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Addis Ababa University

College of Law and Governance Studies

School of Law

## **Real Time Dispatch and Presumption of Innocence under Criminal Division of Federal Courts in Addis Ababa**

A Thesis Submitted to School of Law of Addis Ababa University in Partial Fulfillment of the Requirements for the Master of Laws in Constitutional and Public Law.

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## **Acronyms**

<b>ACHPR</b>	African Charter on Human and People's Right
<b>ART</b>	Article
<b>BPR</b>	Business Process Re-engineering
<b>FDRE</b>	Federal Democratic Republic of Ethiopia
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>RTD</b>	Real Time Dispatch
<b>UDHR</b>	Universal Declaration of Human Rights

## **Abstract**

*Real Time Dispatch is a system to expeditious the criminal justice proceedings. Its aim is to make the process of criminal proceedings speedy and to render a decision within a short period of time by ensuring the protection of the accused person's right. The procedural safeguards accorded to the accused person in Ethiopia are the right to fair trial. The concept of fair trial incorporates the principle of the right to the presumption of innocence, right to understand the nature and cause of the charge, right to adequate time and facilities to prepare a defense, right to equality, right to public hearing etc. Ensuring protection of the right to presumption of innocence is the cornerstone of other procedural safeguards and for just decision. This study examines the practical implementation of Real Time Dispatch vis-a-vis presumption of innocence under criminal division of Federal Courts normally residing in Addis Ababa. The study has identified the potentials and limitations of Real Time Dispatch system implementation under criminal division of Federal Courts in Addis Ababa and in particular, its impacts upon the right to presumption of innocence. Finally, the researcher has made some recommendations that could rectify the existing problem in the criminal justice administration under criminal division of Federal Courts in Addis Ababa.*

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# CHAPTER ONE

## Introduction

### 1.1. Background of the Study

The right to a speedy trial is a constitutional right in Ethiopia. The Federal Democratic Republic of Ethiopia Constitution ("FDRE Constitution") provides for a long detail list of rights of both arrested and accused persons. Its provisions and their elements have some relevance to a speedy trial right. Among others, the FDRE Constitution enumerates the rights of arrested persons namely the right to be informed promptly of the reasons for their arrest and any charge against them; be brought before court within 48 hours of their arrest; petition the court to order their physical release where the arresting police officer fails to bring them before a court within the prescribed time and to provide reasons for the arrest; and be released on bail.<sup>1</sup> The FDRE Constitution also enumerates about the accused person's rights to a public trial by an ordinary court of law within a reasonable time.<sup>2</sup> Nevertheless, the criminal justice system in Ethiopia has generally been characterized by delays in dispensation, a lack of institutional capacity both in law enforcement and the judiciary, and poor co-ordination among justice sectors.

Disposition of criminal cases were so delayed that rights granted by the Constitution could not be implemented. Some of the most central problems are outdated and inefficient methods and procedures of the system in delivering justice.<sup>3</sup> In an effort to address the issue, the Federal government criminal justice administration initiated to introduce Real Time Dispatch ("RTD") system in order, among others; to improve the effective delivery of justice by the judiciary and to put an efficient system of justice.<sup>4</sup> The RTD system has been put in place in the Federal justice sectors, allowing judgment and sentencing to be undertaken within hours or a day, in petty cases where there is a clear identification of the crime and the culprit. The RTD system includes activities of the court, prosecution, police and prison administration at the Federal level.<sup>5</sup>

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<sup>1</sup> Constitution of The Federal Democratic Republic of Ethiopia Proclamation No.1/1995 ("FDRE Const."), Art 19(1), (3), (4) and (6).

<sup>2</sup> *Id.*, Art 20(1).

<sup>3</sup> The Federal Government Criminal Justice Administration Business Process Re-engineering ("BPR Document"), (2010, Unpublished, Federal Attorney General), at Preamble.

<sup>4</sup> Interview with Mikale Teklu, The Former Director of Investigation and Decision Making Process in Ministry of Justice (Federal Attorney General), on 25 December 2017.

<sup>5</sup> Federal Government Criminal Justice Administration Investigation, Litigation and Decision Making Process Team Charter ("Team Charter"),(2010, Unpublished ,Federal Attorney General), at 3-12.

In all RTD cases, investigation, prosecution and decision making process is required to be done in a short period of time, mostly decision making ranging from 4 hours to 18 days.<sup>6</sup> Before introducing the RTD system court's decision making takes an average of 3 years and 7 month.<sup>7</sup> Since RTD system is launched, it has registered some encouraging results both in co-ordination among justice sectors and in justice delivery. The yearly clearance rate of criminal cases has been maintained at above 75 percent in Federal Courts.<sup>8</sup> In the expeditious decision making the achievement of RTD is just too good. Since criminal cases are processed at public expense, any instrument that can shorten the time required to process a criminal case also saves public spending and judicial time. Though the effort to shorten the time to process criminal cases by any standard is commendable, even it needs further studies to gauge whether the system has actually benefited the accused. It is because making short of the criminal proceedings may not necessarily benefit the defendants on the ground. To put in differently, too speedy trial may not pave the way for full observation and enforcement of the accused person's rights. Persons accused of crime are endowed with the right to due process protection in the criminal proceedings. This right is the right to be treated fairly, efficiently and effectively in the course of administering criminal justice.<sup>9</sup> One of the mechanisms developed to protect these rights are also the right to presumption of innocence.<sup>10</sup>

The principle of presumption of innocence balances the right of the victim and the accused for a fair trial by shifting the burden of proof from the accused to the prosecution (public prosecutor) who has to prove beyond reasonable doubt on the fact that the crime was committed by the accused. But presumption of innocence is not respected in RTD criminal division of Federal Courts in Addis Ababa. Thus, one may be tempted to raise the issue of a rushed justice. As the saying goes, "justice rushed is justice crushed". As a result, RTD system has managed to reduce time required to process criminal cases at the cost of this right. But it should be noted that both the accused and the public have interest in the implementation of the right to a speedy trial and that their interests are not conflicting. However, one may get difficulty as to whether or not the reforms implementing are consonant with the laws currently in force as well.

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<sup>6</sup> BPR Document, *Supra* note 3, at 30-31.

<sup>7</sup> *Id.*, at 27.

<sup>8</sup> —,(2010), " Federal Supreme Court's Annual Report", 1 Federal Supreme Court Chilot Mag. No.2 ,at 11.

<sup>9</sup> J. Manns, (2005), Liberty Takings: a Framework for Compensating Pretrial Detainees, (Unpublished, Harvard Law School, John M. Olin Center for Law, Economics and Business), at 5.

<sup>10</sup> M. Naughton, (2011),"How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Convictions," 2 Irish J. of Legal Studies No.1, at 41.

This study is, therefore, designed to investigate whether the implementation of the RTD system adversely affected the right to presumption of innocence of the accused persons under the criminal divisions of Federal Courts normally residing in Addis Ababa. Federal criminal justice administration envisaged the RTD system of any sort and then, to explore and examine the values of the RTD system. In addition to these, this research aspires to assess the extent to which the RTD system under criminal division of Federal Courts in Addis Ababa serves for the common good.

