respect of whom the offence was committed dying.

As a result, when an investigating officer brings the suspect before court of law within 48 hours and requests leave from the court to investigate, the court has the power to reject the request of grant additional 14 days for investigation. If the court rejects the request, since the court cannot order the release of the suspect on bail, the trend is courts will close the file while the suspect remains under custody the bench judges told to the

suspect to open file of habeas corpus.⁶⁵ Even though the problem pertains to the law, the Arada remand bench both judges said the even if suspect not proven guilty, he suspected by some one death how could I can release him in bail? this is totally against the presumption of innocence.

Similar approach used to be followed in cases of suspects of terrorism crimes specified under the former anti-terrorism proclamation no 652/2009. Article 20 (3) of the proclamation provided that when a suspect under the proclamation would be brought to court and the pretrial bench mandatorily gives 28 days investigation days for four times. However, the proclamation did not indicate the fate of the suspect after the fourth remand. The courts used to close the pretrial file without releasing the suspect on bail. Likewise, this trend was violation of the presumption of innocence. These acts transgress the right of the suspect and the accused the right not to be treated as convicted persons, which is the primary purpose of the recognition of the right. This becomes trend and custom of the judiciary without legal ground. the act of judicial custom noted as “it suffices, even in the absence of formal finding, that there is some reasoning to suggest that the official regards the accused as guilty.”

4.5. Ascertaining Access to Justice, Fair and Speedy Trial

The rights of a suspect during pretrial and trial stages range from accessing a court to specific rights ensuring fair trials. Federal courts are expected to have active roles in ascertaining rights of suspects and defendants. This section will discuss these rights briefly.

Article 19(3) of the constitution stipulates the right of suspects to appear before a competent court within 48 hours, excluding the time of locating the police station, of incarceration. The maximum duration of police custody is set to 48 hours. UN Body of Principles on Detention demands the detaining authority to produce without unreasonable delay and urges the authority before which the suspect first appeared to decide upon the lawfulness and necessity of detention immediately. Suspects have the right to rapid and explicit clarification of the basis for their custody due to an alleged crime committed while standing before a judge. In undertaking the review of the detention, the court has the authority to order immediate release if the detention is found

⁶⁵ Interview made with Arada remand bench judges Tigist Mengistu and Biniyam Mekibib (June 27/2015 E.C)

to be arbitrary or unlawful. Violations of such rights of suspects are very common especially in relation to crimes of political nature such as crimes of terrorism.

Article 40 of the CPC requires that any person who is detained must be brought before a court within 48 hours, and must be informed of their rights. This means that any detention must be carried out in accordance with fair and transparent procedures, and the person being detained must be brought before a court within a reasonable time. Article 20 of the constitution further affirms that any person who is arrested or detained has the right to be brought before a court or other judicial officer within 48 hours, and to have the lawfulness of their detention reviewed. The draft criminal procedure and evidence law (DCPC), under Article 25 requires that any person who is detained must be brought before a court within 48 hours, and must be informed of their rights. This means that any detention must be carried out in accordance with fair and transparent procedures, and the person being detained must be brought before a court within a reasonable time.

The researcher also interviewed three legal attorneys get at the time of court observation in May 25/2015 EC; namely, Meku Degu and Yitbarek Fikadu who attend the remand bench in stated on the suspect one and two and at July 27/2025 who were judge at Federal Supreme court cassation bench now legal attorney named Almaw Wale. They gave answer for the question:

The Right to Appear before the Court in 48 hours of Arrest is under FDRE its constitutional and all human right safeguards also recognized but practically do all suspects appear before court within 48 hours of arrest? if yes/No how many such case do you know or have and What where the role of courts in Ensuring the Suspects Right Access to Justice and Speedy Trial and what legal measure taken for the violation?

Ato Yitbarek said: Practically no. I know so many cases in which so many arrested persons confined at unknown places without even visiting any court. Practically this is the day-to-day news within our community nowadays. The court has role, at least, in some cases at some point. But court cannot implement/execute its own rulings unless this (ruling) is welcomed by the executive body of the government. The court may help in granting bail, in mitigating the condition of the arrested persons' handling in prison camps, in initiating the accountability action on those who violated the rights of arrested person etc.

Ato Meku said that suspects do not always appear before Court within 48 hours. This is more common for political crimes including terrorism crimes and crimes against the Constitutional order. I know some suspected who were brought before court after a week, after 15 days, after a month and more of arrest. When the Court tries to establish this human rights violation and asks the police officer, the police officer who brought the suspect before court commonly respond to the Court, we arrest him before one day or two day and we did not know the where about of the suspect before that. Usually, the Courts do not go beyond this and impunity cements, to be the daily life of Ethiopian criminal justice system. This unequivocally violates the suspects' right to access to justice and right to speedy trial.

Ato Almaw wale stated that while the right to appear before the court within 48 hours of arrest is constitutionally recognized in Ethiopia, it may not always be implemented in practice. There have been cases where suspects do not appear before the court within the specified timeframe. In such instances, the role of the courts becomes crucial in ensuring the suspects' access to justice and a speedy trial. It is important for the courts to intervene and take appropriate legal measures to address any violations of the suspects' rights.

The researcher from court observation found one file and studies it from FFI court, Arada bench.

File number. 238604 Adis Abeba police and Abel G/kidan, the suspect, stated the court that the suspect was given over or apprehended by police on June 21, 2015, but did not appear in court until June 25, 2015. The court's second remand bench issues an order to the police explaining why the suspect failed to appear in court within 48 hours. The Adis Abeba police said, "We are not liable for this, we received suspect today 25/06/2015 from yeka sub city police station, the court order the present yeka police and to proof but they did not appear by ordered at time, then court grant bail for the suspect and told the suspect to make charge against for the violation of his court appearance within 48 hours.

We can observe certain people are detained for long periods of time before being brought before a judge and this right is not always upheld in reality. The precise number of cases that are heard by a court each day or each week is hard to pinpoint because it varies based on a lot of variables, such as the nation's level of political unrest or stability. Legal recourse is an option if the police violate the arrested person's right to appear in

court within 48 hours of their arrest. If individual was detained arbitrarily, the court may order their release as well as additional inquiry into the implicated police officer or heads is proper.⁶⁶

A corollary of this authority of the court is ascertainment of the implementation its decisions. Pronouncement of the court particularly in connection with violation of rights must be respected by law enforcements so that respect to human rights be complied.

4.6 Ensuring legal representation

Another aspect of the courts role in protecting arbitrary arrest is ensuring legal presentation. Effective legal aid shall be provided promptly after the time of apprehension in order to ensure that the unaffordable cost of legal counsel does not present a barrier to individuals deprived of their liberty, or his or her representative, without adequate means to bring proceedings before a court. The court has a constitutional basis and mandate to make sure suspects have got professional legal assistance. Article 39 of the CPC requires that any person who is arrested must be informed of the reasons for their arrest and the charges against him, and must be allowed to communicate with a lawyer or family member. This means that any arrest must be based on legitimate grounds, and the person being arrested must be informed of the reasons for his or her arrest and the charges against them. Article 40 also requires that any person who is detained must be allowed to communicate with a lawyer or family member, and must be provided with any necessary medical care. This means that any person who is detained must be treated with respect and dignity, and must be provided with any necessary support while they are in custody. DCPC Article 26 of the draft law requires that any person who is detained must be allowed to communicate with a lawyer or family member, and must be provided with any necessary medical care.

In the Ethiopian case, most of the suspects represent themselves. It is not also uncommon to observe that suspects who can afford one get represented by legal professionals. This author has also asserted that in pre-trial stages the court orders the appointment of public defenders save in preliminary inquiry usually without public defenders the court not hear or examine witness.⁶⁷ The author also observes in bench observation the court play a great role by giving order the suspect to represent by public

⁶⁶ Interview with attorney general Yitbarek, may 25 /2015 E.C in A.A Arada remand bench in court observation

⁶⁷ Interview with remand bench judges Tigist Mengistu and Biniyam Mekibib may 15/2015 In A.A

defenders. The FFIC first remand bench give order in file no. 238825 federal public prosecutor and Ato Sefa Sherefa, file no. 242162 A.A Police and Kinde Nibret and from third bench of remand bench file no. 242817 federal prosecutor and Eyoel Tagel, file no. 242609 federal prosecutor and Sisay Tilaye.⁶⁸

In FHC remand bench all suspect of terrorism and anti-corruption crime appear to court by their own representative of advocate. But the bench judges said if someone claim to get public defender the give order to assign to him.⁶⁹ However, since there is a dearth of cases in which public defenders are assigned during pre-trials.

4.7 Enforcement of the right to Bail

Under Ethiopian criminal justice system, bail can be issued by police and courts within their respective mandates. The right to be released on bail by a court is one of the repeatedly discussed points relating to the role of courts. This right is principal and constitutionally guaranteed like international human right instrument that Ethiopia has signed.

The first one pertains to the power of courts to release suspects of so called non-bailable crimes. In Ethiopia, the legislative had and has still prescribed lists of crimes a suspect of which cannot be released by on bail bond. These crimes are dangerous vagrancy as per proclamation no 384/2004, corruption crimes under proclamation no 881/2015, terrorism crimes stipulated in Proclamation no 1176/2020 and the general provision of Art 63 of the CPC which stipulates that suspects who have been charged for offences punishable with death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying may not be released on bail. According to some studies, with this restriction some 100 types of crimes in the new criminal code ended up being non bailable. Consequently, the issue of the authority of courts to grant bail is debated widely and still remains controversial.

The Council of Constitutional Inquiry upheld the position that legislative prohibition of bail in cases of corruption offences carrying more than ten years imprisonment not bail able do not deny courts power to entertain claims of release upon bail. It's the courts

⁶⁸ Annex 3

⁶⁹ Interview with FHC judge Fatuma Aman July 19/2015E.C in A.A FHC office at 9:00 AM

mandate to decide the presence of adequate reason to suspect and arrest suspects of crimes of corruption and investigate whether or not the facts alleged by the prosecutor constitute corruption.

Despite such authoritative interpretation of the ICC, courts decline to verify, whether or not the facts constitute corruption, the alleged facts by the prosecutor. This was the position of the court in criminal file no 7366 Federal Ethics and Anti-corruption Commission vs workers of Commercial bank of Ethiopia⁷⁰. Moreover, in the case of public prosecutor vs Engineer Hailu Shawel criminal file no. 43246 the Federal High court failed to check the existence of a prima facie case.⁷¹

This practice of the federal courts appears to follow the restraint approach even after ICC Opinion. They generally close cases, after giving remand periods, in which the suspect is charged with non bailable crimes when they do not remand the case.

The other point that needs attention is the role of courts in cases of bailable crimes but when the law does not clearly mention the possibility release on bail. The typical law of this nature was the 2009 anti-terrorism law of Ethiopia. Art 20 (1) and (2) of this proclamation stipulates that when a suspect is detained in suspicion of committing a bailable type of crime of terrorism, the court, when requested by the investigating officer, may give sufficient period, not less 28 days not more than 4 months. Sub article (3) of the same provision, on the other hand, obliges the court to order the defendant to stay in custody until the time a verdict is rendered once hearing is conducted.

One can understand from this that the law keeps silent as to what will happen to the defendant between the period where the 4 months have elapsed but the prosecutor has failed to bring charges on the suspect instituting trial.

The approaches of the judges, in this regard, differ. Some judges used to follow the approach of closing the file stating that the law did not indicate the authority of the court to order the release the suspect bail bond.

⁷⁰ As cited in The right to bail in Ethiopia: respective role of the court and the legislature (by Wondwossen Demissie)

⁷¹ Ibid

Some other judges, on the other hand, release the suspect on bail arguing that where the law says nothing about the fate of such suspects, since the constitution recognizes release on bail as the principle, there could not be any legal reason to deny bail to such suspects⁷². This different pattern of interpretation by the courts had stayed until the law was repealed by the new anti-terrorism proclamation no 1176/2020.

Article 133 of DCPC /the draft law /does not label offences bailable and non-bailable offence like the current CPC. It gives the discretion power to court to recognize bail right. This is the right way of application of judicial power depending on the circumstance of case on its own discretion.⁷³ When we see the 1961 CPC under its article 63 principally it states that the offence which is non bailable and under Art. 67 of CPC it states exception or the condition which court can give bail to the suspect⁷⁴ this imposes limitation in judiciary power. We can mention two other different new issue from the draft law (DCPC) the first one is the DCPC outlines if there is a doubt that the arrested person may have committed the alleged offence the police may only release the arrested-on bond or surety before the conditions that may set by police. Beside this DCPC lay out the duties and responsibilities of the police and prosecutor.⁷⁵ Under Art. 19 and 20 this specifies the as the prosecutor lead the criminal investigation depending on this the time for the process of remand bring better solution than CPC has not time limitation for remand but know the draft limit the time by any means for investigation process the remand bot excide than four months from the application of the remind appear before courts. If the investigation not conclude by the given time the court may release an accused by bail or the court can may give when it is proper giving twenty days to public prosecutor to issue a suite.⁷⁶

Overall, the provisions of the draft Criminal Procedure and Evidence Law are aimed at safeguarding against arbitrary arrest and detention, and ensuring that any arrest or detention is carried out in accordance with fair and transparent procedures. However, the law has not yet been enacted, and it remains to be seen how effectively it will be implemented in practice.

⁷² Focus group discussion with honorable FHC judge Dawit Blay , FFIC honorable judge Habtamu ARefayne and attorney Kidist Tsige In A.A FHC court Judge Dawit office may 10/2015 at 9:00 A.M

⁷³ Draft criminal procedure and evidence law Article 133,132

⁷⁴ Can see the 1961 CPC Article 63 and 67

⁷⁵ Draft criminal procedure code Art. 111-113

⁷⁶ Ibid Art. 113 /4/ and 114 stated that the final effect of non- accomplishment of an investigation is to release the accused on bail or permit for the public prosecutor to issue the suite

4.8. Upholding the right to habeas corpus

The writ of habeas Corpus is a constitutionally recognized remedy to verify the legitimacy of any arrest regardless of the reason for the arrest. Those who have been detained by the government but have not been brought before a judge may seek legal remedy through habeas corpus. Art 19 of the constitution provides the grounds, on the basis of which, the court the application is submitted to. These are: failure for not bringing the suspect to a judge within the prescribed time and giving explanation of arrest.

Moreover, Articles 177–179 of the 1967 civil procedure Code of Ethiopia provides for habeas corpus in which courts may review any restraint otherwise than in pursuance of an order duly made under the civil procedure code or criminal procedure code. This system provides for a means broader than specified in the constitution as it includes an individual who is subjected to arrest in civil cases.

Even though no application has been submitted, to the knowledge of the author, challenging a civil arrest, repeated applications have been brought relating to criminal arrest.

There is confusion about which court-the Federal First Instance court or the Federal High Court- receives and gives decisions on the application of habeas corpus. This misconception seems to emanate from the newly introduced jurisdiction of the Federal High Court in Art 11(2) of Proclamation number 1234/2013.

In the case *Ruta Mehari vs Sheger City Administration Sebeta Sub City Police*, file no.301519 judgment given date 11/11/2015 of E.C where the applicant brought an application supported by an affidavit stating that for the defendant, taking the applicant out of her car on 29/10/2015, put her under custody, the court was requested for a decision to be release the applicant as she was kept in jail for a long time without producing her to court⁷⁷. The Federal High court rejected the application for lack of jurisdiction. In his reasoning it is stated:

⁷⁷ Annex 3

Federal Courts Proclamation 1234/13 Article 5(1) stipulates that the Federal Court of First Instance has the civil jurisdiction to hear and decide cases presented to confirm the legality of forced detention habeas corpus. Article 17 of the Constitution states that the right not to be detained without due process of law is one of the constitutionally protected fundamental rights in Chapter Three of the Constitution. In Proclamation 1234/13, Article 11(3) of the Constitution, the Federal High Court has been given the jurisdiction to hear arguments about the fundamental rights and freedoms mentioned in Chapter Three, so it can be said that the Federal High Court is the one to hear cases of habeas corpus. If that has not been the case, Article 5(1) would not have specifically stated that this type of dispute is the jurisdiction of the Federal Court of First Instance. The Federal Supreme Court's cassation division has given a binding interpretation in volume 25 Cassation file no 230167, 230168, and 230169 that the Federal Court of First Instance has the jurisdiction to hear and judge such litigations. Therefore, we have decided, according to Proclamation No. 1234/13 Article 5(1), this Federal High Court does not have jurisdiction to hear and judge the case of habeas corpus as per Art 9 and 231(1b).

Similarly, in FFIC the same litigation in jurisdiction happen in the case *Kassahun Mekuanint vs Addis Ababa Police* file no. 208670 the court asserted that in date 23/10/2014 E.C

Federal Courts Proclamation No. 1234/2013, Article 5, which establishes the general civil jurisdiction of the Federal Courts, and the sub-paragraph of this article provides for a petition to verify the legality of forced arrest. This is the first level jurisdiction of the Federal High Court in the first instance jurisdiction of the Federal High Court in Article 11 of the Decree, and in the civil cases mentioned in Article 5 Sub-Article 1(A) to Sub-Article 1(E) of the same Article. It stipulates that it will have power. The decree clearly gave jurisdiction to the Federal High

Court to hear cases of extrajudicial killings referred to in Article 5 Sub-Clause (1)(e), and it did not clearly give it to the Federal High Court regarding a petition to verify the legality of forced detention as set out in Article 5 Sub-Clause 1(b). If the legislature had wanted the Federal High Court to hear this matter, it would have included it as stated in Article 11 (2)(a) that the Federal High Court shall have first-instance jurisdiction over civil matters.

From the above two cases, one can see that since habeas corpus is part of chapter three of the constitution it may appear possible to be entertained in both courts, the FFIC and FHC are in agreement that the matter belongs to the jurisdiction of the FFIC.

4.9 Accountability for violation of human right related to arrest

Under our legal system violation of human right including abuse in criminal investigation process and in arrest procedure when the use of improper method is there it results criminal and criminal and civil liability in both civil and criminal laws of Ethiopia⁷⁸. Un lawful deprivation of someone liberty is a crime as per article 423 of criminal code of Ethiopia⁷⁹.

Breaking the law is considered a tort in Ethiopia, according to the civil code.⁸⁰ Human right is guaranteed by international treaties which are integrated into Ethiopian laws as well as national laws⁸¹. the judiciary have legal jurisdiction over government officials. As a result, infringement of human right is deemed legal breaches and are classified as torts under art. 2035 of the civil code. for example, neglecting to bring an arrested person before a court of law within 48 hours of arrest constitutes a constitutional tort and a breach of article 19/3/ of the constitution by a police official. Bodily assault⁸², trespassing⁸³, denial of liberty⁸⁴, and assault on property⁸⁵, are all defined as torts in civil

⁷⁸ Criminal code of Ethiopia art.424 /1/and /2/

⁷⁹ Article 423 of CC " Any public servant who contrary to law or in described by law arrests detains or in disregard of the forms and safeguards prescribed by law arrests, detains or otherwise deprives another of his freedom is punishable with rigorous imprisonment not exceeding ten years and fine. "

⁸⁰ Ethiopian Civil code art.2035

⁸¹ FDRE Constitution art.9/4/

⁸² Ethiopia Civil code art. 2038

⁸³ Ibid art.2040

⁸⁴ Ibid art.2053

code. Given that the majority of the perpetrators are state personnel. If the wrong doer is government official a victim can claim compensation from the state⁸⁶. Rather than declaring the accountability the civil code also includes all types of compensation and about payment of damage with the methods of restitution⁸⁷ and criteria for calculating of moral damage⁸⁸. And from other laws of Ethiopia the proclamation no. 1176/2012 issued for the prevention and control of terrorist crime clearly stated in this decree art. 41/1/⁸⁹.

All laws recognize as the courts have the authority to hold law enforcement personnel responsible for abuses of authority, such as arbitrary arrests and detentions, and to make sure that they are held responsible for any human rights breaches. But practically the judicial custom is found the courts are not taking measure properly for violation no file found in FFIC but in FHC for dalliance of bringing the case to court by issuing suit within fifteen days the court finds that the Executive Organ performed in violation of the law and orders the person or the institution that violated the law to compensate the victim a moral damage from Birr 30,000 in File no. 292170 judgment given in 30/3/2015 in the case of Federal Prosecutor General vs G/Giorgis Giday the defendant.

4.10 Redress for victims of arrest -related human right violation in Ethiopia

In the above section try to address the accountabilities of government enforcement body when the violation of human right is committed. Article 9(5) of the ICCPR reads, “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” The provision provides for a right that shall be enforceable before a domestic authority. Likewise in Ethiopian legal system Victims of crime have the right to be compensated under the Criminal Code. Article 101 of the Criminal Code, the trial court must issue an order forcing the offender "to make good the damage, make restitution, or pay damages by way of compensation." This section applies to all victims, including those involved in criminal proceedings, even if the

⁸⁵ Ibid art. 2054

⁸⁶ Ibid art. 2126/2/

⁸⁷ Ibid art. 2090-2114

⁸⁸ Ibid art. 2115-2117

⁸⁹ proclamation no. 1176/2012 41/1/ says "any person entrusted with the responsibility of preventing and investigating crimes or conducting litigation concerning crimes provided for in this proclamation shall depending on the types of the violation and the damage caused as a result of the violation be subject to disciplinary action or be held civilly and criminally liable "

culprits are public employees such as police officers. The steps to seek compensation are detailed in the Criminal Code. It provides that victims of crimes have the option of filing a criminal case in addition to a civil claim for damages. When a victim of crime files a compensation claim, they provide further proof, such as witness testimony, and indicate the value of the claim. The accused's acquittal does not mean that the claim for damages is lost on the contrary it can turn the lawsuit from a criminal action into a civil action.

The proclamation No. 1176/2012 issued for the prevention and control of terrorist crimes. As clearly stated in this decree No. 41(3), "Where during the proceedings, the court finds that the Executive Organ performed in violation of the law, it may on the same file, orders the person or the institution that violated the law to compensate the victim a moral damage from Birr ten thousand to hundred thousand birr. (4) The victim may claim compensation for damage other than the moral damage awarded pursuant to Sub-article (3) of this Article. " let's see how courts entertain such kind of litigation practically case was in FHC.

In the File no. 292170 judgment given Date 30/3/2015, the case of Federal Prosecutor General vs G/Giorgis Giday the defendant, the application submitted on 14/07/20122 by the defendant, being assisted by his public attorney, the main points requesting Damages for moral injury he sustained. In the application it is stated that even though it is prescribed expressly in the law that the prosecutor had an obligation to institute a criminal charge within fifteen days after the reception of the criminal investigation file from the police, the prosecutor has failed to frame the charges before court of law. The prosecutor instituted the charge on 22/05/2022 attaching as evidence the forensic document written by the EFDR Federal police 09/09/2021. He underlined that the police and the prosecutor general had failed to enforce their duties enshrined in the law to frame a charge for the last Nine months while the defendant was under custody. He, reminding the court has power to give other orders relating to the matter in accordance with proclamation no 1176/2012 Article 41, requested compensation for moral injury he sustained.

The plaintiff (public prosecutor) brought a reply written on 26/07/2022 stating the defendant remained in custody during investigation due to his inability to produce guarantee. there is no obligation upon the applicant to institute a charge within 15 days.

Following this, the court examined the case framing two issues 1, whether the compensation for moral injury claim has legal basis or not and 2, if so, what is the amount that should be paid to the defendant as issues.

To examined the request for compensation for moral damages presented by the defendant the bench has looked at the international convention on civil and political rights signed by Ethiopia. And the court concluded according to Article 109(1) CPC, the Proclamation No. 1176/2012 issued for the prevention and control of terrorist crimes art.38, Article 41(3). And ICCPR art.9/5/ the prosecutor must prepare such charges and submit them to the competent court within fifteen days of receiving the police Republic investigation report. Returning to the matter at hand, regarding the contention of the accused that he was subjected to an arbitrary arrest of nine months, the Federal Ministry of Justice has been ordered to pay Birr 30,000 (thirty thousand Birr) as compensation for the defendant's conscience in accordance with Article 41(3) of Decree No. 1176/2012.

4.11 Key legal and practical challenges

4.11.1 The Legal gaps

I. Lack of Legal definition and Procedure to Effect Arrest

Our criminal procedure law and criminal code do not define arrest, arbitrary arrest the reason for arrest, the condition and elements of arbitrary arrest also yet not defined.

Warrant is an essential tool to construct a ground of preserving individuals right of liberty from illegal and unlawful infringement. Despite these facts the Ethiopian laws are not consistent in affirming this principle. Sometimes the contents of the laws are against the principle of liberty. We simple understand what arrest may be and the reasonable ground from the general content and from the general aim of the law.

How arrest effect the Criminal Procedure Code of Ethiopia provides that “any member of the police may arrest the suspect without warrant when he has a reasonable suspicion.⁹⁰ And the court may issue warrant of arrest when requested by the investigating police officer⁹¹. In both scenarios the term shows the discretionary power of judge’s and police. Most of the time we observe when a police officer abuses the

⁹⁰The detail conditions lay down in Art. 51 and Art. 471 Penal Code by the 1996 article 477.

rights of individual liberty by the purpose of investigation and by this provision power but this discretion is not unlimited that's why courts review the legality of arrest in both cases.

"Under Ethiopian law, the principle of arrest with a warrant is generally enforced by the federal courts. When issuing a warrant for arrest, the court is required to examine the grounds for arrest and determine whether there is reasonable suspicion to believe that the individual has committed a crime the standard for reasonable suspicion is not clearly defined in Ethiopian law, but it generally requires some basis for believing that the individual has committed a crime or is about to commit a crime. "⁹²

Although "Ethiopian law does not specify the criteria for reasonable suspicion, it usually calls for some kind of evidence that the person in question has committed or is about to commit a crime. This could involve proof in the form of witness accounts, tangible objects, or intelligence data. Before issuing a warrant, the court will usually need the police to present some proof or an explanation for the reason behind the arrest. In practice, however, there have been issues about the application of the principle of arrest with a warrant in Ethiopia"⁹³. "There have been allegations of people being arrested without a warrant and held for long periods of time without charge or trial. There have also been instances of warrants being issued without a thorough review of the reasons for arrest, especially in situations involving political opponents or civil society activists. "⁹⁴

The researcher analyses standard for reasonable suspicion is not clearly defined in Ethiopian law, but it generally requires some basis for believing that the individual has committed a crime or is about to commit a crime. This may include evidence such as witness statements, physical evidence, or intelligence information. The court will typically require the police to provide some evidence or explanation for the basis of the arrest before issuing a warrant.

⁹¹ Art. 53. -- Issue of warrant.

⁹² The researcher also interviewed three legal attorneys get at the time of court observation in May 25/2015 of E, C named Meku Degu and Yitbarek Fikadu who attend the remand bench in stated on the suspect one and two and at July 27/2015 who were judge at Federal Supreme court cassation bench now legal attorney named Almaw Wale. At Arada criminal remand bench

⁹³ Interviews mad with honorable judge Biniyam Mekibib in June 27/2015 E.C in Arada bench office no. 310

⁹⁴ Ibid with honorable judge Tigist Mengistu in May 25/2015 E.C

However, in practice there have been concerns about the enforcement of the principle of arrest with a warrant in Ethiopia. There have been reports of individuals being arrested without a warrant and detained for extended periods without charge or trial. There have also been reports of warrants being issued without proper examination of the grounds for arrest, particularly in cases involving political opposition or civil society activists. And arrest must have to be with court warrant usually Arrest with warrant as a rule not exception but in current criminal legal system the executive body (public prosecutor) and police abuse this principle.

To improve the enforcement of the principle of arrest with a warrant in Ethiopia, it is important to strengthen the independence and capacity of the judiciary to examine the grounds for arrest and ensure that warrants are issued based on reasonable suspicion. It is also important to ensure that law enforcement officials are held accountable for any abuses, including arbitrary arrests, and that there are effective legal remedies available for individuals who have been subject to unlawful arrest or detention.

II. Abuse of Remand Period

The police apply depending on Art.59/2/ of the CPCE to the court to get remand for the first time or for additional days. the court give order depending on this article but the law aim to achieve one or more known function when left or the police depending on the suspect word may need time and it may be indeed to detain the suspect the police have to proof to get permit ion to 14 days' how many time it can claim and court permit not clear discretion is to the judge. The researcher made a court observation, and as a lawyer, know that when the court grants arrest warrant and order of remand for the police to proceed criminal investigation, as the police want or need, with no additional inquiry. The police arrived without a criminal investigation file before court. Without a police investigation file, it is difficult for courts to examine must be the justification or reasons explicitly defined by law as grounds of deprivation of liberty to give remand I can observe courts remand for first seven day and additional remand days permitted or given for the police this is almost in all cases bring by the police if its first time no doubt the court permit. This working culture not supported by law. But the legal gap creates other means of violation of human right violation special bail right and restrict individuals' liberty without law. there is inconsistent interpretation and implementation observed without necessity of the suspect presentation the suspect detains for several

weeks' month and so on, this usually looks like as permitted by law these questioned judge's independency, impartiality and fairness. The following assertion strengthen my argument

"The Ethiopian Human Rights Commission 2015 observation of Ethiopian courts identified 1) the granting of bail to suspects under the age of 14 after looking evidences of ages and the prompt decision of the courts to investigate abuses when requested by suspects as commendable activities of the courts. On the other hand, the commission listed 1) denial of bail for suspects with permanent address; 2) lack of courage to bail for suspects contemporary issues, 3) failure to properly examine the activities of the police, 4) accepting reasons presented by police that could note result in denial of bail, 5) denial of bail in cases that could not prevent bail and 6) absence of public trial as problems in handling cases."⁹⁵

4.11.2 Key practical challenges

I. Inconsistent interpretation of the ground of arrest and for granting bail

The grounds and reasons for arrest under the Ethiopian law are not always clear and this legal limitation creates practical gaps in enforcing human rights safeguards against arbitrary arrest in Ethiopia. The lack of clarity in the law can lead to inconsistencies and potential abuses, impacting individuals' right to liberty. It is crucial to have clear and well-defined criteria for arrest to prevent arbitrary deprivation of freedom.