## **1.2. Statement of the Problem**

The accused person's right to presumption of innocence is recognized under Art 20(3) of the FDRE Constitution. Ensuring the effective realization of the accused person's right to presumption of innocence is a fundamental success. It can be realized during all stages of the criminal proceedings. Presumption of innocence guarantees that the accused has the benefit of doubt, which has to be declared in the final decision by fact finder. The fact finder must ignore all pre trial evidence of guilt and determine the guilt or innocence evaluating only the evidence presented at the trial.<sup>11</sup> Presumption of innocence implies that people who are accused of a criminal act must be treated in accordance with this principle. In spite of the existence of most modern criminal justice system in the world which uphold for the proper implementation of the right to be presumed innocent until proven guilty according the law states are not perfect and they cannot be free from defects.<sup>12</sup> Hence, Ethiopia, criminal division of Federal Courts in Addis Ababa also not free from such defect. The principle though, in practice, is challenging for the court of law to apply in its strict sense of the term especially when the case proceeds in the RTD system. The main justification for the RTD system under criminal division of Federal Courts in Addis Ababa is that providing expeditious decision by forgotten the common proverb which is that "justice rushed is justice crushed".

As legal practitioner, the writer came to recognize that the accused has the right to presumption of innocence during the criminal proceedings.<sup>13</sup> However, the RTD system under criminal division of Federal Courts in Addis Ababa has unique character with the comparison to the normal proceedings. Under RTD criminal division of Federal Courts in Addis Ababa charges are notified to the accused person at he/she presence at the court of trial and can't access before

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<sup>11</sup> F.D. Jong and L.V. Lent,(2016),"The Presumption of Innocence as a Counterfactual Principle," 12 Utrecht L. Rev., at 37.

<sup>12</sup> L. Weathered, (2011), "Wrongful Convictions in Australia," Cincinnati, Ohio Innocence Project, at 1.

<sup>13</sup> FDRE Const., Art 20(3).

his/her presence to the court like the usual criminal trial proceedings. Moreover, the accused have no any information when and where he/she may bring before a court of law for trial. There is no trial schedule and means of communication only the public prosecutor and investigator police will forthwith decide whether to bring the case to the RTD criminal divisions or not. Since the case is brought to the RTD criminal divisions the court immediately starts to hear the prosecutor's witness and other evidences after reading out, explain and asked to plea regarding the offence charged. At this time even if the suspected/committed crime is bail-able accused persons are under the custody of police and he/she remains there until the final decision of the court. All these shows that the existence of issues of adequate time in the RTD system under criminal division of Federal Courts in Addis Ababa to understand the nature and cause of the offence charged in order to litigate properly that might lead the court to convict the accused person without proofing beyond a reasonable doubt, which in turn violates the right to presumption of innocence.

Persons accused of crime before the court were supposed to be judged fairly in accordance with the principles of law and justice.<sup>14</sup> Presumption of innocence constitutes one of the fundamental guarantees of fair trial. Regarding the FDRE Constitution the principle that governs criminal proceedings despite its being expressed in a very ambiguous terms. The right to a fair trial is protected clearly under UDHR Art 10 and ICCPR Art 14(1). The right to fair trial is a composite of a number of individual rights which encompass the entire criminal process. The right to presumption of innocence is one of these rights. This right is synonymous with the prosecutor's burden to prove an individual guilty beyond a reasonable doubt.<sup>15</sup> Which means that "innocent until proven guilty" signified that courts convict only when there was enough proof that the crime was committed by the defendant through respecting and enforcing the Constitutional rights of the accused person which is the right to presumption of innocence. When there are convictions without respecting and enforcing the Constitutional rights of the accused, the justice system will be failed to achieve its purpose of ensuring human rights and prevailing rule of law. So that it requires solution to protect the accused person's right to presumption of innocence under RTD criminal division of Federal Courts in Addis Ababa.

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<sup>14</sup> Cambodian Center for Human Rights,(2012), Fair Trial Rights and Trial Monitoring Handbook, (East West Management Institute), at 7.

<sup>15</sup> S. Baradaran,(2011), "Restoring the Presumption of Innocence", 72 Ohio State L. J., No.4, at 738.

### **1.3. Objective of the Study**

The overall objective of this study is to examine the existence of trial and conviction without respecting and enforcing the right to presumption of innocence under criminal division of Federal Courts in Addis Ababa due to the implementation of the RTD.

The specific objectives of this research, in line with the overall objective of this study, are:-

- ✚ To assess factors contributing for the occurrence of conviction without presuming innocent and proofing beyond reasonable doubt and its impact upon the criminal justice administration.
- ✚ To assess the legal framework of RTD system in Ethiopia.
- ✚ To make out the right to presumption of innocence of the accused beyond expeditious decision making through the implementation of RTD system under the criminal division of Federal Courts in Addis Ababa.
- ✚ To examine the value of presumption of innocence in criminal conviction.

### **1.4. Research Questions**

Based on the specific objectives of this research, this study aims at examining the following questions:-

- ✚ What is the concept of RTD in general and in Ethiopia, as well as its historical development?
- ✚ Is there any legal framework of RTD in Ethiopia?
- ✚ What is the nexus between the presumption of innocence and RTD in Ethiopia?
- ✚ What is the practice and impacts of RTD implementation under the criminal division of Federal Courts in Addis Ababa? Does it prejudice the legitimacy of the criminal justice system?
- ✚ What legal protections are available to the accused person under RTD?
- ✚ What kind of measures should be considered to avert or curtail the incident of conviction without respecting and enforcing the right to presumption of innocence under RTD criminal division of Federal Courts in Addis Ababa?

These and other related questions are to be raised and answered based on the analysis of the texts of the FDRE Constitution and other relevant legislations.

### **1.5. Significance of the Study**

The research study attempts to determine whether the implementation of RTD system under criminal division of Federal Courts in Addis Ababa affects the constitutional right of the accused

to the presumption of innocence or not. Hence, the finding of this work contributes to the criminal administration of justice under Federal Courts in Addis Ababa. The paper will come up with the issue of conviction without respecting and enforcing the right to presumption of innocence and proofing beyond reasonable doubt in the RTD system as well as some possible solutions for reducing the occurrence of conviction without respecting and enforcing the accused person's right to the presumption of innocence. I hope the principle of presumption of innocence gets proper attention at all levels of criminal division of Federal Courts in Addis Ababa especially in the RTD divisions.

It will also be able to depict the impacts of RTD upon the accused person's right to presumption of innocence and helps for lawyers, law students, judges, prosecutors, police, human right experts and others to understand the problem. In addition to this it will also contribute in helping Federal Courts for giving a solution for the problem in order to achieve the vision of the justice sector by ensuring human rights and prevailing rule of law.

#### **1.6. Scope and Limitation of the Study**

The scope of the study is confined to RTD and presumption of innocence under criminal division of Federal Courts in Addis Ababa. Conviction without respecting and enforcing the right to presumption of innocence and proofing beyond reasonable doubt will be part of the paper. It will include the discussion of laws of Ethiopia, the practice within the criminal division of Federal Courts in Addis Ababa, regional and international laws with regard to the concept of presumption of innocence.

Regarding the constraint the writer has been challenged by the absence of literatures related with the concept of RTD. Of course, financial constraint was also obvious limitation as well.