Let's see court cases given interpreter the ground or the reason for arrest and grant remand for police and denied bail right to as shown in Annex 2, *The court case between Sato Sermesa Shalom and three people and Adis Abeba police was filed in two courts in Federal First Instance Court File No.233430, the kind of offense is car robbery. The police stated that the three suspects robbed a car property of Shemsedins Abdela No 3-23612 together in 04/08/2014 from Akaki Kaliti sub city and destroyed from Adis Abeba for further investigation detaining the suspect is mandatory for a remand of sufficient time to enable the investigation as police application the police request 14 days remand in its application written 14/2/2015. In some cases, the police detain the suspect for an extended period of time for the purpose of questioning. Court files 231522 and 231534 are the third and second files closed because the court granted a sufficient and*

⁹⁵ Interview with Selamawit Girmay Human right Monitoring and Investigation department regional directorate in October /2015 in Ethiopian Human Right Commission office at 8:30. also observe written report for the commissioner

reasonable amount of time for remand and granted all bail in the cases, but the police brought the suspects back and asked questions before remand. In the same and separate cases, the court said that the suspects were in your hands and that you should have investigated at the time they were presented to court. The police refuse to provide evidence for their repeated claims that remand is required, even though they acknowledge that the suspect is in custody, the two court files are closed, and remand is required before the suspect is discovered according to previously obtained information. The suspect contended that our detention was unjustified and demanded additional time. the court prove as there is no ground for arrest and grant bail for all of ass this claim is without law it violation of presumption of innocent ,the right to liberty the police arbitrary without fairness unjustly arrested as the court have to close the file by previous bail .after a while investigation the court give order by the police file no. 103/6140/15 this suspect were presented two times in two different file FFIC file no. 231522 and 231534 this is the third file and they are pre-trial detained more still police cant proof arresting the suspect is necessity so no ground to grant remand for next 14 days and deny giving a time and grant bail for each 10,000Birr and ordered to release on bail the and close the file.

The investigating police oppose the lower courts' orders and demand an appeal to the High Court via written application on October 21, 2014, refusing to release the suspect on bond.

After the suspect was placed in pretrial custody for three days, the High Court opened file number 010316 and began litigation on the case on October 23, 2024. Since the detention was conducted without a court order, it was deemed unlawful. The suspect bail was eventually granted on October 23, 2014, when the high court investigated the case without making any statements. This is the third file, 232430, but the police started their investigation into the car robbery (number 3-23612) on October 20, 2014, so even though the suspect was already on his hands, the case was dismissed without cause or in violation of the law by the lower court in accordance with CPC Art. 59. The court revised the lower court's order and granted the police remand for 14 days, stating that the suspect must appear in court before filing file numbers 231522 and 231534 concerning other car robberies.

Analyzing the matter, police detained the accused without a court warrant before opening two files in FFIC, as previously indicated. and the FFIC Arada bench closed the

two files by saying the police took too long to investigate the car robbery, therefore there was no grounds to arrest. The court order suspect has to remain on bail and give order to release on bail and close file then at the same bench at the same investigation police file number the police bring them for the third time by opening a new court file this is normal for the police to arrest the time for further time before I was Public Prosecutor and know the custom well. I'm expected to concur with FFIC. The police can investigate certain information at the same time of by the court file as it manages by one police investigation file the reason is the same to further investigation for additional evidence collection, we can't get back the robbed property until we find remand have to give and so on. The FHC (Federal High Court) interprets Article 59 for a single case as it applies to a single file, but a collection of property and suspects can have a focus. It has to focus on the reason for the arrest and deny the bail is mandatory the information is known before and we also know in collection case police the same time or once made investigation by saying the police are starting on this property at this time and let take the chance not proper even if it is bringing the case before the court do court have reason the arrest or detain then suspect the presumption of innocence, impartiality fairness justice have to condense

After analyzing the case the researcher needs to see others judge experience and interview with two FFIC Arada bench honorable judges named Biniyam Mekbib and Tigist Mengistu, FHC with Fatuma Aman and FSC cassation bench honorable judge named Etmet Asefa with the following question.

How many times you give remand for police in what ground do you deny or grant bail right of an accused?

Under Ethiopian law, the police may request a remand order from a court, allowing them to detain a suspect for a limited period of time while they conduct their investigations. The maximum period of remand allowed under Ethiopian law in accordance with article 59 of cr.pr. code is 14 days, although this period may be extended in certain circumstances with the approval of a court. It is granted for unlimited time unless the judge restricts it on case-by-case basis.

When deciding whether to grant bail to an accused person, the court will consider a range of factors, including the seriousness of the offense, the likelihood that the accused person will flee or interfere with the investigation, and the potential risk to public safety.

The court will also consider the individual circumstances of the accused person, such as their age, health, and family situation. In general, bail is more likely to be granted for less serious offenses, or for individuals who have strong ties to the community and are unlikely to flee or interfere with the investigation. In cases where the offense is more serious, or there is a risk that the accused person may flee or interfere with the investigation, the court may deny bail and remand the accused person in custody. It is important to note that the decision to grant or deny bail is made on a case-by-case basis, and is ultimately up to the discretion of the judge presiding over the case. The court will consider the specific circumstances of each case and the evidence presented before making a decision on bail or remand.

However, still there have been concerns about the independence and effectiveness of the Ethiopian federal courts in upholding human rights standards and protecting individuals against extended detention in name of remand. There have been reports of individuals being detained for extended periods without charge or trial in the criminal justice system.

II. Refusal of Police /Public Prosecutor's to Enforce Bail Judgment and court order

Now a day in our legal system police get veto power and not new refusing court order even some instances may occur where the police refuse to enforce a court's decision on bail release. The reasons for such acts can vary and may include factors like lack of clarity in the court's order, personal bias or misconduct, or institutional challenges. However, it is essential to assess whether the police's refusal has a legal basis or if it is a violation of the court's authority. These files are taken from Arada remand benches file no. 233144 Adia Abeba police and kekiya Damesa ,231738, Adis Abeba police and Fikadu kitila ,231740 Adia Abeba police and Obsa Tolera ,238184,238344,238446, this is one person case indifferent file between Adia Abeba police and pastor Biniam Shitaye and others. This all files refuse by police to enforce on bail judgment and the court order different orders to do so.

In cases where the police's act of refusing to enforce a court's decision on bail release is deemed to be without legal grounds, it could potentially be considered as court contempt. If proven to be contemptuous, the courts can take measures to hold the police

accountable, such as issuing warnings, fines, or even initiating disciplinary proceedings. It is crucial to ensure accountability and maintain the integrity of the judicial system.⁹⁶

"Police refuses to enforce court decisions especially those relating to bail release without any legal reason because the legal system is still poor to stop police impunity. Plus, since the democratic process is very weak in the country the government does not want strong court. Strong court usually challenges arbitrary actions of the government including police and undemocratic governments like ours Police do not respect court order because no one questions them, the court does not have real power to punish police and this is because the government does not want to see the court exercising real power."⁹⁷

There are so many cases in hand of court there are so many applications in Ethiopian human right commission appear the human right investigation directorate stated that around 69 application is on hand they are investigating the application reality and why police refuse enforce court order. Police might refuse to enforce decisions of court for different grounds. One possible reason may be appealing in the decision of the court that ensures the individual's right to bail. Unless there is injunction given by the appellate court, this only cannot be a ground to refuse enforcing decision of courts. Anyone who refuses enforcing decision of courts should be accountable before the court.

What judges say about the question: *Why do you think police refuses to enforce decision of a court to release an accused on bail? Are there legal grounds for that? If not, what is the consequence of the unlawful act or do they become accountable? What is the role of courts in this place what measures are taken?*

It is important to note that there are no legal grounds for law enforcement officials to refuse to enforce a court decision to release an accused person on bail. The Ethiopian Constitution guarantees the right to a fair trial and due process, and requires that court decisions be enforced in accordance with the law and the Constitution. If law enforcement officials refuse to enforce a court decision to release an accused person on

⁹⁶ The researcher also interviewed three legal attorneys get at the time of court observation in May 25/2015 of E, C named Meku Degu and Yitbarek Fikadu who attend the remand bench in stated on the suspect one and July 27/2015 with who were judge at Federal Supreme court cassation bench now legal attorney named Almaw Wale. At Arada criminal remand bench

⁹⁷ Interview made with legal attorney named Meku Degu May 25/2015 of E,C A.A FFIC Arada remand bench

bail, they may be held accountable for their actions. Depending on the circumstances, this may include disciplinary action, criminal charges, or civil liability for damages.

To prevent non-enforcement of court orders and ensure that accused persons are not subject to arbitrary detention, it is important to strengthen the independence and capacity of the judiciary, improve accountability mechanisms for law enforcement officials, and promote public awareness and education about human rights standards.

III. Lack of Appropriate Measures for the Misconduct of Police/Public Prosecutor or other officials

The role of the Ethiopian federal courts in this context is to ensure that court decisions are enforced in accordance with the law and the Constitution. If a court decision to release an accused person on bail is not being enforced, the court has the power to take remedial action, such as issuing an order directing law enforcement officials to comply with the court decision.

In cases where law enforcement officials persistently refuse to comply with court orders, the court may take more drastic measures, such as holding them in contempt of court or referring the matter to higher authorities for further action.

All lawyers' judges agreed the Cumbersome Procedure of Arrest and Pre-trial detention the legal gaps are the base but there nothing done by courts in order to take measures the researcher also can't get any file which can be an example there is an issue the court can take immediate action it have goes in the process of investigation who can also made further information no third-party investigator is in our legal system but some argued

It could potentially be considered as court contempt. If proven to be contemptuous, the courts can take measures to hold the police accountable, such as issuing warnings, fines, or even initiating disciplinary proceedings. It is crucial to ensure accountability and maintain the integrity of the judicial system;⁹⁸.

The researcher argued that whatever the police refusal named, the Contempt of court is open for different interpretations due to the wording "in the course of a judicial inquiry, proceeding or hearing". There is still a wide-open room for positive interpretation to come up with the problem at hand. Therefore, the court may ascertain the accountability by doing so. However, the problem "who guards the guardian" is the major issue. The

⁹⁸ Interview made in July 27/2015 with who were judge at Federal Supreme court cassation bench now legal attorney named Almaw Wale. At Arada criminal remand bench

court cannot execute some of its rulings as a matter of authority or separation of authority. Whatever it takes, the courts shall either take court contempt interpretation to safeguard the rights of arrested person or insist the initiation of criminal investigation whenever those violations exist.

V. Lack of judicial policy and budget constraint to enforce human right

A budgetary restriction is another pertinent practical issue. The issue of federal courts being overwhelmed with cases is regularly brought up in both FHC and FFIC. Judges and cases do not correlate in a balanced manner. Judges were forced to set a time limit for each case due to the overflow of cases. to appoint judges and assistance judges and other supporting staff, to appoint public attorney, to ascertain speedy trial the main source is having adequate budget but the judiciary's inadequate funding, which forbids the appointment of judges.⁹⁹

There is no strict guidelines in the Federal courts as to how Federal courts and investigation agencies as investigate and decide cases of arbitrary arrest and other human rights violations. Justice to victims of Human Rights violations should be of paramount consideration.¹⁰⁰

This all-results a great delay in getting the justice to the victims of the Human Rights violations and Weak legal protections, Limited judicial independence. From interviews and court observation the researcher finds as there are concerns about the independence and impartiality of the Ethiopian judiciary, particularly in cases that involve politically sensitive issues. Judges are often subject to political pressure and interference, which can impede their ability to protect human rights and enforce the law effectively. Judiciary as being the justice delivering machinery should be free from all external control. There have been instances of political pressure on the judiciary which has proven impediment in delivering justice to victims. This can lead to arbitrary arrests, detentions, and prosecutions, and can undermine the independence and impartiality of the judiciary.

⁹⁹ Supra note43 Interview made with honorable judge Biniyam Mekbib and interview made with Sisay Goa the FDRE Ministry of justice prosecution general division vs director at June 2015 at 4:30 AM A.A

¹⁰⁰ Interview made with Sisay Goa FDRE Ministry of justice prosecution general division vis director in June 2015 at 4: 30 AM A.A attorney General attorney office

Chapter five

Conclusion and Recommendations

1. Conclusion

The Ethiopia's criminal justice system is highly characterised by lengthy pre-trial detentions and illegal and unlawful detentions. Admittedly, the Ethiopian government has taken steps to reform its legal framework and improve respect for human rights, including the re-establishment of a Human Rights Commission and the Ombudsman; the adoption of a new anti-terrorism law in 2019 etc. Nonetheless, serious concerns are being raised regarding the implementation of the CPC and safeguards against arbitrary arrest and detention, particularly in the context of political opposition and dissent.

This research has attempted to explore international human rights instruments to identify settled standards and has examined the legal framework and practice against arbitrary arrest in Ethiopia.

This research has attempted to explore international human rights instruments to identify settled standards and has examined the legal framework and practice against arbitrary arrest in Ethiopia.

As it has been discussed, issues relating to arbitrary arrest may be brought in both FFIC and FHC. Ethiopia's law of arrest and safeguards against arbitrary arrest has been accorded constitutional guarantee.

One of the findings of the research is that there are instances in which suspects are arrested for transactions that are purely non-criminal and civil. Arrest warrants are also issued without ascertaining the absolute necessity of arrest.

In exercising their discretion to remand cases, Federal courts approaches differ from one another. While some benches strictly investigate the facts and scrutinize the need for the extension, others loosely conduct the investigation.

Due to the in clarity of the courts' power to check the legality of grounds of arrest among scholars, federal courts practice also shows restraints of the courts to examine grounds of arrest. The grant and denial of bail also depicts that the courts' decision making is highly inconsiderate to the right of the presumption of innocence of suspects and defendants. The role of courts in entertaining bail claims of bail able and non-bail able crimes is also one of the controversial issues to which the Council of constitutional

Inquiry ascertained courts are not absolutely prohibited to assure whether the crime of corruption is constituted in light of the facts alleged.

The federal courts practice also demonstrated that there were instances where non presentment of the suspect before a court of law within 48 hours, beyond looking for an explanation and asserting liability, end up in a decision of immediate release on bail.

The protection of suspects' rights to due process particularly not to be subjected to arbitrary arrest is greatly dependent on getting legal representation. The courts are not consistent in ensuring professional representation despite rare instances.

The most important mechanism of safeguarding arbitrary arrest is writ of habeas corpus is also recognized under Ethiopian law which has proved to be effective. Though there seems to be confusion as to the court that has jurisdiction, the courts have been observed to be consistent in asserting that it is the FFIC that has been bestowed with the judicial power.

The main practical challenge of the judiciary to enforce and uphold human right safeguards from arbitrary arrest is the police resisting the decision of courts. Of course, this resistance has no legal basis save an encouragement by the executive.

The line between the branches of the government is not yet clear. There are no strict guidelines in the Federal courts as Federal courts and investigation agencies as investigate and decide cases of arbitrary arrest and other human rights violations. Justice to victims of Human Rights violations should be of paramount consideration

There are concerns about the independence and impartiality of the Ethiopian judiciary, particularly in cases that involve politically sensitive issues. Judges are often subject to political pressure and interference, which can impede their ability to protect human rights and enforce the law effectively. Judiciary as being the justice delivering machinery should be free from all external control. There have been instances of political pressure on the judiciary which has impeded in delivering justice to victims. This can lead to arbitrary arrests, detentions, and prosecutions, and can undermine the independence and impartiality of the judiciary.

In Ethiopia, there is a lack of accountability for law enforcement officials who violate human rights. This creates a culture of impunity, where officials feel free to engage in arbitrary arrests and other abuses without fear of repercussions. This lack of

accountability undermines the rule of law and erodes public trust in the criminal justice system.

The Ethiopian criminal justice system is under-resourced and understaffed, which can limit the capacity of law enforcement agencies and the judiciary to protect human rights and enforce the law effectively. This can lead to delays, backlogs, and other inefficiencies that can undermine the protection of human rights.

2.Recommendations

Based on the findings mentioned above, the following recommendations are forwarded:

- The Criminal procedure being enacted in 1960s is ill-equipped to handle modern day situations mainly with regard to enforcing human rights safeguards against arbitrary arrest. Hence, there is a dire need for the amendment the criminal procedure law.
- The draft criminal procedure and evidence law needs to provide solutions to bailable and non bailable crimes and the remand time have fixed and it have to give jurisdiction to the judges to prove the legality of arrest to full fill the legal and practical gaps asper international human right standards and principles.
- In case violation of human rights safeguards against arbitrary arrest, there is a need to strictly follow laws and establish efficient investigation and accountability system against transgressors of these rights which enables to redress justice to the victims of Human Rights violations.
- Since there is great delay in redressing victims of the Human Rights violations and there are limited legal remedies available for individuals who have been subject to arbitrary arrest or detention in Ethiopia, perpetuating the culture of impunity among law enforcement officials must be tackled.
- For lack of accountability which undermines the rule of law and erodes public trust in the criminal justice system, the judiciary expected to empower itself to exercise its constitutional power of check and balance or have to supervise the executive bodies or other government enforcement organs.
- the researcher strongly recommends judges to be strict to enforce decision of courts and hold transgressors accountable. For this purpose,

the court can utilize Article 52 of proclamation 1234/2013 of federal courts. The criminal code, criminalizing contempt of court and Art.423, 449 and 585 of the Criminal Code provides basic tool to enforce and to take measures on any officials.

- The judiciary need to the laws, regulations and directive that enable it to administer the budget allocated by HPR, which is the key to assure e financial independence. This is particularly aimed to avoid the influences of the executive organs, due to the existing proclamation, regulations and directive administered and empowered the executive to control the courts.
- To improve the implementation and enforcement of human rights violations as a government agency Ensuring the judiciary's financial and institutional independence is, in fact as it made it possible for the court, which is independent of the executive branch, to utilize funds to uphold and protect human rights. For instance, in addition to receiving money from the executive branch, the judiciary must manage its revenue from paying judicial fees to the courts.

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ANNEX 1

The following interview questioner is for the purpose of research Topic:-The role of federal courts in enforcing human right safeguards against arbitrary arrest in Ethiopia: legal and practical analysis

Questions prepared for Legal Attorneys

1. The grounds to be a criminal suspect under the Ethiopian law and the reasons for arrest in current criminal legal system is not clear and this legal limitation create practical gaps in enforcing human right safeguards against arbitrary arrest in Ethiopia? Do you agree? If yes what are legal and practical gap do you observe? What is the impact of the inconsistency of law on individual's right to liberty?
2. Do you think federal courts have role in order to protect individual rights to liberty especially in arbitrary arrest? If yes what is the role of court in Protecting and Enforcing the Suspects Rights in criminal proceeding before and after arrest effect?
3. Do you observe federal courts in all level use international human right laws or the universal human right safeguard which ratified by Ethiopia to examine the ground for individual arrest, or to give remand for the police, or when the grant or denied the bail right? if yes which they use? if not why do you think ?
4. The Right to Appear before the Court in 48 hours of Arrest is under FDRE its constitutional and all human right safeguards also recognized but practically do all suspects appear before court within 48 hours of arrest? if yes/No how many such case do you know or have and What where the role of courts in Ensuring the Suspects Right Access to Justice and Speedy Trial and what legal measure taken for the violation?
4. What are the legal and practical gaps in enforcing human right safeguards against arbitrary arrest in Ethiopia? If there is a legal gap what is the impact of inconsistency of law on individual's right to liberty?
5. Now a day police refuses to enforce the decision of a court on bail release? Why do you think police engage in such act? Has it legal ground?
6. If your answer for Q.5 is has not legal ground Do you think is the act can be court contempt? If yes how? / no why? And is there any accountability for the act of police? What measures are taken by federal courts?
7. Do you believe the right to have the lawfulness of the detention decided speedily or without delay by a court of law (habeas corpus?) if yes /no how and why? How many cases do you handle in such conditions?

The following interview questioner is for the purpose of research Topic:-The role of federal courts in enforcing human right safeguards against arbitrary arrest in Ethiopia: legal and practical analysis

Questions prepared for judges

1. In the criminal proceeding before and after arrest effect by police what are courts roles in Safeguarding human rights against arbitrary arrest?
2. Do you believe Ethiopian federal courts enforce human right safeguards against arbitrary arrest? If yes which human right laws apply, to what extent?
3. So money literature reads as there is Cumbersome Procedure of Arrest and Pre-trial detentions in Ethiopia .if yes what are legal and practical gap in enforcing human rights safeguards against arbitrary arrest in Ethiopia? If yes what are there?
4. Because of the legal gaps of criminal procedure and inconsistent interpretation of the ground or the reason for arrest arbitrary arrest and other violation of suspects human right resulted, such violation made by police in criminal investigation before and after arrest in such violation judiciary in each level have constitutional duty to safeguard and enforce human right of individual do you observe courts role in enforcing such right? If yes how and what are the role played? If No why do you think?
5. How is the principle of arrest with warrant enforced by federal courts? When you issue warrant for arrest did you examine the ground for arrest (reasonable suspicions)? If yes what is the standard of reasonable ground for arrest you examine?
6. Did the Right to Appear before the Court in 48 hours of Arrest respect for all suspects? If yes/No how many cases may be per day or weak appear? When police fail to do this did you give legal Remedies for Arbitrarily Arrest /in case of violation? What kind?
7. Where the police, investigation is not completed the investigating police officer may apply for a remand for a sufficient time to enable the investigation to be completed The criminal procedure ART.59 usually court permit to the police reasonable 14 days what ground How many time you gives remand for police? and in what ground do you deny or grant constitutional bail right of an accused?
8. Why do you think a police refuses to enforce decision of a court to release an accused on bail? Are there legal grounds for that? If not what is the consequence of the unlawful act or do they become accountable? What is the role of courts in this place what measures are taken?
9. For Q.8 police say by the lower court decision I have right to appeal in high court to supreme appellate courts and refuse lower court decision on bail and the apple litigation finalize without enforcement of the bail right. Do you think the arrest or detention has legal ground in such case? If yes/No how and what have to be the role of judiciary in safeguarding suspected human right.
- 10.The right to liberty is constitutional right but by The Cumbersome Procedure of Arrest and Pre-trial detention ,it abuses by police or in pre-trial litigation by court too do you believe in ?if yes what have to be The Role of courts for the enforcement human rights safeguards standards on their decisions?

ANNEX 2

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የትኩረት ቁጥር	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ስም	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ቁጥር	የትኩረት/የመለያ ቁጥር
00/0102/2004000	መለከት ታሰቢ	አዲስ አበባ ከተማ አስተዳደር	6/4/2014	30/9/2015	0	0	0	0
00/0102/2006008	የጥበቃ ባለሙያ	አዲስ አበባ ከተማ አስተዳደር	7/7/2014	6/11/2014	0	0	0	0
00/0102/2008882	አዲስ አበባ ከተማ አስተዳደር	አዲስ አበባ ከተማ አስተዳደር	1/1/2014	4/1/2014	0	0	0	0
00/0102/2008884	የተጠቅላላ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	1/1/2014	4/1/2014	0	0	0	0
00/0102/2009034	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	7/11/2014	11/1/2014	0	0	0	0
00/0102/2009036	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	7/11/2014	11/1/2014	0	0	0	0
00/0102/2009044	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	8/11/2014	21/3/2015	0	0	0	0
00/0102/2009078	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	11/1/2014	22/1/2014	0	0	0	0
00/0102/2009098	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	12/1/2014	4/1/2014	0	0	0	0
00/0102/2009204	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	13/1/2014	21/1/2014	0	0	0	0
00/0102/2009238	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	14/1/2014	18/1/2014	0	0	0	0
00/0102/2009240	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	14/1/2014	18/1/2014	0	0	0	0
00/0102/2009290	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	19/1/2014	21/1/2014	0	0	0	0
00/0102/2009414	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	22/1/2014	30/1/2014	2	2	2	2
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00/0102/2009430	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	25/1/2014	4/1/2014	0	0	0	0
00/0102/2009458	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	27/1/2014	29/1/2014	0	0	0	0
00/0102/2009496	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	3/12/2014	6/12/2014	0	0	0	0
00/0102/2009622	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	4/12/2014	9/12/2014	0	0	0	0
00/0102/2009642	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	6/12/2014	9/12/2014	0	0	0	0
00/0102/2009812	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	12/12/2014	24/5/2015	0	0	0	0
00/0102/2009834	የጥበቃ ስራ ማስፈጸሚያ	አዲስ አበባ ከተማ አስተዳደር	16/12/2014	19/12/2014	0	0	0	0

የፍልጋት ሪፖርት

የፍልጋት ቁጥር: 4.0528PM

የፍልጋት ቀን: 7/10/2015

የፍልጋት ሰዓት: 4.0528PM

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ፌዴራል የመንግሥት ደረጃ ፍ/ቤት ስራዎች ምድብ ችሎታ

ፖሊስ
በታሪካዊነት

ቀን ክ: 1/11/2013 ሰዓት: 10/10/2014 ምድብ: የሰ

የታተመበት ቀን:

17/2/2016

የታተመበት ሰዓት:

4:01:17AM

ግ/ቦታ/ሰዓት	ክልል የመጡ	አዲስ	አንደኛ የተከራከሩ	የተዘገ	የተወሰነ	የማይታዩት	ወደሌላ ፍ/ቤት	የተላለፉ
ፍ/ቤት 1፣ ችሎት + ቤተሰብ	72	478	373	482	314	0	0	127
ለፍ ለፍ ፍ/ቤት 2 + አፈጣጥ	114	448	167	375	200	0	0	154
ፍ/ቤት 3፣ ችሎት	0	0	0	0	0	0	0	0
ጊዜ ቀጠሮ	2	2	12	14	0	0	0	2
ወንጀል ችሎት 2፣	0	0	0	0	0	0	0	0
ወንጀል ችሎት 3፣	0	0	0	0	0	0	0	0
ወንጀል ችሎት 4፣	76	249	24	114	211	0	0	24
ፍ/ቤት 4፣ ችሎት	4	0	1	2	0	0	0	3
ወንጀል ችሎት 5፣	25	339	19	26	337	0	0	20
ወንጀል ችሎት 6፣	89	259	32	165	184	0	0	31
ወንጀል ችሎት 7፣	98	250	40	148	172	0	0	68
ፍ/ቤት 5፣ ችሎት + ቤተሰብ አፈጣጥ	20	0	116	68	59	0	0	9
ፍ/ቤት 6፣ ችሎት + ቤተሰብ	75	471	344	448	368	0	0	74
ወንጀል ችሎት 8፣ አገ ወዋ የሰዎች	0	0	0	0	0	0	0	0
ፍ/ቤት 7፣ ችሎት + አፈጣጥ	57	253	180	285	137	0	68	0
9፣ ወንጀል ወጣት ጥፋቶች	0	0	0	0	0	0	0	0
ወንጀል ችሎት 2፣ ችሎት + አፈጣጥ	187	451	257	366	446	0	0	83
ለፍ ለፍ ፍ/ቤት 1 + አፈጣጥ	93	421	237	461	174	0	0	116

ፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት ኦራሃ ምድብ ችሎታ

ፈጠራ
በታተሰበት

ቀን ዘጠኝ 1/11/2016 አክቲቭ 30/10/2015 ጠቅላይ ችሎታ

የታተመበት ቀን 15/2/2016
የታተመበት ሰዓት 8:23:36PM

ጥበቃ/ሰያ	ከሰራው የመጡ	አፈባ	አንደኛው የተከሰቱ	የተዘገቡ	የተመሰሉ	የማያስቀርብ	ወደሌላ ፍ/ቤት የተሰጠ	የተሰለፉ
7ኛ ቤተሰብ ችሎታ	0	0	2	2	0	0	0	0
5ኛ ፍ/ዘር 2	0	0	0	0	0	0	0	0
5ኛ ፍ/ዘር 1	0	0	0	0	0	0	0	0
8ኛ ንግድ ችሎታ + አፈዋጭ	0	0	0	0	0	0	0	0
10ኛ ወንጀል ለፋኝና ወገኖች ወንጀል	1	53	6	23	26	0	0	11
1ኛ ጊዜ ቀጠሮ	101	3772	799	4,495	0	0	0	177
2ኛ ጊዜ ቀጠሮ	169	2445	891	3,426	0	0	0	79
ወርሱ ንግድ ከደ 1 ችሎታ + አፈዋጭ	100	535	407	573	383	0	0	86
4ተኛ አፈዋጭ ከደ 1	0	0	6	4	0	0	0	2
4ተኛ አፈዋጭ ከደ 2	2	0	5	6	0	0	0	1
11ኛ ወንጀል ችሎታ	2	13	1	1	3	0	0	12
1ኛ እና 2ኛ ሥራ ክርክር	54	286	118	261	177	0	0	20
3ኛ ሥራ ክርክር	55	240	79	189	165	0	0	20
3ተኛ ጊዜ ቀጠሮ	3	1474	126	1,569	1	0	1	32
1ኛ ከወል ወጭ ችሎታ + አፈዋጭ	0	9	0	0	0	0	0	9
	1,189	12,634	4,123	13,445	3,200	0	1	1,300
		16,757			16,646			

ΔΙΔΑ
ΝΤ-ΕΝ-ΕΜ

17/3/2016
1:50:54PM

[illegible]