#### **1.7. Research Methodology and Sources of Information**

To answer the above stated research questions, qualitative and quantitative research methodology is used. To this end three main tasks are thoroughly performed. The first one is exploring international, regional as well as national laws to identify the recognition and objective aspect of the right to presumption of innocence.

The second task is discussing the practice of the right to presumption of innocence under RTD criminal division of Federal Courts in Addis Ababa. To this end data is collected from criminal division of Federal Courts and Federal Attorney General normally residing in Addis Ababa through interview with their officials and disseminated written questioners to judges as well as prosecutors. Moreover interview is made with public prosecutors currently working in Addis

Ababa Federal Attorney General. Data collected by observation of trials is also implemented. Cases decided by RTD criminal division of Federal Courts in Addis Ababa which are considered to have potential to show the ongoing practice are also analyzed.

The third task is comparing the first and second tasks and determining the conformity or otherwise of the recognition and implementation of the right to presumption of innocence under RTD criminal division of Federal Courts in Addis Ababa, along with their possible effects up on the right to fair trial of the accused and criminal justice system.

To this end, a number of people with whom an interview and written questioner was conducted, a number of RTD criminal cases was explored and analyzed as well as trial proceedings were observed are as the following.

No	Activity	Planed size		
		Judge	Prosecutor	Total
1	Interview	1	7	8
2	Written questioner	52	78	130
3	Decided Cases	-	-	5
4	Observation of trials	-	-	10

### **1.8. Ethical Considerations**

During data collection which requires permission of individuals or authority, the researcher takes due care to get the permission. Interviewees are informed of the purpose of the study for genuine feedback and securing their consent. The researcher also took care of the interviewees' response and consent to disclose their identity. Further, in the interpretation of data, the researcher provides an accurate account of the information without any bias.

### **1.9. Organization of the Study**

The paper contains a total of five chapters the first chapter is an introductory part. The second one deals mainly with the concept of RTD and its purpose and to the justice system. Chapter three contains the legal framework of RTD, presumption of innocence and their nexus. In chapter four, a thorough study is made on RTD and its implementation under criminal division of Federal Courts in Addis Ababa. Chapter five deals on the conclusion and recommendation by providing a holistic overview, it draws together the questions that have been raised and the conclusion that have been reached. This part indicates whether RTD protects the constitutional right of the accused and wind up by providing some recommendations.

## CHAPTER TWO

### The Concept of Real Time Dispatch (RTD) and Its Historical Development

#### 2.1. The Historical Development of Real Time Dispatch (RTD)

In common law jurisdictions, writers trace the genesis of the right to a speedy trial back to the 12<sup>th</sup> century:<sup>16</sup>

*"The right to a speedy trial is an ancient history. During the reign of King Henry II (1154-1189), the England crown promulgated the Assize of Clarendon, a legal code comprised of twenty-two articles, one of which promised speedy justice to all litigants."*<sup>17</sup>

In 1215, the Magna Charta prohibited the emperor from delaying justice to any person in the realm. As a result of this development, the English Parliament passed the Habeas Corpus Act in 1679. The act required that individuals accused of treason or a felony be released on bail if not indicted at the next term, unless the emperor's witness could not be produced, and further provided for total discharge for those not indicted and tried by the next term.<sup>18</sup> That's why the RTD system called as next day justice in United Kingdom.

In the United States of America, the first colonial right set forth in the Virginia Declaration of Rights of 1776, which was also the first colonial bill of rights.<sup>19</sup> The founding declaration intended the speedy trial; clause to serve two purposes:-

- (1) First, to prevent arrested and accused persons from languishing in jail for an indefinite time before trial; and
- (2) Secondly, to ensure an accused person's right to a fair trial.

This is because the longer the commencement of trial is postponed, it is more likely that witnesses will disappear, memories will fade, and evidence will be lost or destroyed.<sup>20</sup> Thus, the right to a speedy trial is made a constitutional right under the sixth amendment, which states that, "in all criminal cases the accused shall enjoy the right to... a speedy trial."<sup>21</sup>

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<sup>16</sup> D.J. Shestokas, Sixth Amendment's Speedy Trial right: Ancient, Worthy and Elusive, at <[www.shestokas.com/sixth-amendments](http://www.shestokas.com/sixth-amendments)> accessed on December 13, 2017.

<sup>17</sup> *Ibid.*

<sup>18</sup> F.D.L.Jr., (1965), "The Lagging Right to a Seedy Trial," 51 Virginia L. Rev.No.8, at 1057.

<sup>19</sup> Shestokas, *Supra* note 16.

<sup>20</sup> —, Speedy Trial Encyclopedia, at <[www.lawensaclopidia.com](http://www.lawensaclopidia.com)>, at 1594 -1595, accessed on December 4, 2017.

<sup>21</sup> Shestokas, *Supra* note 16.

Despite this constitutional guarantee, the United States Supreme Court could not come up with a definite time limit within which a delay can be considered permissible or impermissible. What could be determined before 1974 was to make use of “balancing test” in which the length of the delay is just one factor to be considered when evaluating the merits of a speedy trial claim. Since the different mechanisms designed by the United States Supreme Court’s analysis of the standards could not bring about the desired effects of reducing the backlogs of court cases, and the lengthy pretrial delays, congress enacted the speedy trial Act in 1974.

This Act introduced definite time limits within which a criminal case may be dismissed with or without prejudice. In addition to this, it provided nine specific exclusions to the time limits. The time limits and the sanctions have generated a number of issues with which the United States courts are still grappling with and there appears to be a wide divergence in interpretation. This is so because in the words of Brooks, *"the right to a speedy trial is amorphous, slippery, and generally difficult to vindicate, as a result of which courts have not applied consistent legal standards in such cases."*<sup>22</sup> Notwithstanding the absence of a consensus, the practice evinces that some standards have developed to tackle the issue.

In Ethiopia, the Criminal Procedure Code has recognized a suspect’s right to a speedy trial. The right to a speedy trial can be affected by many factors that may be imputed to the police, the prosecution, the court, or even the victim. In Ethiopia, every police investigation... shall be completed without unnecessary delay.<sup>23</sup> Regarding the issue at hand, in the strict sense, there is no legal definite limit within which a police investigation should be finalized. The term *"unnecessary delay"* is general and amenable to misuse. It also provides that the public prosecutor shall frame a charge within fifteen days of receipt of the police report.<sup>24</sup> This is one of the significant areas where the law has prescribed a specific time limit to expedite the criminal process or put differently, to ensure the right to a speedy trial. The lengths of trial and adjournments are also broadly regulated under the Ethiopian Criminal Procedure Code.<sup>25</sup> The FDRE Constitution provisions use vague and general terms with respect to a speedy trial. Art 20(1) of the Constitution employed the words *"reasonable time."* The only definite time provided

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<sup>22</sup> B.P.Brooks, (1994) "A New Speedy Trial Standard for Barker v. Wingo: Reviving a constitutional Remedy in an age of statute," *61 Uni. Chicago L. Rev. No.2*, at 587.

<sup>23</sup> Criminal Procedure Code of Ethiopia, Proclamation No.185/1961 ("Crim.P.C."), Art 37(1).

<sup>24</sup> *Id.*, Art 109(1).

<sup>25</sup> *Id.*, Art 94, 131 and others regulated the lengths of trial and adjournments.

under the FDRE constitution is that the time limit to be brought before court, which is 48 hours.<sup>26</sup>

Despite of all this efforts, the Ethiopian criminal justice system is burdened with an increasing number of cases and that justice is delayed due to this, as a result of which, suspected and accused persons are languishing in detention centers. Because of this, the Federal government has recently launched a serious campaign to reform the Federal criminal justice administration. This is evidenced by the issuance of Business Process Re-engineering document ("BPR Document"). The FDRE government has also introduced Criminal Justice Policy and draft Criminal Procedure Code. All these documents provide some device for the effective realization of the right of a speedy trial in Ethiopia. They are also apparently aims at ameliorating the situation of those who may suffer as a result of delayed justice. In other words, such reforms are aimed at doing away with these shortcomings and establishing a system that truly makes the exercise of the right to speedy trial a reality than a hollow right. The time limit provided for the completion of criminal investigation, framing and filing charges and making decision within a set time limit are important points. However, it remains to be seen whether this system will really achieve its intended purpose without prejudicing the rights of the accused persons in practice. Having said this, we shall examine the concept of RTD both in general and in Ethiopia hereinafter.

## **2.2. The Concept of Real Time Dispatch: General Notion**

### **2.2.1. Definition and Meaning of Real Time Dispatch**

It is hard to define and to find out the meaning of RTD. However, the meaning of each and every words of the phrase in issue can be found out as such and thereby it seems possible to know the definition of RTD. Therefore, let us see the meanings of "Real Time" and "Dispatch" one after another as follows.

"Real Time" is defined as action taken at a given time at which information about the occurrence of something is made available to the concerned body.

This means that if something occurred at a given place, the concerned body will take immediate action at the time the information about the occurrence is available.

The word "Dispatch" may be defined as prompt completion and sending off something that does not strictly follow the custom of the business especially, to avoid delays resulting from a

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<sup>26</sup> FDRE Const., Art 19(3).

crowded. This also mean that in order to avoid overloading; execute a given issue without using the normal process, which is utilized in every daily activity, and handover to the concerned body. Based on the collective sense of Real Time Dispatch, RTD may be defined as the system of handing over something, such as justice, without any unnecessary delay.

The FDRE National Human Rights Action Plan 2013-2015 has defined RTD as "*a speedy crime investigation, prosecution and passing decision technique of simple and medium criminal offences in which all relevant evidence is available.*"<sup>27</sup> From this meaning, we can comprehend that RTD is a technique or system for the effective realization of a right of both arrested and accused persons to speedy trial. And normally, it meant to be used for simple and medium offences, provided that where all evidences are available or where plea of not guilty cases and where the defendant is ready to defend his case immediately.

Further, the Federal government criminal justice administration has recognized the concept of RTD in 2010 business process re-engineering document ("BPR Document"). The BPR document begins by showing the current state of performance of the agencies of the criminal justice system in general. As regards time required to process a criminal case starting from investigation up to final decision, the average time found by the BPR study was four years and one month.<sup>28</sup> It promises to change this feature and deliver an expeditious as well as fair justice that meets the expectation of citizens.<sup>29</sup>

Under this document, the Federal government criminal justice administration has set definite time limit for the RTD system required to complete the litigation and decision making of Serious and complicated offences within 8 hours to 18 days, Medium offences within 4 hours to 11 days and Simple offences within 4 hours to 7 days.<sup>30</sup> Serious offences are those which are punishable above fifteen years, medium offences are offences those which are punishable from three to fifteen years and Simple offences are offences those which are punishable not more than three years.<sup>31</sup> The Federal government criminal justice administration BPR aims at improving conviction rate from 33% to reach up to 95%.<sup>32</sup> The BPR document provides that flagrant

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<sup>27</sup> The Federal Democratic Republic of Ethiopia National Human Rights Action Plan,(2013-2015), at 43.

<sup>28</sup> BPR Document, *Supra* note 3, at 21.

<sup>29</sup> *Id.*, at Section 1.

<sup>30</sup> *Id.*, at 29-30.

<sup>31</sup> The Federal Government Criminal Justice Administration Business Process Re-engineering Implementation Manual ("BPR Manual"),(2010, Unpublished, Federal Attorney General), at 7.

<sup>32</sup> BPR Document, *Supra* note 3, at 23.

offences and offences that is not involve intricate evidences can be processed through the RTD system. For its implementation the investigating police officer must handover the criminal investigation file to the public prosecutor as soon as it he has completed the investigation within the required time limit. Next, the public prosecutor must decide whether to prosecute the suspect under any provision of applicable criminal legislation within the given period of time. If it has decided to prosecute, it must be submit the criminal charge to the competent court of law along with its supporting evidences within the prescribed period of time. Finally, the court should deliver its decision according to the governing law without any delay over the criminal case before it. From this we can understand that RTD is mean about expeditious criminal decision making.

The Federal government criminal justice administration team charter ("Team charter")has also defined RTD as an expeditious crime investigation, prosecution and passing decision system of flagrant offences and the like, which is that not only flagrant offences but also simple and medium offences in which all relevant evidence is available are govern by the system.<sup>33</sup>

Therefore, according these all definitions, RTD is all about the system of expeditious and fair criminal justice starting from crime investigation, prosecution and to trial stages. To put it in a different way, RTD deals with the timing of fair criminal justice delivery, namely the shortening of the length of time criminal proceedings taking so far beginning from the time justice set in motion to final judgment. RTD system meant to be used for flagrant, simple, and medium criminal cases and where the prosecution evidences as well as the accused person altogether are brought before an authorized court of law at the time where the criminal charge brought to be filed.

### **2.2.2. Purpose of Real Time Dispatch System**

Very lengthy criminal proceedings and delay are considered as the core obstacles to the effective, less costly and efficient criminal justice system. Criminal cases disposition may be delayed during criminal investigation, prosecution, and litigation stages. This might lead to the accumulation of backlogs. As a consequence, it might pave the way for the gradual erosion of the public confidence over the working criminal justice administration. Offenders, victims,

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<sup>33</sup> Team Charter, *Supra* note 5, at 8-9.

witnesses, and others will heavily suffer from this congestion.<sup>34</sup> Some of the obvious negative impacts of delay of criminal justice are:-

- ✚ Offenders are waiting a long time for a court decision and this affects the time of pre trial detention.
- ✚ Witnesses' time is often wasted as they are called for hearings that never take place for the reason that the case might not be ready. Given the length of proceedings, many witnesses do not attend courts and refuse to give evidences and this affects the conviction rate. and
- ✚ Victims lose their confidence in the criminal justice system.

In so far as, ways of getting rid of current backlog or avoiding them in the future as well as changes in the criminal cases management are to the heart of police officers, prosecutors and judges' concern.<sup>35</sup> Therefore, the main purpose of using RTD system is to make the criminal proceedings short and fair as far as possible. It enables the criminal process to be disposed within a reasonable short period of time. In turn, management of the criminal cases would be effective. This system do not meant to serve all criminal cases, but rather meant to serves for flagrant offences, simple and medium criminal cases, provided that all relevant evidences are available before a court of law. This is at the hearts of the concept of RTD system.