የፌዴራል ከፍተኛ ፍ/ቤት ልዩ ቃ ምድብ ችሎት

ፌዴራል
ዕቅድ

ቀን ወሰን 30/11/2013 ጸሐፊ 20/10/2014 ጥላቻ 15 ወር ምርት ምርት ምርት

የተሰጠው ቀን 17/3/2016
የተሰጠው ሰዓት 1:49:51 PM

የጥያቄው የጥያቄው	የጥያቄው የጥያቄው	የጥያቄው የጥያቄው	የጥያቄው የጥያቄው	የጥያቄው የጥያቄው	የጥያቄው የጥያቄው	የጥያቄው የጥያቄው
15 ወር ምርት ችሎት	5	0	27	21	0	11
	5	0	27	21	0	11
	5	0	27	21	0	11

ቀን 30/3/2015 ዓ/ም

ዳኞች፡- ዘላለም ተስፋዬ**ሐረገወይን ተክሉ****ካሳዬ ዘርይሁን****ከሳሽ፡- የፌ/ጠ/ዓ/ህግ ዓ/ህግ ዳዊት ፋሪሳ ቀረቡ****ተከሳሽ፡- ገ/ጊዮርጊስ ግደይ በዋስ ከተ/ጠበቃ ገዛኸኝ ተሾመ ጋር ቀረቡ**

መዝገቡ የተቀጠረው መርምሮ በጉዳት ካሳው ላይ ውሳኔ ለመስጠት እና የዓቃቤ ህግ ተከሳሽ ባቀረበው የሰነድ ማስረጃ አስተያየት ላይ የሚለውን ለመጠበቅ ነው። በዚህ መሰረት ተመርምሮ በጉዳት ካሳው ላይ ተከታዩ ውሳኔ ተሰጥቷል።

ው ሳ ኔ

ለውሳኔ መነሻ የሆነው ተከሳሹ በተከላካይ ጠበቃው አማካኝነት እየታገዘ ሐምሌ 07 ቀን 2014ዓ/ም ባቀረበው አቤቱታ መነሻነት ሲሆን የአቤቱታው ይዘት ባጭሩ፡- ዐቃቤ ህግ የምርመራ መዝገቡ የተከሳሽ ከፖሊስ ከደረሰው በሃላ በህጉ በግልፅ በተደነገገው አግባብ ማለትም በአስራ አምስት ቀናት ውስጥ በተከሳሽ ላይ ክስ አላቀረበም ይልቁንም ዓቃቤ ህግ ተከሳሽ ላይ ያቀረበውን ክስ ያስረዳልኛል በሚል አስረጅ አድርጎ ያቀረበው የሰነድ ማስረጃ ከኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የፌዴራል ፖሊስ ኮሚሽን ወንጀል ምርመራ ቢሮ ጳጉሜ 04 ቀን 2013 ዓ/ም የተላከለትን የፎረንሲክ የሰነድ ማስረጃ ነው። ይህንን ማስረጃ አስረጂ አድርጎ ግንቦት 22 ቀን 2014 ዓ.ም በተፃፈ ክስ ዐቃቤ ህግ መስርቷል። ፖሊስም ይሁን ጠቅላይ ዐቃቤ ህግ ላለፉት ዘጠኝ ወራት ክስ በተከሳሽ ላይ ሳይመሰረትበት በእስር በመቆየቱ በህግ የተሰጣቸውን ግዴታ አልተወጡም። በተከሳሽ ላይ ለደረሰው የሞራል ጉዳት ካሳ ተከሳሽ በጊዜው ጉዳዩ ተፋጥኖ ከእስር ቢወጣ ኖሮ ሰርቶ እራሱንና ቤተሰቡን እንዲሁም ሃገሩን ሊያግዝ እንደሚችል ታሳቢ ተደርጎ በአዋጅ ቁጥር 1176/2012 አንቀፅ 41 ለዚህ ችሎት በተሰጠው ስልጣን መሰረት በዚህ በተያዘው መዝገብ፣ በመዝገቡ ላይ የሚሰጠው ሌሎች ትዕዛዞች እንደተጠበቀ ሆነው ለደረሰብኝ የሞራል ጉዳት በህጉ መሰረት ተገቢውን የሞራል ጉዳት ካሳ እንዲወሰንልን በማለት ጠይቋል።

የተከሳሹ በአዋጅ መሰረት የጠየቀውን የጉዳት ካሳ አቤቱታ ለዐቃቤ ህግ ደርሶት ዐቃቤ ህግ በቁጥር ፌ/ጠ/ዐ/የተ/221/15 በቀን 19/11/2014 ዓ/ም በሰጠው መልስ ባጭሩ ተከሳሽ በምርመራ ወቅት በእስር ላይ የቆየው የዋስትና ግዴታውን ባለመወጣቱ ስለሆነ ተጠርጣሪው ከህግ ውጭ በምርመራ ወቅት ቆይቷል የሚባልበት የህግ ምክንያት የለም። ሌላው ዐቃቤ ህግ በ15 ቀናት ክስ የመመስረት ግዴታ የሚኖርበት በምርመራ ወቅት ችሎት ቀርቦ የክስ መመስረቻ ጊዜ የጠየቀ እንደሆነ ብቻ ስለሆነ በ15 ቀን ውስጥ ክስ የመመስረት በህግ የተቀመጠ ግዴታ የለበትም።

በተከሳሽ ላይ ፖሊስ በተለያዩ ጊዜ ከፎረንሲክ ማስረጃ በተጨማሪ ሌሎች ማስረጃዎችን ለማሰባሰብ ጥረት እያደረገ የቆዩ ቢሆንም፣ ይህ ጥረትም በተለያዩ ምክንያት ሳይሳካ ቀርቷል። ፖሊስ ዋስትና በተፈቀደለት ሰው ላይ በዚህ ቀን የምርመራ መዝገብ መጠናቀቅ አለበት ወይም ዐቃቤ ህግ ክስ ማቅረብ አለበት የሚልበት የህግ ምክንያት የለም። እንዲሁም ተከሳሽ ላይ በምርመራ ወቅት የደረሰ የሰብአዊ መብት ጥሰት የለም። በፍርድ ቤት ዋስትና ተፈቅዶለት ግዴታውን ያልተወጣው ተከሳሽ በመሆኑ የቀረበውን የካሳ ጥያቄ ተቀባይነት የለውም በሚል ተከራክሯል።

ይህ ችሎትም በተከሰሽ በኩል የቀረበውን የሞራል ጉዳት ካሳ ጥያቄ ከህግም ሆነ ከፍሬ ነገር አኳያ ተገቢነት አለው ወይ? ካለውስ ለተከሰሱ ምን ያክል መጠን የጉዳት ካሳ ሊከፈለው ይገባል? የሚሉትን ጭብጦች በመለየት መዝገቡን እንደሚከተለው መርምረናል። እንደመረመርነውም በተከሰሽ በኩል የቀረበው የሞራል ጉዳት ካሳ ጥያቄ ያለአግባብ በእስር ቆይታለሁና ካሳ ሊከፈለኝ ይገባል የሚል ከመሆኑ አኳያ ለተያዘው ጭብጥ ግልፅ ለማድረግ ብሎም እልባት ለመስጠት በተሻለ መልኩ ይቻል ዘንድ ኢትዮጵያ የፈረመችው አለም አቀፍ የሲቪልና የፖለቲካ መብቶች ስምምነትን መመልከቱ ችሎቱ ለበኋላው ለሚደርስበት ድምዳሜ አስፈላጊ ሆኖ ስላገኘው እንደሚከተለው ተመልክቶታል።

በአለም አቀፍ የሲቪልና የፖለቲካ መብቶች ስምምነት (ICCPR) አንቀፅ 9 ከተያዘው ጭብጥ አኳያ እልባት ለመስጠት ቆርጠን በመውሰድ የድንጋጌውን ከፊል እንደሚከተለው ሰፍሯል።

አንቀፅ 9(1) «Everyone has the right to liberty and secure of person. No one shall be subjected to arbitrary arrest or detention no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law»

በተመሳሳይ አንቀፅ 9 ንዑስ ቁጥር 5 ላይ «Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation» በማለት ይደነግጋል።

ከላይ ከተገለጹት አለም አቀፍ ስምምነት ድንጋጌዎች መገንዘብ እንደሚቻለው የዘፈቀደ እስራት /arbitrary arrest or detention/ የተከለከለ መሆኑን የአንድን ሰው ነፃነት ጣልቃ የሚገባው በልዩ ሁኔታ ይህም በህግ በተበጀ ስርአት አግባብ እንደሆነ ያመለክታል።

ከአለም አቀፍ የሲቪልና የፖለቲካ መብቶች ስምምነት (ICCPR) ይህ የነጻነት መብት ድንጋጌ በስምምነቱ ከተመለከቱን ከሌሎች ድንጋጌዎች፣ ይህም፡- በግልፅ ተገቢና ገለልተኛ ፍርድ ቤት መዳኘት መብት /አንቀፅ 14/ እንዲሁም ከኢሰብአዊ አያያዝ፣ ማሰቃየትና ግርፋት የመጠበቅ መብት /አንቀፅ 7/ አኳያ ተጣጥሞ መተርጎም እንዳለበት በዘርፉ የሰብአዊ መብት ምሁራን የሚገለፅ ነው። ከዚህ አኳያ ላልተወሰነ ጊዜ የሚደረግ እስር (indefinite detention) ምንም እንኳን የተያዘው ሰው አስቀድሞ የተያዘበት አግባብ ህጋዊ ስርዓት ተሟልቶ ቢሆንም፣ ላልተገባ እና በህግ በግልፅ በተቀመጠው ጊዜ ውስጥ ፍርድ ሊሰጥ ከሚችል አካል ያልቀረበ ከሆነ በግለሰብ ነፃነት መብት ላይ ጣልቃ መግባት ብሎም የዘፈቀደ እስር (arbitrary arrest) ተደርጎ እንደሚወሰድ ይታመናል።

ከአለም አቀፍ የሲቪል ፖለቲካ መብቶች ስምምነት (ICCPR) ጋር በተዋደደ አግባብ በኢ.ፌ.ዲ.ሪ ህገ መንግስት አንቀፅ 17 ላይ የነፃነት መብት እንደሚከተለው ሰፍሯል።

1. "በህግ ከተደነገገው ስርዓት ውጭ ማንኛውም ሰው ወንድም ሆነ ሴት ነፃነቱን/ቷን አያጣም/አታጣም
2. ማንኛውም ሰው በህግ ከተደነገገው ስርዓት ውጭ ሲያዝ ክስ ሳይቀርብበት ወይም ሳይፈረድበት ሊታሰር አይችልም።" ይላል።

የዚሁ ድንጋጌ አንቀፅ 17(2) እንግሊዝኛ ቅጅ ደግሞ፡-

"no person may be subjected to arbitrary arrest and no person may be detained without a charge or conviction against him" የሚል ነው /ሰረዝ የተጨመረበት/

በህገ መንግስቱ በግልፅ እንደተመለከተው በተለይም የአንቀፅ 17(2) እንግሊዝኛና አማርኛ ትርጉም ተጣጥሞ ሲተረጎም የዘፈቀደ እስር (arbitrary arrest) ክልክል እንደሆነ ያስገነዝባል። የግለሰብ ነፃነት ላይ ጣልቃ ለመግባት የሚቻለው በህግ በተደነገገው ስርዓት ብቻ እንደሆነ ያመለክታል። በኢ.ፌ.ዲ.ሪ ህገ መንግስት አንቀፅ 13(2) መሰረት አለም አቀፍ የሰብአዊ መብቶች ህጋዎች፣ አለም አቀፍ ሰብአዊ መብቶች ስምምነቶች እና አለም አቀፍ ሰነዶች መርሆዎች ጋር በተጣጣመ መንገድ የህገ መንግስቱ ሰብአዊ መብት ድንጋጌዎች መተርጎም እንዳለባቸው ታሳቢ የሚደረግ ነው።

በመሆኑም ማንኛውም ሰው ወይም ተጠርጣሪ በህግ ከተደነገገው ውጭ የዘፈቀደ እስር (arbitrary arrest) እንደማይፈቅድ ተደንግጓል። ክልክል ነው። በህግ ከተደነገገው ስርአት ውጭ ሊያዝ እንደማይገባ እንዲሁም አስቀድሞ በህግ አግባብ ከተያዘ በኋላ ላልተገባ ጊዜ የተያዘ ወይም በፍርድ ሰጭ አካል አያያዙ ካልተከለሰ /if it is unduly prolonged or not subject to periodic review/ እንደዘፈቀደ እስር እንደሚቆጠር በሰብአዊ መብት ምሁራን በኩል ግንዛቤ የሚወሰድበት ነው። ችሎቱም ይህንኑ ግንዛቤ ይጋራዋል።

ለማሳጠርም በኢ.ፌ.ድ.ሪ ህገ መንግስት አንቀጽ 13(1) መሰረት ፍርድ ቤቶች ህግ ሲተረጉሙ፣ በህገ መንግስቱ ምዕራፍ ሶስት የተመለከቱትን የሰብአዊ መብቶች ተመርኩዘው መሆን እንዳለባቸው ያስገድዳል። በአናቱም የፌዴራል ፍርድ ቤቶች ማቋቋሚያ አዋጅ ቁጥር 1234/2013 አንቀጽ 6(1) መሰረት ዳኞች የያዟቸውን ጉዳዮች ከፌዴራል ህጎች ባሻገር በህገ መንግስቱ እና ኢትዮጵያ አባል የሆነችባቸውን አለም አቀፍ ስምምነቶች ተንተርሰው እልባት ለያዙት ጉዳይ ሊሰጡ እንደሚገባ ተመላክቷል።

ተከሳሽ ያቀረበው ክስ ተከሳሽ ላይ በተገቢው ጊዜ ክስ ተከሳሹ ላይ በተገቢው ጊዜ ክስ ሊቀርብበት ሲገባው ክስ ሳይቀርብበት ላለፉት ዘጠኝ ወራት በእስር ላይ የቆየ በመሆኑ የህሊና ጉዳት ካሳ ሊከፈለኝ ይገባል የሚል ነው።

በመሰረቱ ተከሳሽ ላይ ዐቃቤ ህግ ያቀረበው ክስ የሽብር ወንጀል ለመከላከልና ለመቆጣጠር የወጣውን አዋጅ ቁጥር 1176/2012 አንቀጽ 10(3) የተመለከተውን ተላልፏል በሚል ነው። በዚህ አዋጅ ቁጥር 41(3) ላይ በግልፅ እንደተመለከተው ፍርድ ቤት በወንጀል ክርክር ሂደቱ የህግ አስፈፃሚ አካላት የህግ ጥሰት የፈፀመ መሆኑን ያረጋገጠ እንደሆነ የወንጀሉ ጉዳይ እንዲጣራ ትዕዛዝ መስጠቱ እንደተጠበቀ ሆኖ በሌላ ህግ የበለጠ የሚያስጠይቅ ካልሆነ በስተቀር ለተገኘው ከአስር ሺ ብር እስከ መቶ ሺ ብር የሚደርስ የህሊና ጉዳት ካሳ እንዲከፍል በያዘው የክርክር መዝገብ ሊወሰን እንደሚችል ተደንግጓል። በዚሁ አዋጅ ላይ የተደነገገው የጉዳት ካሳ በህገ መንግስት እውቅና የተሰጠው የሰብአዊ መብት ሲጣስ የሚጣል የጉዳት ካሳ /compensatory remedy/ ሲሆን አፈፃፀሙ ከመደበኛው የጉዳት ካሳ ህግ /tort law/ የተለዩ ነው። ይህ የአዋጁ ፍሬ ሃሳብ ፍርድ ቤቶች የሰብአዊ መብትን ለመቆጣጠር እንዲችሉ በተለይም ደግሞ አስፈፃሚው አካል በሰብአዊ መብት ጉዳይ ላይ አወንታዊ ግዴታውን /positive duty/ ያልተወጣ እንደሆነ ከተራ የስልጣን ክፍፍል /ordinary separation of power/ ባሻገር አንዱ የሶስቱ የመንግስት እጆች check and balance መርህን ማስፈፀሚያ ስርአት የሆነ የህግ ማዕቀፍ ነው።