Further, RTD system enables the criminal justice sectors to co-ordinate each other without infringing their independence. The prosecutor secures up to date, continuous information on the progress of the case because of the fact that police usually inform the prosecutor as the case is being investigated and the prosecutor can take a Real-Time decision. Similarly, the court also has delivering criminal justice as soon as possible. Therefore, RTD system has the following benefits:<sup>36</sup>

- ✚ The prosecutor does not have to waste time in re-reading the file as he/she was constantly informed in the course of the police custody and all details are fresh in his mind.
- ✚ The witnesses are at hand for statements and do not have to be summoned repeatedly; their memory is also fresh as that of the prosecutor and the police.
- ✚ The exhibit evidences saved by the police do not have to stay for long time in the hands of the police rather they return to the real owner of the properties immediately or with in

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<sup>34</sup> A. Eser, The Acceleration of Criminal Proceedings and the Rights of the Accused: Comparative Observations as to the Reform of Criminal Procedure in Europe, at <[heinonline.org>HOL>Page](http://heinonline.org/HOL/Page)> accessed on May 17,2017.

<sup>35</sup> *Ibid.*

<sup>36</sup> Interview with Mulatu Gabisa, Prosecutor and Advisor of Federal Attorney General, on 9 March, 2017.

short period of time. Returning exhibits without unnecessary delay has positive role in promoting the criminal justice administration. Otherwise, people might not be willing to report crimes and to testify about crimes.

- ✚ Police station custodies are not overburdened by detainees; they avoid the headache of protecting detainees.
- ✚ Courts see almost entertaining fresh cases. Victims are gladness by the expeditious decision making of the court.
- ✚ The public feeling better about the criminal justice administration due to the swift resolution of criminal cases.

So that the application of RTD system facilitates speedy disposition of criminal cases, saving time and expense of all stakeholders of the justice sector, including the victims and witnesses. The system may also contribute for the effectiveness and accessibility of the legal system.<sup>37</sup> According to the justice sectors five years strategic plan of 2010/11-2014/15, the implementation of RTD system has enabled the reduction of the withdrawal of court cases.<sup>38</sup> Before the implementation of RTD system, many criminal cases were discontinued due to the absence or missing of witnesses and the accused persons. In addition to this, the RTD system might also decreases the possibility of false testimonies, prosecution misconducts, and increases the collaboration of the concerned justice organs, as well as it may arouse public motivations to testify before a court of law.<sup>39</sup> Also, the FDRE Criminal Justice Policy states that "*...to reduce the burden of workload in the justice organ, to submit fresh evidence without reducing their value of persuasion, to resolve problems relating to exhibits and to ensure the protection of the right of the victim and criminally suspected persons.*"<sup>40</sup>

From this, we can understand that the implication of RTD system is reducing workload of the police, public prosecutor and the court, as well as protecting constitutional rights of defendants; which are the right to presumption of innocence, right to understand the nature and cause of the charge, right to adequate time and facilities to prepare a defense, right to equality, right to public hearing etc., and it ensures the right of the victim to get justice timely by courts of law. This is

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<sup>37</sup> *Ibid.*

<sup>38</sup> Ministry of Justice and Region Justice Bureaus (Justice Sectors) Five Years (2010/11-2014/15) Strategic Plan,(2010,Unpublished, Federal Attorney General), at 27.

<sup>39</sup> *Ibid.*

<sup>40</sup> Federal Democratic Republic of Ethiopia Criminal Justice Policy, (2015), at 44.

because the shorter the disposition of trial, it is more likely that witnesses will appear, memories will not fade, and evidence will not be lost or destroyed.

### **2.3. Real Time Dispatch System in some Foreign Countries: Drawing a Lesson**

The delay in disposal of criminal cases is one of the most serious problems of administration of criminal justice. Countries, like France and United Kingdom, have employed RTD system chiefly for the purpose of speedy disposition of certain criminal cases. For the objective of drawing some lessons and understanding the concept of RTD system, we will examine the experience of France and United Kingdom with regard to RTD as follows.

#### **2.3.1. France**

France started RTD system towards the end of the year 1994.<sup>41</sup> In France RTD system well developed and progressively extended to be applied to all criminal cases and implemented upon all courts and prosecution offices.<sup>42</sup> Although the criminal proceedings legal process exist the reason of employing the system of speedy trial for criminal proceedings the explanation and reasons that are stated within different documents are presented as follows.

Since criminal proceedings has been taken longer time and the society requires the service of fair and fast justice without delay and such interest increases from time to time the country was obliged to establish RTD system to the criminal proceedings. Beside this, because of having back log with justice organs, which are the police, office of public prosecutor and courts, rendering satisfactory service for citizens become difficult and this makes an arrested person to be under custody for long period of time, due to long criminal proceedings the witness also lost their interest to appear before court for this reason they were hesitating to participate in the criminal proceeding stages. Individual defendants also losing trust on the justice organs by their taking long time justice delivery.<sup>43</sup>

In order to resolve these problems, which are describing in the above France designed a new system to expeditious the criminal proceeding which helps for back log minimization. The new

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<sup>41</sup>The Study of Federal Criminal Justice Administration, Implementation of Real Time Dispatch Technique to the Flagrant offence and the Like, (2016, Unpublished, Federal First Instance Court),at 6. And see also Mulugeta Abdeta, (2010), Raawwanaa Toofitaa Saffisa Adeemsa Falmii Yakka(RTD): Haala Qabatamaa Naannoo Oromiyaa, (Unpublished, Oromia Institute of Justice and Legal Research Expert Training), at 19.

<sup>42</sup> The Study of Federal Criminal Justice Administration, Implementation of Real Time Dispatch Technique to the Flagrant offence and the Like, (2016, Unpublished, Federal First Instance Court),at 6. And see also BPR Document, Supra note 3, at 9.

<sup>43</sup> J.A Hans,(2001), Settlement out of Court: a Comparative Study of European Criminal Justice Systems, (South African Law Commission), at 33-35.

system is not very easy to practice but it surely minimized the tedious slow process of crime investigation by the police, prosecution process by the office of public prosecutor and courts litigation process and it makes this process expeditious deliver of justice with in short period of time. In this new system the public prosecutor's investigation and prosecution which is carried out separately that depends upon the result of police investigated document which is brought the first level crime investigation makes with the police investigation process.<sup>44</sup>

From this, we can appreciate that in France three stages of criminal proceeding were in place before the implementation of RTD system is reduced to two stages with the application of RTD. In this new system of criminal proceeding, an issue that indicates committing red handed crime or if an individual is attempting to commit a crime the police should notify the information of the actual crime to the public prosecutor through using the existing system before starting an investigation. The public prosecutor also starting from the time his receiving information should make analysis if the act is actually a crime then continue investigation and arresting the defendant along with the evidences then submitting the case to the court and the court rendering decision on the same day. However due to different reasons if it is not possible to render decision on the same day the case should get decision within few days after.<sup>45</sup>

For effective realization of the system in question, France design criteria for the regulation of cases that can be process through RTD system. In France, a criminal case can pass through RTD system if and only if legally prescribed requirements are fulfilled. In the absence of the fulfillment of the criteria, any criminal case, including the red handed cases, cannot pass through this system. A criminal case in order to pass through this system, it must fulfill the following legally prescribed requirements. These are:<sup>46</sup>

- ✚ The crime must be red handed or both the defendant as well as the evidence presented at the spot.
- ✚ The case must not be controversial for rendering decision.
- ✚ The defendant must be willing to process his case using the Real Time Dispatch process.
- ✚ The crime should not be penalizing beyond 7 years.
- ✚ The defendant must be brought to the bench with his private lawyers or the lawyers that government assigns for him.