በዚሁ አዋጅ አንቀጽ 38 ላይ በግልፅ እንደተመለከተው የፌዴራል ጠቅላይ ዐቃቤ ህግ በሽብር ወንጀል የሚደረግን ምርመራ ይመራል፣ በፍርድ ቤት ክርክር ያደርጋል፣ በአዋጁ የተመለከተውን ወንጀል ምርመራ የሚመራና ክርክር የሚያደርግ ባለሙያ የተለየ የስራ ክፍል ያደራጃል፣ እንዲሁም በሽብር ወንጀል ተጠርጥሮ የተያዘ ሰው አያያዝ በህግ መሆኑን ይከታተላል፣ በሚል በህጉ ከነበረው መደበኛው የወንጀል ስነስርዓት ሃላፊነት በጠቅላይ ዐቃቤ ህግ ተቋም ላይ ከፍ ያለ ሃላፊነት በትክክል ላይ አስቀምጧል። ስለ ክስ አቀራረብ በልዩ ህጉ ያልተመለከተ ቢሆንም በዋናው መደበኛ ህግ አቃቤ ህግ የፖሊስ ምርመራ መዝገብ በደረሰው በአስራ አምስት ቀን ውስጥ የመሰለውን ክስ አዘጋጅቶ ስልጣን ላለው ፍርድ ቤት ማቅረብ እንዳለበት በወ/መ/ስ/ህ/ቁ 109(1) መሰረት ግዴታ ወድቆበታል።

በእጃችን ወዳለው ጉዳይ ስንመለስ ተከሳሹ ላልተገባ የዘፈቀደ የዘጠኝ ወራት እስር /arbitrary arrest/ ተዳርጌያለሁ በሚል የሚያቀርበውን ክርክር በተመለከተ ዐቃቤ ህግ በክሱ ላይ ያስረዱልኛል በሚል ያያያዛቸው የሰነድ ማስረጃዎች ከኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ብሄራዊ መረጃና ደህንነት አገልግሎት በቁጥር ደመ/42/160/ 2013 በቀን 04/13/2013 ዓ.ም ለፌዴራል ወንጀል ምርመራ ቢሮ የተላከ መሆኑን ያስረዳል። ዐቃቤ ህግ በተከሳሹ ላይ ግን ክስ ያቀረበው በቁጥር ፌ/ጠ/ዐ/የተ/ድ/ተ0995/14 በቀን 22/09/2014 ዓ/ም በተፃፈ የክስ አቤቱታ ነው። ይህም ለፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ ማስረጃው ከቀረበ ከዘጠኝ ወራት በላይ በኋላ ክስ እንዳቀረበ ችሎቱ ተገንዝቧል። እንዲሁም በፍትህ ሚኒስቴር የጠቅላይ ዐቃቤ ህግ ዘርፍ በቁጥር ፌ/ጠ/ዐ/ህግ የተ/ድ/ተ/1064/14 በቀን 26/09/14 ዓ.ም ለችሎቱ አስቀድሞ የቀረበው ማስረጃ

የሚያመለክተው ጉዳይ የዘገየው በተቋሙ ባሉ ዐቃቤ ህግ የስራ ግዴታቸውን ያልተወጡ በመሆኑ ሳቢያ እንደሆነ ያመለክታል።

ከላይ ከፀረ ሽብር አዋጁም ሆነ ከወ/መ/ስ/ስ/ህጉ ድንጋጌዎች መንፈስ መረዳት የሚቻለው አቃቤ ህግ በሽብር ወንጀል የተጠረጠረን ተጠርጣሪ በህጉ አግባብ የተያዘ ለመሆኑ የመከታተል ግዴታ እንደተጣለበት ነው። ከፍ ሲል ክስ ሊያቀርብ የሚገባው የምርመራ ሪፖርት ለዐቃቤ ህግ በደረሰው በአስራ አምስት ቀናት ውስጥ እንደሆነም እንዲሁ። በዚህ ረገድ ዐቃቤ ህግ ተከሳሹ ላይ የወንጀል ምርመራው በተገቢው የህግ አግባብ እየተከናወነ ለመሆኑ መቆጣጠር እየተገባው ላለፉት ዘጠኝ ወራት ማስረጃው ከቀረበ በኋላ ክስ አለማቅረቡ አሊያም ከቀረበው ማስረጃ ውጭ ሌላ ክስ ጋር ያያያዘው በወ/መ/ስ/ስ/ህ/ቁ 38(1) መሰረት ተጨማሪ ማስረጃ የሌለ ለመሆኑ አስቀርቦን ከተመለከትነው የፖሊስ ምርመራ ሪፖርት ጭምር ችሎቱ አረጋግጧል። በተጨማሪም ዓ/ህግ ተከሳሽ የፖሊስ ምርመራ ሪፖርት በደረሰው በአስራ አምስት ቀናት ውስጥ በወ/መ/ስ/ስ/ህ/ቁ 109/1/ መሰረት ክስ ማቅረብ የህግ ግዴታ እያለበት ይህንን በህግ የተዘረጋውን ስርዓት አለመፈፀሙን ችሎቱ ተገንዝቧል።

በሌላ በኩል ዐቃቤ ህግ አጠንክሮ የሚከራከረው ተከሳሽ የዋስትና ግዴታውን ስላልተወጣ ነው የሚል ቢሆንም ተከሳሹ የዋስትና ግዴታውን ካልተወጣ በተገቢው የፍርድ አካል ጉዳዩ እንዲቀርብ አድርጎ ተከሳሽ መኖሩ ህክምና ባለበት ማረፊያ ቤት እንዲቀርብ ማድረግ እየተቻለ ለዘጠኝ ወራት በፖሊስ ጣቢያ እንዲቆይ መደረጉ ተከሳሽ በህግ አግባብ የተያዘ ቢሆንም አቆያየቱ ግን ከላይ በተመለከተው ህጋዊ አግባብ ያልተገባ እስር /arbitrary arrest/ ሆኖ ይህ ችሎት አግኝቶታል። ስለሆነም ለተከሳሹ የህሊና ጉዳት ካሳ /compensatory remedy/ ሊከፈለው ይገባል ተብሏል።

ለተከሳሹ የህሊና ጉዳት ካሳ የሚከፈለው ከሆነ በአዋጁ አንቀፅ 41(3) ላይ በግልፅ እንደተመለከተው በሌላ ህግ የበለጠ የሚያስጠይቅ ካልሆነ የሚል በመሆኑና በድንጋጌው የጉዳት ካሳ መሰረታዊ ፍልስፍና እሳቢ ከፍታብሄር ህጉ የህሊና ጉዳት ካሳ የተለየ ብቻም ሳይሆን በፍ/ህ/ቁ 2116(3) መሰረት የሞራል ጉዳት ካሳ አንድ ሺ ብር በመሆኑና ይህም ከአዋጁ የገንዘብ መጠን የሚያንስ ሆኖ ችሎቱ ተገንዝቧል። የገንዘብ ጉዳቱን ከደረሰው የህሊና ጉዳት ጋር ለማጣጣም በግልፅ ዝርዝር የካሳ አሰላል ድንጋጌ በአዋጁ የተመለከተ ባለመሆኑ የፍታብሄር ህጉን የካሳ ግምት ምዘና ተመጣጣኝነት መርህን በመጠቀም በርትዕ መሰረት የፌዴራል ፍትህ ሚኒስቴር ጠቅላይ ዐቃቤ ህግ ለተከሳሽ ብር 30,000(ሰላሳ ሺ ብር) እንዲከፍል በሙሉ ድምፅ ተወስኗል። ስለሆነም ተከታዩ ታዟል።

ት ዕ ዛ ዝ

የፌዴራል ፍትህ ሚኒስቴር ለተከሳሹ የህሊና ጉዳት ካሳ በአዋጅ ቁጥር 1176/2012 አንቀፅ 41(3) መሰረት ብር 30,000 (ሰላሳ ሺ ብር) እንዲከፍል ታዟል። ይፃፍ።

ከተባለ በኋላ ዐቃቤ ህግ አስተያየቱን በቁጥር ፌ/ጠ/ዐ/ህግ የተ/1666/15 በቀን 29/03/15 ዓ.ም በተፃፈ 3 ገፅ በ3 ቅጅ አያይዟል ድርሻው ለተከሳሽ ተሰጥቷል ተከታዩ ታዟል።

ት እ ዛ ዝ

መርምሮ ለመበየን ቀጠሮ ለጥር 09 ቀን 2015 ዓ.ም ተቀጠረ፡ (3:30)

የዳኞች ፊርማ፡- ዘላለም ተስፋዬ

ሐረገወይን ተክሉ

ካሳዬ ዘርይሁን

03/04/2015 ዓ/ም

ጽሑፍ ለጠቅላይ ሚኒስትር
ሰነድ የሆነ ቅጂ
ገዛቸዉ ገለጽ

አመልካች፡- የአዲስ አበባ ፖሊስ ኮሚሽን

ተጠሪዎች፡- እነ ስንታየሁ ተፈራ ገ/መድን

የአሁን አቤቱታ አቅራቢ፡- ስንታየሁ ተፈራ ወኪል መለሰ ማጥ

ተጠሪዎች፡- 1) የአዲስ አበባ ፖሊስ ኮሚሽን

2) በዓረብ ሚኒስትር ጠቅላይ ይዘት-ሀገ ዘርፍ የመስፍ ወንጀል ጉዳዮች ዳይሬክቶሬት

መዝገብ ተመርምሮ ተከታይ ብይን ተሰጥቷል።

ብይን

እዚህ ብይን መሃሽ ምክንያት የሆነዉ የአሁን አቤቱታ አቅራቢ በተወካዩ በኩል የካቲት 28 ቀን 2015 ዓ.ም በተደረ ማመልከቻ በዚህ መዝገብ ላይ ለዋስትና ያስያዙት ገንዘብ ብር 10,000 (አስር ሺህ ብር) ተመላሽ እንዲደረግልኝ በማለት አመልክቷል። ተጠሪዎች በበኩላቸዉ 1ኛ ተጠሪ በቁጥር አፖ/ወመዐ01/27392 በቀን 15/07/2015 ዓ/ም መልስ ሲሰጥ የምርመራ መዝገቡ ተግርፋ በዓረብ ሚኒስትር የመስፍ ወንጀል ቦህማ ዘርፍ የተላከ በመሆኑ በዕቃቤ-ሀገ በኩል መልስ እንዲሰጥበት ደደረገ በማለት አመልክቷል። 2ኛ ተጠሪ በዓረብ ሚኒስትር የመስፍ ወንጀል ቦህማ ዳይሬክቶሬት በበኩል በቁጥር ጠ/0/0904/644/15 በቀን 15/07/15 ዓ/ም በተላከ ደብዳቤ በአቤቱታ አቅራቢ ላይ የተጣራውን የወንጀል ምርመራ መዝገብ አግርተን ተገቢውን ምላሽ ለመስጠት እንድንችል ተለዋጭ ተጠር ይሰጠን በማለት አመልክቶ ችሎቱም ተለዋጭ ተጠር ለቀን 21/07/2015 ዓ/ም የያዘ ሰሆን፤ 2ኛ ተጠሪ በ21/7/2015 ዓ/ም በነበረዉ ተጠር መልሳቸዉን ይዞ ስላልተረሰ ችሎቱ መልስ ለመስጠት እንዳልፈለጉ በመቀጠር መልስ የመስጠት መብታቸዉን አልፏል።

የመዝገቡ አመጣጥ በአጭሩ ይህን የሚመስል ሰሆን ችሎቱም የአሁን አቤቱታ አቅራቢ ለዋስትና በዚህ የጊዜ ተጠር መዝገብ ላይ ያስያዙት የዋስትና ግዴታ ብር 10,000 (አስር ሺህ ብር) ስላቤቱታ አቅራቢ

AB

[Signature]

5/15

አመልካቸዉ ይገባል በይዘ አይገባም። ሌሎች ሃሳቦች በሀገራዊ መዝገብ መርምረው። እንደመረመርነዉም የአሁን አቤቱታ አቅራቢ ይህ ችሎት መስክረም 09 ቀን 2015 ዓ.ም ለብር 10,000 (አስር ሺህ ብር) በቀ የሀገራዊ አቅርቦት ዘርፍ በሰነድ አቅርቦት በሰነድ መሰረት ዋስትናውን ማቅረብን በመዝገቡ መዝገብ ተሻሻል። በሌላ በኩል 1ኛ ተጠሪ የሀገራዊ አበባ ፖሊስ ኮሚሽን የአሁን አቤቱታ አቅራቢ የተጠሪዎችን የወንጀል ጉዳዮች የምርመራ መዝገብ ተግርፋ በዓረብ ሚኒስትር የመስፍ ወንጀል ቦህማ ዘርፍ የተላከ በመሆኑ በዕቃቤ-ሀገ በኩል መልስ እንዲሰጥበት ተጠይቆ ምላሽ ለመስጠት ዓቅዶኝ በሰነድ የተላከ የአሁን አቤቱታ አቅራቢ ለዋስትና ያስያዘዉ ገንዘብ እንዲመልስበት ለመስጠት ዓቅዶኝ በሰነድ የተላከ የአሁን አቤቱታ አቅራቢ ለዋስትና ያስያዘዉ ገንዘብ ተይዞ የሚቀይረው በቀ እኛ አላሞኝ ሀገራዊ ምክንያት አልተገኘም። ስለሆነም የአሁን አቤቱታ አቅራቢ በዚህ መዝገብ ላይ ለዋስትና ያስያዙት ብር 10,000 (አስር ሺህ ብር) ተመላሽ እንዲደርግላቸዉ ብይን ተሰጥቷል።

ቅጂዝ

- 1) የአሁን አቤቱታ አቅራቢ አቶ ስንታየሁ ተፈራ በዚህ መዝገብ ላይ ለዋስትና ያስያዙት ብር 10,000 (አስር ሺህ ብር) ተመላሽ እንዲደረግላቸው ታዟል። ይጻፍ።
- 2) መዝገቡ ተዘግቷል፤ ወደ መዝገቡ ቤት ይመለስ።

AB

[Signature]