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<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

- ✚ The case must be brought before the court for trial within one to five days of accused person's detention. However, if it cannot be brought within five days the case would be taken to the normal proceedings.

### **2.3.2. United Kingdom (UK)**

In United Kingdom, the RTD system is known as "next day justice."<sup>47</sup> United Kingdom has adopted the "next day justice" system for the objective of timely disposition of criminal cases. Where the process is too lengthy, the society couldn't access the service of criminal justice within a short period of time. And that has prejudicial effect to the administration of criminal justice. Before the introduction of next day justice in United Kingdom, the criminal justice administration was too lengthy and costly.<sup>48</sup>

As a result, United Kingdom has forced to adopt "next day justice" system. The implementation of the "next day justice" system has showed significant progress upon the criminal justice administration of United Kingdom. Moreover, it enables the police and public prosecutor to conduct crime investigation together at the same place sharing their experience at the spot where the crime was committed. If the plaintiff is willing to process his case by way of this system, the case will be investigated and prosecuted at the spot and will immediately present to the court without wasting witnesses' time. This system avoids different formats that might not add any value to the investigation and prosecution of criminal proceedings. In United Kingdom the process is applicable to the crimes, which are punishable not more than one year imprisonment. However the system cannot implement up on homicide, rape, robbery and aggravated property crimes. Such crimes can only process in the way of ordinary criminal investigation, prosecution and trial proceedings.<sup>49</sup>

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<sup>47</sup>UK Government Web Archive, Delivering Simple, Speedy, Summary Justice, at <[Webarchive.nationalarchives.gov.uk](http://web.archive.nationalarchives.gov.uk)>http:> accessed on June 22, 2017.

<sup>48</sup>Hans, *Supra* note 43, at 30-32 and see also the Study of Federal Criminal Justice Administration, Implementation of Real Time Dispatch Technique to the Flagrant offence and the Like, (2016, Unpublished, Federal First Instance Court), at 6.

<sup>49</sup>Hans, *Supra* note 43, at 30-32.

## CHAPTER THREE

### The Legal Framework of Real Time Dispatch System and Presumption of Innocence in Ethiopia and their Nexus

#### 3.1. The Legal Framework of Real Time Dispatch System in Ethiopia

As noted above, the overall objective of RTD system is accelerating criminal justice proceedings as far as reasonably possible, while ensuring the protection of the rights of the accused. Timely disposition of criminal cases helps to avoid unnecessary delay in the investigation, prosecution and decision making stages and thereby it would improve the effectiveness of criminal justice administration. The notion of speedy trial has incorporated both under the FDRE Constitution and Criminal Procedure Code of Ethiopia. First, let us see the conception of speedy trial under the FDRE Constitution. The FDRE Constitution reads:

*"Arrested persons have the right to be brought before a court of law within 48 hours of their arrest."<sup>50</sup>*

It also stipulated that *"such time shall not include the time reasonably required for the journey from the place of arrest to the court."<sup>51</sup>*

*"---in determining the additional time necessary for investigation the court shall ensure that the responsible law enforcement authority carry out the investigation respecting the arrested person's right to speedy trial."<sup>52</sup>*

Furthermore, it provided that *"accused persons have also the right to public trial by an ordinary court of law within a reasonable time."<sup>53</sup>*

Then, we will look at provisions dealing with the conception of speedy trial under the Criminal Procedure Code. The Criminal Procedure code reads:

*"The public prosecutor shall within 15 days of the receipt of the police report or the records of a preliminary inquiry frame such charge as he thinks fit and file it in the court having jurisdiction."<sup>54</sup>*

It also stipulated that *"---No remand shall be granted for more than 14 days on each occasion."<sup>55</sup>*

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<sup>50</sup> FDRE Const. Art 19(3).

<sup>51</sup> Ibid.

<sup>52</sup> *Id.*, Art 19(4).

<sup>53</sup> *Id.*, Art 20(1).

<sup>54</sup> Crim.P.C., Art 109 (1).

<sup>55</sup> *Id.*, Art 59(3).

All the above mentioned provisions stressed about the concept of speedy trial. These provisions basically meant to protect arrested or accused persons from insecurities and uncertainties in criminal cases. For instance, Art 59(3) of the Criminal Procedure Code limits the maximum duration of a remand period, which is 14 consecutive days. However, the number of times which remand may be granted is not limited. This gap opens the door for violation and abuse of the suspect's right is not limited.

Since speedy trial is one of the constitutional rights of both arrested and accused persons, the investigating police officer shall complete and submit the criminal investigation without any delay. For that end, the law makes the police investigation to be done under the supervision of the court and prosecution department. Once investigation is completed, the investigating police officer should submit the investigation file to the public prosecutor for decision. Then, the public prosecutor shall decide within 15 days over the presented criminal investigation case. If the prosecution office filed in the court having jurisdiction, the court shall dispose it within a reasonable period in accordance with the criminal procedure code and in a manner that ensures the right to a speedy trial of an arrested or accused person. However, the term "Reasonable" that is employed under Art 20(1) of the FDRE Constitution is ambiguous and it needs an interpretation. 'Reasonable' means a standard for what is fair and appropriate under usual and ordinary circumstances that a rational and just person would have acted. Based on this ordinary meaning, 'reasonable time' may be understood to mean realistic period of time for the rendering of legal justice according to the circumstances of the case at hand. The right to be heard within reasonable time may also mean the right to get judgment or decision with no needless holdup. Therefore, the right of the accused person to speedy trial guaranteed under the FDRE Constitution as well as Criminal Procedure Code of Ethiopia.

Moreover, acceleration of criminal justice has universal values and it incorporated in all modern criminal justice system.<sup>56</sup> Speedy criminal justice has been endorsed in the International charters and covenants especially in the ICCPR, Which Ethiopia ratified on 11 June 1993<sup>57</sup> and African Charter on Human and People's Right (ACHPR), which Ethiopia ratified on June 15, 1998.<sup>58</sup>

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<sup>56</sup> Aderajew Teklu and Kedir Mohammed,(2009), Ethiopian Criminal Procedure Teaching Material, (Unpublished, Justice and Legal System Research Institution), at 58.

<sup>57</sup> UN General Assembly Technical Committee, International Covenant on Civil and Political rights (ICCPR)-UNTC, at <<https://treaties.un.org>> accessed on May 13, 2017.

<sup>58</sup> African Commission on Human and Peoples' Rights, The African Human Rights System: Its Laws, Practice and Institutions, at <<https://books.google.com>> accessed on May 13, 2017.