5/15

የፌዴራል መጀመሪያ ደረጃ ፍ/ቤት

አራዳ ምድብ 2ኛ ፍታብሒር ችሎት

ቀን 23/10/2014 ዓ.ም

የመ/ቁ : 208670

ዳኛ : ማራቱ ወቤ

አመልካች : ወርቁ የሺዋስ / አልቀረቡም

ተጠርጣሪ : ካሳሁን መኳንንት / ተረቡ

ተጠሪ : አዲስ አበባ ፖሊስ ኮሚሽን / ዋና ሳጂን ክቤ አድካሚ ቀረቡ

መዝገቡ ተመርምሮ ተከታዩ ብይን ተሰጥቷል።

ብይን

ሰብይኑ መነሻ የሆነው ተጠሪ ተጠርጣሪን ይዘው ቀርበው የማይፈቱበትን ምክንያት እንዲያስረዱ በታዘዙት መስረት በቁጥር አ/ፖ/ወም/01/39065/14 በቀን 23 / 10 / 2014 ዓ.ም በተፃፈ ምላሽ ፍ/ቤቱ በግድያ የተጠረጠረን ተጠርጣሪ አካል ነፃ ማወጣት ጉዳይ ለማየት ስልጣን የለውም የፌዴራል ጠቅላይ ፍ/ቤት ስበር ስሟ ችሎት በመዝገብ ቁጥር 228912 በቀን 10 /10/ 2014 ዓ.ም ውሳኔ ሰጥቶበታል ስለዚህ ፍ/ቤቱ መዝገቡን ዘግቶ ያሰናብተን በማለት ያቀረቡት የመጀመሪያ ደረጃ መቃወሚያ ነው።

ፍ/ቤቱም ፍ/ቤቱ ተገዶ የመያዝ ህጋዊይነትን ለማጣራት የሚቀርብ አቤቱታን አይቶ ለመወሰን የስረ ነገር ዳኝነት ስልጣን አለው ወይስ የለውም? የሚል ጭብጥ ይዞ ጉዳዩን አግባብነት ካለው የህግ ድንጋጌ ጋር በማገናኘብ መዝገቡን መርምሯል። የፌዴራል ጠቅላይ ፍ/ቤት ስበር ስሟ ችሎት በጉዳዩ ላይ ውሳኔ ሰጥቶበታል የተባለውን በተመለከተ የተረጋገጠ ማስረጃ እንደሚያስረዳው አመልካች የአሁን ተጠሪ ተጠሪ ሽመልስ ሙሉጌታ መኳከል ባለ ክርክር ጉዳዩ ተገዶ በመያዝ ምክንያት የተረበ አቤቱታ ስለመሆኑ የተገለፀለት የፌዴራል መጀመሪያ ደረጃ ፍ/ቤት ጉዳዩን በመቀበል ተጠሪ በዋስትና እንዲለቀቁ እንዲሁም በይግባኝ የተረበለት የክፍተኛው ፍ/ቤት ጉዳዩ ለወንጀል ችሎት ሊቀርብ ይገባል በሚል የወሰነበትን አግባብ ለማጣራት በሚል ጉዳዩን ያስቀርባል ከማለት በቀር የሰጠው ውሳኔ የለም።

ስለሆነም በፌዴራል ጠቅላይ ፍ/ቤት ሰበር ሰሜ ችሎት የተሰጠ አስገዳጂ የህግ ትርጉም የሌለ በመሆኑ በዚህ ረገድ የተረጠጠ ክርክር ፍ/ቤቱ አልተቀበለም።

የፌዴራል ፍ/ቤቶች አዋጅ ቁ.1234/2013 አንቀጽ 5 የፌዴራል ፍ/ቤቶችን የጠል የፍታብሔር የዳኝነት ስልጣን የሚያስተምጥ ሲሆን በዚህ አንቀጽ ንዑስ አንቀጽ ኘ ላይ ተገዶ የመያዝ ህጋዊይነትን ለማጣራት የሚቀርብ አቤቱታን አስተምጦት ይገኛል። ይኸው አዋጅ በአንቀጽ 11 የፌዴራል ከፍተኛ ፍ/ቤት የመጀመሪያ ደረጃ የፍታብሔር የዳኝነት ስልጣን ሲያስተም በዚህ አንቀጽ ንዑስ አንቀጽ 2 (ሀ) ላይ በዚህ አዋጅ አንቀጽ 5 ንዑስ አንቀጽ 1(ሀ) እስከ ንዑስ አንቀጽ 1(ሠ) ላይ በተጠቀሱ የፍታብሔር ጉዳዮች ላይ የፌዴራል ከፍተኛ ፍ/ቤት የመጀመሪያ ደረጃ የዳኝነት ስልጣን እንደሚኖረው ይደነግጋል። አዋጁ በአንቀጽ 5 ንዑስ አንቀጽ 1(ሀ) እስከ ንዑስ አንቀጽ 1(ሠ) ላይ የተጠቀሱ የፍታብሔር ጉዳዮችን የማየት የዳኝነት ስልጣን ለፌዴራል ከፍተኛ ፍ/ቤት በግልፅ የሰጠው ሲሆን በዚህ አዋጅ በአንቀጽ 5 ንዑስ አንቀጽ 1(ኘ) የተቀመጠውን ተገዶ የመያዝ ህጋዊይነት ለማጣራት የሚቀርብ አቤቱታን በሚመለከት ለፌዴራል ከፍተኛ ፍ/ቤት በግልፅ አልሰጠውም። ህግ አጠቃላይ ይህን ጉዳይ የፌዴራል ከፍተኛ ፍ/ቤት እንዲያየው ቢፈልግ ኖሮ በአንቀጽ 11 ንዑስ አንቀጽ 2 (ሀ) በዚህ አዋጅ አንቀጽ 5 ንዑስ አንቀጽ 1(ሀ) እስከ ንዑስ አንቀጽ 1(ሠ) ላይ በተጠቀሱ የፍታብሔር ጉዳዮች ላይ የፌዴራል ከፍተኛ ፍ/ቤት የመጀመሪያ ደረጃ የዳኝነት ስልጣን ይኖረዋል በማለት እንዳስተመጠው ባካተተው ነበር።

ይኸው አዋጅ በአንቀጽ 14 የዚህ አዋጁ አንቀጽ 11 ድንጋጌ እንደተጠበቀ ሆኖ የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት በዚህ አዋጁ አንቀጽ 3 እና 5 መሰረት በሚቀርቡ የፌዴራል የፍትህብሔር ጉዳዮች ላይ የመጀመሪያ ደረጃ የፍትህብሔር የዳኝነት ስልጣን እንዳለው ይደነግጋል። ከዚህም ድንጋጌ በአዋጁ በአንቀጽ 11 በፌዴራል ከፍተኛ ፍ/ቤት እንዲያዩ ተለይቶ ከተሰጡት (በዚህ አዋጅ አንቀጽ 5 ንዑስ አንቀጽ 1(ሀ) እስከ ንዑስ አንቀጽ 1(ሠ) ላይ ከተጠቀሱ) የፌዴራል የፍትህብሔር ጉዳዮች ውጪ ያሉ እና በአዋጁ አንቀጽ 5 የተዘረዘሩትን የፍትህብሔር ጉዳዮች የማየት የመጀመሪያ ደረጃ የፍትህብሔር የዳኝነት ስልጣን ያለው የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት እንደሆነ ለመረዳት ይቻላል ። ስለሆነም አዋጁ በአንቀጽ 11 ንዑስ አንቀጽ 2 (ሀ) በዚህ አዋጅ አንቀጽ 5 ንዑስ አንቀጽ 1(ሀ) እስከ ንዑስ አንቀጽ 1(ሠ) ላይ በተጠቀሱ የፍታብሔር ጉዳዮች ላይ የፌዴራል ከፍተኛ ፍ/ቤት የመጀመሪያ ደረጃ የፍትህብሔር የዳኝነት ስልጣን አለው በሚል በግልፅ ለይቶ ማስቀመጡ እና ተገዶ የመያዝ ህጋዊይነት ለማጣራት የሚቀርብ ጉዳይ አለማካተቱ እንዲሁም በአዋጁ በአንቀጽ 14 የዚህ አዋጁ አንቀጽ 11 ድንጋጌ እንደተጠበቀ ሆኖ

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የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት በዚህ አዋጁ አንቀጽ 3 እና 5 መሰረት በሚቀርቡ የፌዴራል የፍታብሒር ጉዳዮች ላይ የመጀመሪያ ደረጃ የፍትህብሒር የዳኝነት ስልጣን እንዳለው መቀመጡ ይህን ጉዳይ ለማየት የመጀመሪያ ደረጃ የፍትህብሒር የዳኝነት ስልጣን የተሰጠው የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት እንጂ የፌዴራል ከፍተኛ ፍ/ቤት አስመሆኑን ያስረዳሉ።

በመሆኑም ፍ/ቤቱ ተገዶ የመያዝ ሀጋዊይነትን ለማጣራት የሚቀርብ አቤቱታን አይቶ ለመወሰን የስረ ነገር የዳኝነት ስልጣን አለው በማለት ፍ/ቤቱ ብይን ሰጥቷል።

ተጠሪ ፡ የጊዜ ተጠር መዝገቡ ተዘግቷል ተጠርጣሪ የተጠረጠሩት በሰው መግደል ወንጀል መሆኑን እና ቋሚ አድራሻ የሌላቸው መሆኑን ፍ/ቤቱ ከግምት ውስጥ ያስገባልን ብለዋል።

ተጠሪጣሪ ፡ አዲስ አበባ ጀሞ ነዉ የምኖረዉ ቤተሰብ አለኝ የሁለት ልጆችም አባት ነኝ የተን ስራ በመስራት ነዉ የምንተዳደረዉ ብለዋል።

ዉሳኔ

ተጠርጣሪ በአመልካች አማካኝነት በቀን 22 / 10 / 2014 ዓ.ም በተፃፈ አቤቱታ ከህግ አግባብ ዉጭ ተጠሪ አስሯቸዉ የሚገኝ መሆኑን ገልፀዉ አካሌ ነፃ ይወጣልኝ ሲሉ አመልክተዋል። ተጠሪ ተጠርጣሪን ይዘዉ ቀርበዉ የማይፈቱበትን ምክንያት እንዲያስረዱ በታዘዙት መሰረት በቁጥር አ/ፖ/ወም/01/39065/14 በቀን 23 / 10 / 2014 ዓ.ም በተፃፈ ምላሽ ፍ/ቤቱ በግድያ የተጠረጠረን ተጠርጣሪ አካል ነፃ ማወጣት ጉዳይ ለማየት ስልጣን የሰውም የፌዴራል ጠቅላይ ፍ/ቤት ሰበር ሰሚ ችሎት በመዝገብ ቁጥር 228912 በቀን 10 /10/ 2014 ዓ.ም ዉሳኔ ሰጥቶበታል ስለዚህ ፍ/ቤቱ መዝገቡን ዘግቶ ያሰናበተን ብለዋል።

በችሎትም የጊዜ ተጠር መዝገቡ ተዘግቷል ተጠርጣሪ የተጠረጠሩት በሰው መግደል ወንጀል መሆኑን እና ቋሚ አድራሻ የሌላቸው መሆኑን ፍ/ቤቱ ከግምት ውስጥ ያስገባልን ብለዋል።

ተጠርጣሪ ቤተሰብ አለኝ የሁለት ልጆችም አባት ነኝ የተን ስራ በመስራት ነዉ የምንተዳደረዉ ብለዋል።

ፍ/ቤቱም መዝገቡን መርምሯል።

እንደመረመረውም ተጠርጣሪ በወንጀል ተጠርጠረው ተይዘው የጊዜ ተጠሮ መዝገብ ተከፍቶባቸው በእስር ሆነው ፖሊስ ምርመራውን ሲያከናውኑ ቆይቶ የጊዜ ተጠሮ መዝገቡን የያዘው ፍ/ቤት የፖሊስን የተጨማሪ ምርመራ ጊዜ ጥያቄ ባለመቀበል መዝገቡን የዘጋው መሆኑን ፍ/ቤቱ ከግራ ቀኝ ክርክር መረዳት ችሏል።

እንደ በወንጀል ተጠርጥሮ የተያዘ ሰው በእስር ሆኖ ፖሊስ ምርመራውን ሲያከናውን የሚችለው በወ/መ/ስ/ ስ/ሀ/ቁ. 59(2) መሰረት ፍ/ቤት ሲፈትድ ብቻ ነው ።

ወደ ያዝነው ጉዳይ ስንመለስ ተጠርጣሪ ፍ/ቤት የፖሊስን የተጨማሪ መምርመራ ጊዜ ጥያቄ ጧድቅ በማድረግ የጊዜ ተጠሮ መዝገቡን ዘግቶት እያል በእስር ላይ ሆነው ይገኛሉ።

ይህም ከፍ/ቤት ወላኔ/ትዕዛዝ ውጭ የተደረገ እስር በመሆኑ በፍ/ብ/ስ/ስ/ሀ/ቁ.177 መሰረት ህገ-ወጥ እስር ነው ።

በመሆኑም ተጠርጣሪ የተያዙት በሰው መግደል ወንጀል ተጠርጥረው መሆኑ እና የኢኮኖሚ አቅማቸው ከግምት ውስጥ ገብቶ በብር 6,000(ስድስት ሺህ) ዋስትና ክእለት እንዲለቀቁ በፍ/ብ/ስ/ስ/ሀ/ቁ.179(2)እና(3) መሰረት ተወስኗል።

ትዕዛዝ

ተጠርጣሪ ብር 6,000 (ስድስት ሺህ) ሲያስይዙ ወይም ለዚህ የሚበቃ የሰው ዋስ ሲያስይዙ ክእለት እንዲፈቱ ታዟል።

ይግባኝ መብት ነው።

መዝገቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የዳኛ ፊርማ አለበት

4

የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት

አራዳ ምድብ 2ኛ ልዩ ልዩ ፍታብሂር ችሎት

የ/ኮ/መ/ቁ : 208840

ቀን: 30/10/2014ዓ.ም

ዳኛ : ማራቱ ወቤ

አመልካች :- አልማዝ ማሞ / ቀረቡ

ተጠርጣሪ :- ሂፕክ ጀጅ / ቀረቡ

ተጠሪ :- የአዲስ አበባ ፖሊስ ኮሚሽን / ዋና ሳጂን ደንቀው
ቀረቡ

መዝገቡ ተመርምሮ ተከታዩ ወሳኔ ተሰጥቷል

ወሳኔ

ተጠርጣሪ በአመልካች አማካኝነት በቀን 29/10/2014 ዓ.ም በተፃፈ አቤቱታ ከህግ አግባብ ውጭ ተጠሪ አስሯቸው የሚገኝ መሆኑን ገልፀው አካሉ ነፃ ይጠጣልኝ ሲሉ አመልክተዋል፡፡ተጠሪ ተጠርጣሪን ይዘው ቀርበው የማይፈቱበትን ምክንያት እንዲያስረዱ በታዘዙት መስረት በቁጥር አፖ/መ/04/39566/14 በቀን 30/10/14ዓ.ም በተፃፈ ምላሽ ተጠርጣሪ በዘረፉ ወንጀል ተጠርጥረው የጊዜ ተጠሮ መዝገብ ተከፍቶ የነበረ ሲሆን ፍ/ቤቱም በተጠርጣሪ ላይ የጊዜ ተጠሮ ከማቋረጥ በቀር ግልፅ ትዕዛዝ ያልሰጠ በመሆኑ እና የተጠረጠሩትም በዘረፉ ወንጀል በመሆኑ በእስር ላይ ይገኛሉ ብለዋል፡፡

ፍ/ቤቱም መዝገቡን መርምሯል፡፡

እንደመረመረውም ተጠርጣሪ በወንጀል ተጠርጠረው ተይዘው የጊዜ ተጠሮ መዝገብ ተከፍቶባቸው በእስር ሆነው ፖሊስ ምርመራውን ሲያከናውን ቆይቶ የጊዜ ተጠሮ መዝገቡን የያዘው ፍ/ቤት የፖሊስን የተጨማሪ የምርመራ ጊዜ ጥያቄ ባለመቀበል መዝገቡን የዘጋው መሆኑን ፍ/ቤቱ ከግራ ተኝ ክርክር መረዳት ችሏል፡፡

አንድ በወንጀል ተጠርጥሮ የተያዘ ሰው በእስር ሆኖ ፖሊስ ምርመራውን ሲያከናውን የሚችለው በመ/መ/ከ/ ከ/ህ/ቁ. 59(2) መሰረት ፍ/ቤት ሊፈቅድ ብቻ ነው ፡፡ ወደ ተያዘው ጉዳይ ስንመለስ



ተጠርጣሪ ፍ/ቤት የፖሊስን የተጨማሪ ምርመራ ጊዜ ጥያቄ ወድቶ በማድረግ የጊዜ ተጠርፎ መገዝበት ዘግቶት እያል በእስር ላይ ሆኖ ይገኛል።

ስለሆነም ተጠርጣሪ ታስረው ያሉት ክፍ/ቤት ወላኔ/ትዕዛዝ ወጣ በመሆኑ እስራቱ በፍ/ብ/ስ/ሀ/ቱ.177 መሰረት ህገ-ወጥ ነው።

በመሆኑም ተጠርጣሪ የተያዙት በዘረፋ ወንጀል ተጠርጥረው መሆኑ እና የኢኮኖሚ አቅማቸው ከግምት ውስጥ ጉብፍ በብር 7,000 (ሰባት ሺህ) ምስትና ክእለት እንዲሰጥ በፍ/ብ/ስ/ሀ/ቱ.179(2)እና(3) መሰረት ተወስኗል።

ትዕዛዝ

ተጠርጣሪ ብር 7,000 (ሰባት ሺህ) ሲያስይዙ ወይም ለዚህ የሚበቃ የሰጠ ሞስ ሲያስይዙ ክእለት እንዲሰጥ ታዟል።

ይግባኝ መብት ነው።

መገዝቡ ተዘግቷል ወደ መዝገብ ቤት ይመለስ።

የማይነበብ የጻፉ ፈርማ አለበት

2



የመ/ቁጥር 301519
ቀን- 11 / 11 / 2015 ዓ.ም

የፌዴራል ከፍተኛ ፍርድ ቤት ልዩታምድብ ፍትሐብሄር
2ኛ መስረታዊ መብቶችና ነጻነቶች ችሎት

- ዳኞች: 1. ሰብለ ክንፈ
2. መሓሪ ገ/መድህን
3. ሉምባሜ በየነ

አመልካች፡ ወ/ሮ ሩታ መሀሪ

ተጠሪ፡ የሸገር ከተማ አስተዳደር ሰበቃ ክ/ከተማ ፖሊስ መምሪያ

መዝገቡ ተከፍቶ የቀረበው አመልካች በ3/11/2015ዓም የተጻፈ አካልን ነጻ የማውጣት አቤቱታ በማቅረባቸው ሲሆን አቤቱታው ተመርምሮ ተከታዩ ብይን ተሰጠ።

ብይን

አመልካች በ3 /11 /2015ዓም በተጻፈ በቃለ መሀላ በተደገፈ አቤቱታ ተጠሪ አመልካችን በ29/ 10/ 2015ዓም ከመኪናቸው በማስወረድ በፖሊስ ጣቢያው አስርዋቸው ይገኛል። ተጠሪ አመልካችን ያስምንም ሀጋዊ ምክንያት ለረዥም ጊዜ ፍርድ ቤት ሳያቀርብ መያዝ መብት የሌለው በመሆኑ ፍ/ቤቱ ይህንን አረጋግጦ የአመልካችን የአካል ነጻነት እንዲከበር ውሳኔ ይሰጥልን በማለት አመልክተዋል። ለማስረጃነትም ምስክሮችን ቆጥረዋል።

ፍ/ቤቱም የአመልካችን አካልን ነጻ የማውጣት ወይም ተገዶ የመያዝ ሀጋዊነት ማረጋገጥ አቤቱታ ተመልክቶ ውሳኔ የመስጠት የስረ ነገር ስልጣን የፌዴራል ከፍተኛ ፍ/ቤት ነው ወይ የሚለውን ከህጉ ጋር በማገናዘብ መርምሯል። በፌዴራል ፍርድ ቤቶች አዋጅ 1234/13 አንቀጽ 5(1ኛ) ከር ነብልን ነጻ የማውጣት ወይም ተገዶ የመያዝ ሀጋዊነትን ለማረጋገጥ የሚቀርቡ

1 |



የመ/ቁጥር 301519

ቀን- 1 / 11 / 2015 ዓ.ም

ተደናገገ አያላ የመመሰን የፍትሃዊነት የስራ ነገር ስልጣን የፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት መሆኑን ይያያዛል።

ከህግ አግባብ ውጪ ያለመታሰር መብት በህገ መንግስቱ ምዕራፍ ሶስት ውስጥ ህገ መንግስታዊ ጥበቃ ከተደረገላቸው መሰረታዊ መብቶች ውስጥ አንዱ ስለመሆኑ የህገ መንግስቱ አንቀጽ 17 ያስተምራል። በአዋጅ 1234/13 አንቀጥ 11(3) በህገ መንግስቱ ምዕራፍ ሶስት ስር የተመለከተውን መሰረታዊ መብቶች እና ነጻነቶችን እስመልክቶ የሚቀርቡ ክርክሮችን የማየት የዳኝነት ስልጣን የተሰጠው የፌዴራል ከፍተኛ ፍርድ ቤት በመሆኑ ተገዶ የመያዝ ህጋዊነትን ለማረጋገጥ የሚቀርቡ ክስ መቅረብ ያለባቸው ለፌዴራል ከፍተኛ ፍርድ ቤት ነው ሊባል ቢችልም የአዋጁ አንቀጽ 5(17) ለይቶ ይህን መሰል ክርክር የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት ስልጣን ነው ሲል አያስተምረውም ነበር። የፌዴራል ጠቅላይ ፍርድ ቤት ለበር ሰሚ ችሎትም ይዚህ አይነት ክርክሮችን አይቶ የመዳኘት የመጀመሪያ ደረጃ የስራ ነገር ስልጣን የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት መሆኑን በሰበር መዝገብ ቁጥር 230167፣230168 ና 230169 ላይ ተገልጿል።

በመሆኑም በአመልካች የተረበውን አካልን ነጻ የማውጣት ክስ አይቶ የመዳኘት የስራ ነገር ስልጣን በአዋጅ 1234/13 አንቀጽ 5(17) መሰረት የዚህ የፌዴራል የከፍተኛው ፍርድ ቤት በመሆኑ በፍ/ቤት/ህግ ቁጥር 9 እና 231(1ሰ) ክርክሩን የማየት ስልጣን የለውም ስንል ብይን ሰጥተዋል።

ትዕዛዝ

እቤቱታው በብይን ውድቅ የሆነ በመሆኑ አመልካች ለዳኝነቱ የክፍሉት በደንብ መሰረት የሚተሳሰው ተቀንሶ ተራፊው ይመለስላቸዋል።

ይግባኝ መሰሉት ነው። መዝገቡ በብይን የተዘጋ በመሆኑ ለመዝገብ ቤት ይመለስ።

2 |



መ/ቁ 242609

ቀን 28/03/2016 ዓ.ም

የአራዳ ምድብ 3ኛ ጊዜ ቀጠሮ ችሎት

ዳኛ አንሳው ታየ

የቀዳሚ ምርመራ ክስ አቅራቢ፡- ጠቅላይ ዐቃቤህግ

ተጠርጣሪ፡- ሲሳይ ጥላዬ አሰፋ

ይህ መዝገብ ሊቀርብ የቻለው የፌዴራል ጠቅላይ ዐ.ህግ በቁጥር
ጠ/ዐ/አ-2 675/16 በቀን 27/03/16 ዓ.ም በተጻፈ የቀዳሚ ምርመራ ክስ
ሲሆን ፍረድ ቤቱም ተከታዩን ትዕዛዝ ሰጥቷል፡፡

ት ዕ ዛ ዝ

- ለዐቃቤ ህግ መስከሮቹ መጥሪያ ይጻፍ ቀጠሮ 04/04/2016 ዓ.ም፡፡
- ለተጠርጣሪ ሲሳይ ጥላዬ አሰፋ ላይ ጠቅላይ ዐቃቤህግ ያቀረበው
የቀዳሚ ምርመራ ክስ ኮፒ ሆኖ በአዲስ አበባ ፖሊስ ኮሚሽን የወንጀል
ምርመራ ቢሮ በኩል ይድረስ፡፡
- ለፌዴራል የመጀመሪያ ደረጃ ፍረድ ቤት አራዳ ምድብ ፊደስትራር
የቀዳሚ ምርመራ መዝገብ ምስክር ለመስማት በተቀጠረበት ቀን
04/04/2016 ዓ.ም ከቀኑ 8:00 ሰዓት ተከላካይ ጠበቃ እንዲመደብልን
ጠቅላይ ዐቃቤህግ ያቀረበው የቀዳሚ ምርመራ ክስ ኮፒ ሆኖ
እንዲደርሳቸው ታዘዟል፡፡

የማይነበብ የዳኛ ፌርማ አለበት፡፡



በፌዴራል የመጀመሪያ ደረጃ ፍ/ቤት የአራዳ ምድብ ችሎት

መ/ቁ 242817

ቀን 02/04/2016 ዓ.ም

የአራዳ ምድብ 3ኛ ጊዜ ቀጠሮ ችሎት

ዳኛ እንደው ታየ

የቀዳሚ ምርመራ ክስ አቅራቢ፡- ጠቅላይ ዐቃቤህግ

ተጠርጣሪ፡- አዩኤል ታገል ከበደ

ይህ መዝገብ ሊቀርብ የቻለው የፌዴራል ጠቅላይ ዐ.ህግ በቁጥር
ጠ/ዐ/አ-2/648/16 በቀን 02/04/16 ዓ.ም በተጻፈ የቀዳሚ ምርመራ ክስ
ሲሆን ፍረድ ቤቱም ተከታዩን ትዕዛዝ ሰጥቷል፡፡

ት ዕ ዛ ዝ

- ለዐቃቤ ህግ መስከሮች መጥሪያ ደጃፍ ቀጠሮ 011/04/2016 ዓ.ም፡፡
- ለተጠርጣሪ አዩኤል ታገል ከበደ ላይ ጠቅላይ ዐቃቤህግ ያቀረበው
የቀዳሚ ምርመራ ክስ ኮፒ ሆኖ በአዲስ አበባ ፖሊስ ኮሚሽን የወንጀል
ምርመራ ቤር በኩል ይድረስ፡፡
- ለፌዴራል የመጀመሪያ ደረጃ ፍረድ ቤት አራዳ ምድብ ሪጀስትራር
የቀዳሚ ምርመራ መዝገብ ምስክር ለመስማት በተቀጠረበት ቀን
11/04/2016 ዓ.ም ከቀኑ 8:00 ሰዓት ተከላካይ ጠበቃ እንዲመደብልን
ጠቅላይ ዐቃቤህግ ያቀረበው የቀዳሚ ምርመራ ክስ ኮፒ ሆኖ
እንዲደርሳቸው ታገዟል፡፡

የማይነበብ የዳኛ ፊርማ አለበት፡፡

ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT



ቁጥር.....
No..... ቀን ፩፻..... ዓ.ም
አዲስ አበባ/Addis Ababa

የክ/መ/ቁ 238825

ቀን 6/3/2016

የፌዴ/ደ/ፍ/ቤት አራዳ ምድብ 1ኛ ጊዜ ተጠር ችሎት

ዳኛ: ቢኒያም መከብብ

ቀዳሚ ምርመራ፡ ጠያቂ፡ አቃቤ ህግ - በላይ ሀገስ ተረቡ

ተጠርጣሪ፡ ሰፋው ሽርፍ ተረቡ

ትዕዛዝ

- የፍ/ቤቱ ተከላካይ ጠበቃ ያለምንም ምክንያት ለተጠርጣሪ እንዲቆምላቸው በድጋሚ በጥብት ታዟል ይዛዩ።
- ተጠርጣሪው በጠበቃ የመከላከል ሀገ መንግስታዊ መብት ያላቸው በመሆኑ ተጠርጣሪው በተከላካይ ጠበቃ ተወካዩ እንዲቀርቡና የአቃህግ ቀዳሚ ምርመራ ምስክርነት ለመስጠት ተለዋጭ ተጠር ለ11/3/2016 8:30 ላይ

የዳኛ ፊርማ አለበት

በሰከ 7/3/16

P

ስልክ Tel. 011-273 3781 ፋክስ Fax. 011-276 75 78 ፓ.ሣ.ቁ. P.O.Box 8389 E-mail court@fflc.gov.et



የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
ፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT



ቁጥር.....
No. ቀን ይጻፉ..... ዓ.ም
አዲስ አበባ/Addis Ababa

የኮ/መ/ቁ 242162

ቀን 18/3/2016

የፌ/መ/ደ/ፍ/ቤት አራዳ ምድብ 15 ጊዜ ቀጠሮ ችሎት

ዳኛ፡ ቢኒየም መከብብ

ቀዳሚ ምርመራ ጠያቂ፡- አክ/ፓሎሊሽን

ቀጠርጣሪዎች፡- ክንዴ ንብረት ያኒት

ትዕዛዝ

- ፓሊስ የአቀቤ ህግን ቀዳሚ ምርመራ ምስክሮች ቤተጠሮ ቀን እንዲያቀርብ ታዟል።
- የፍ/ቤቱ ተከላካይ ጠበቃ ለቀጠርጣሪ እንዲቀምጥ ታዟል።
- የአቀቤ ህግን ቀዳሚ ምርመራ ምስክሮች ለመስማት ቀጠሮ A25 /3/ 2016 8:30 ላይ

የዳኛ ፈርማ አለበት

አ/ሰ 18/3/16

ቆ

ስልክ Tel. 011-273 3781 ፋክስ Fax. 011-276 75 78 ፓ.ሣ.ቁ. P.O.Box 8189 E-mail court@ffic.gov.et