Art 9(3) of the ICCPR provides:

*"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time ---"*

Art 14 (3) c of the ICCPR also provides the right of the accused to be tried without undue delay. The ICCPR is not only providing the right to speedy trial but also creates an obligation on the states, which are ratifying the Covenant in order to ensure the enforcement of the rights guaranteed by the covenant. For instance Art 2(2) of the ICCPR creates an obligation upon the ratifying states to enact domestic legislation for giving effect to the rights guaranteed by the Covenant and Art 2(3) c also creates a further obligation upon such states to ensure the enforcement of rights by the competent authority.

Furthermore, the right to a speedy trial is recognized under the African Charter on Human and People's Rights ("ACHPR"). The ACHPR stipulated that *"every individual has the right to be tried within a reasonable time by an impartial court or tribunal."*<sup>59</sup> For this reason, the charter imposes an obligation to recognize the rights, which are guaranteed by the charter, and to adopt legislative measures upon the member states of the Organization of African Unity.<sup>60</sup>

From these diverse laws, we can realize that the delivery of speedy criminal justice is an obligation of the government at all levels since an arrested or accused person has the right to a speedy trial. In order to ensure the arrested or accused persons' right to a speedy trial, member states shall take any appropriate measure. Based on this responsibility, the Federal government of Ethiopia has introduced the RTD system in criminal justice administration. The RTD system will help for a speedy trial and rendering urgent criminal investigation, prosecution, and decision making. Thus, the RTD system has legal ground and is protected under the FDRE Constitution, Criminal Procedure Code of Ethiopia, ICCPR as well as ACHPR since they have entitled the arrested and accused persons the right to a speedy trial or the right to be tried within a reasonable time.

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<sup>59</sup> African Charter on Human and People's Rights ("ACHPR"), Art 7(1) d.

<sup>60</sup> *Id.*, Art 1.

## **3.2. Some Relevant Points to be considered with respect to Real Time Dispatch System**

### **3.2.1. Establishing Co-ordination with Stakeholders involved in the Criminal Process**

RTD system requires building a right and proper team spirit between police, public prosecutor and courts.<sup>61</sup> Because even if they serve complementary and often interdependent functions, the different components of the justice sector, which are the police, public prosecutor and courts may not operate independently. The existence of weak collaboration among the justice sector also leads to inefficiency of the justice system as a whole. Of course, performing RTD system requires clearly defining duties of police, public prosecutor and courts involved in the system. Even though the organizational arrangement might be flexible, each stakeholder who has part in the system should work in accordance with an accurate job description. The implementation of RTD system depends on the accountability of stakeholders for the most part. The challenge lies in moving from a mentality of isolation to a culture of co-operation.<sup>62</sup> Therefore, it is necessary to create awareness around the RTD system by:<sup>63</sup>

- ✚ Establishing regular relationship between police, public prosecutor, and judges by holding regular meetings where all stakeholders can get full information in the system.
- ✚ Clearly identify and communicate the nature and objectives of the system to stakeholders and employees who will have part in the system.
- ✚ Identify at all levels work force who will be affected by the RTD system and make them participant in outlining the steps needed for performing the system.
- ✚ Making employees clear about the way to put the system in practice by accurately identifying the actions necessary to implement the activities required.
- ✚ Put in place continuous communication and feedback in order to follow how well the system is progressing.

It is worth noting that the judiciary is independent from interference or influence of any organ and the independence of the judiciary should not be compromised in the pretext of co-operation regarding RTD cases. Thus, careful co-ordination scheme must be designed in order to protect the independence of the Judiciary.

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<sup>61</sup> The Study of Federal Criminal Justice Administration, Implementation of Real Time Dispatch Technique to the Flagrant offence and the Like,(2016, Unpublished, Federal First Instance Court), at 1-2.

<sup>62</sup> Interview with Meargu Assefa, Prosecutor and Head of Federal Attorney General Advisor's Office, on 9 June 2017.

<sup>63</sup> *Ibid.*

### 3.2.2. Selecting appropriate type of Offences<sup>64</sup>

As noted above, it is difficult to apply RTD system for all criminal cases irrespective of the complexity and nature of the case. The complicated and grave offences needs more period of time for investigation, prosecution and trial proceedings more than one might expect. That makes difficult the application of RTD system over such cases. If the RTD system used for complicated and grave offences, both the public and private interests will be at danger. As a result, it is adopted to be applied over simple, medium offences and other cases where there are uncontroversial and non-complex evidences. So it is necessary to make an accurate list of offences to be managed in the RTD system.

### 3.2.3. Protecting the Right to Fair Trial of the Accused Person

A person who is on trial for crime accused has some rights which are constitutionally recognized. One of these rights is the right to a fair trial by a competent, independent and impartial tribunal established by law. Fair trial also starts from respecting and enforcing the right to presumption of innocence of the accused person. The FDRE Constitution gives strong guaranty not only for the rights of the accused person to a fair trial but also for human rights as a whole. Human rights are protections to which all human beings are entitled because of their humanity and not because of their social status or individual merit.<sup>65</sup> From this we can say that human rights are belonging to an individual as a consequence of being human. The fact that human rights originate from the nature of human being it needs the effective legal protection in the national as well as international documents of law. Accordingly the FDRE Constitution incorporate human rights in a wide range manner under its chapter three part one. Moreover, the FDRE Constitution states that "*all international agreements ratified by Ethiopia also an integral part of the law of the land*"<sup>66</sup> Ethiopia also ratified the main international documents which deal on human rights.<sup>67</sup> So it is possible to say that all the international documents of human right can be part of the FDRE Constitution. The fundamental rights and freedoms which include those human rights specified in the FDRE Constitution should be translated in a way that can fit with the principles of the

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<sup>64</sup> Ibid and Mulatu, *Supra* note 36.

<sup>65</sup> FDRE Const., Art 10(1).

<sup>66</sup> *Id.*, Art 9(4).

<sup>67</sup> The FDRE Ministry of Justice and Norway government, (2005), International documents of Human Rights, (Ethio Tkur Abay), at Introduction.

Universal Declaration of Human Rights (UDHR), International Covenants on Human Rights and international instruments adopted by Ethiopia.<sup>68</sup>

Human rights, which are protected in the national and international laws, do not exist alone. If there are right holders, there must also someone who has duty bearer. The government has principal duty bearer of human rights obligation to respect and protect these rights. Pursuant to the FDRE Constitution the government of Ethiopia which is that Federal as well as State legislative, executive and judicial body has an obligation to respect and enforce human rights.<sup>69</sup> The right to fair trial also one of the fundamental guarantee of human rights and the rule of law, aimed at ensuring the proper administration of justice.<sup>70</sup> The right to fair trial is broad and incorporates many but some of those which is recognized by the FDRE Constitution is specified under its chapter three, part one, which is that human rights. The right to presumption of innocence is among the guarantees of fair trial. And it stipulates under the human right part of the FDRE Constitution. Therefore, the Federal judicial organ as one body of the Federal government has an obligation to respect, protect, and enforce the right to fair trial of the accused person by effectively implementing the right to presumption of innocence.

### **3.3. The Legal Framework of the Presumption of Innocence and Its Role in the Criminal Proceedings**

#### **3.3.1. Meaning of the Presumption of Innocence**

The right to presumption innocence is recognized as one of the principles of criminal justice proceedings under the FDRE Constitution, Universal Declaration of Human Rights, International Covenants on Human rights and international instruments adopted by Ethiopia as a standard of fair trial.<sup>71</sup> Presumption of innocence is a legal principle and procedure that it embodies two elements. Firstly prescribing that the state (prosecutor) must bear the burden of proof in a criminal trial and secondly requiring that the guilty of the individual as regards a particular crime be proven beyond reasonable doubt.<sup>72</sup> The term "presumption" should not be confused with the concepts of rebuttable or non rebuttable presumption. In general a presumption is a rule which permits a court to assume that a fact is true until a preponderance of evidence disproves the

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<sup>68</sup> FDRE Const., Art 13(2).

<sup>69</sup> *Id.*, Art 13(1).

<sup>70</sup> —, *The Right to Fair Trial*, at <<http://www.fairtrials.org>> accessed on July 10, 2017.

<sup>71</sup> FDRE Const., Art 20(3); UDHR, Art 11(1); ICCPR, Art 14(2) and ACHPR, Art 7(1) b.

<sup>72</sup> L.Campbell,(2013),"Criminal Labels, the European Convention on Human Rights and the Presumption of Innocence," *76 Modern L. Rev. No.4*, at 681-707.

presumption. A presumption is rebuttable if it can be refuted by factual evidence, on the contrary, it is conclusive or irrebuttable if the presumption does not provide for a way to be disproved.<sup>73</sup> Presumption in the context of the presumption of innocence, mean that the burden of proving the charge is on the prosecutor not on the accused.

Under FDRE constitution, accused persons have the right to be presumed innocent until proven guilty in a court of law.<sup>74</sup> The burden of proof is, thus, on the prosecution, which has to convince the court that the accused is guilty beyond a reasonable doubt. Primarily this principle balances the right of the victim and the society to get justice for the wrongdoing as well as the right of the accused for a fair trial. It shifts the burden of proof from the accused to the public prosecutor who has to prove beyond a reasonable doubt on the fact that the crime was committed by the accused. Before the prosecutor is able to do that, the accused is presumed innocent for all practical purposes. In principle, the accused does not have to prove anything before the evidence of the prosecutor. Thus, presumption of innocence meant to imposes the burden of proof upon the prosecution, and it guarantees that guilty cannot be presumed.

### **3.3.2. The Legal Framework of the Presumption of Innocence**

Presumption of innocence was originally expressed by the French cardinal and jurist Jean Lemoine in the phrase "*a person is presumed innocent until proven guilty, based on the legal inference that most people are not criminals.*"<sup>75</sup> This fundamental protection of human right is embodied under the international as well as domestic laws thus we see them as here in after.

#### **3.3.2.1. Presumption of Innocence under International Laws**

Presumption of innocence is legal right of the accused person in criminal proceedings. It is an internationally well recognized right. The UDHR states 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 defense"*<sup>76</sup>

One of the international legal instruments, which are the ICCPR, also gives recognition to the accused person the right to be presumed innocent until proven guilty beyond reasonable doubt. It stipulated that:

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<sup>73</sup> D.Kaiser,(1955),"Presumption of law and fact," 38 Marquette L. Rev. No 4., at 253-254.

<sup>74</sup> FDRE Const., Art 20(3).

<sup>75</sup> —, The Presumption of Innocence: Definition and Overview, at <<https://study.com/academy/lesson>> accessed on June 1, 2017.

<sup>76</sup> UDHR, Art 11(1).

*"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."<sup>77</sup>*

Both the UDHR and ICCPR give protection for the accused person to be presumed innocent until proven guilty. When the courts are carrying out their duties, they should not presume the guiltiness of the accused person before conviction. Instead, the court starts by assuming the accused is free of the offence charged and treated as the innocent one. This is closely linked to the requirement of impartiality of courts and fair trial proceedings in the finding of the truth.

The provision of UDHR incorporates two broad rights, which is that the right to presumption of innocence and the right to defense. This shows us that the accused has not only entitled to the right to a presumption of innocence, but also guaranteed right to challenge the criminal charge. In order to defend him/herself, the accused person may need adequate time and ensuring the principle of equality of arms. This can be ensured when the right to presumption of innocence of the accused person gets enforcement. Therefore, the ability of the accused person to present his case in his defense is fundamental and it needs to give attention for the right to a presumption of innocence of the accused, which is essential to the notion of fair trial.

Like the UDHR and ICCPR African regional human right instrument, which is that the ACHPR that intends to promote and protect fundamental human right and freedoms in Africa,<sup>78</sup> also declares the right to presumption of innocence by stating that:-

*"The right to be presumed innocent until proven guilty by a competent court or tribunal"<sup>79</sup>*

When we read this provision of ACHPR from the wordings that are stipulated under Art 7(1) the right to a presumption of innocence is given to every individual, who have a case to hear in tribunal proceedings. The court presumes the criminally charged person as innocent and the guilt of the accused can be established by the court as a result of due process of law.<sup>80</sup> Its aim is clear it is to protect the innocent from being wrongly conviction even at the expense of guilty offenders escaping conviction for their crimes. Of course, this is the duty of any criminal justice system. But surely its primary duty is to respect and protect internationally recognized

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<sup>77</sup> ICCPR, Art 14(2).

<sup>78</sup> ACHPR, Preamble.

<sup>79</sup> *Id.*, Art 7(1)b.

<sup>80</sup> *Id.*, Art 7(1).

fundamental human rights which are not only the right to presumption of innocence but also the right to fair trial in general.<sup>81</sup>

### **3.3.2.2. Presumption of Innocence under Ethiopia Legal Aspect**

The FDRE Constitution declares the accused person's right to presumed innocent until proven guilty according to law.<sup>82</sup> Pursuant to the FDRE Constitution this right is a fundamental human right. As the right of an accused person to presume innocent is fundamental human right it develops to ensure that no one may be arbitrarily convicted for an act that they may not have committed it.<sup>83</sup>

This right is not only fundamental human right but also constitutional rule of law that every accused, who charged with a criminal offence, is entitled; in doing so protecting innocents is its central aim.<sup>84</sup> As its main aim is protecting innocents this right gives protection to the accused person from being imposed by the immense power and adequate resource of the government.<sup>85</sup> Accordingly this fundamental right requires all judicial organs to respect and enforce it.<sup>86</sup> It implies that before the court renders a judgment of conviction up on the accused person, who is charged with an offence, the judge must be satisfied on each and every element of the offence beyond a reasonable doubt.<sup>87</sup> The proven the accused person's guilty beyond reasonable doubt is highly probable.<sup>88</sup> The legal instrument of presumption of innocence is created to favor the accused based on the legal inference that most people are not criminal. However, this referred not merely to the fact that the burden of proof rests on the prosecution in criminal cases, but also the protection which an accused should be given adequate time to understand the nature and cause of the charge, to prepare for a defense, to public hearing etc. It requires that the trier of fact, be it a judge, begin with the presumption that the accused is innocent.

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<sup>81</sup> *Id.*, Preamble.

<sup>82</sup> FDRE Const., Art 20(3).

<sup>83</sup> Cambodian, *Supra* note14, at 12.

<sup>84</sup> J.B Thayer, "The Presumption of Innocence in Criminal Cases," *Yale L. Journal*, at 196. And See also, Hanna Arayaselassie Zemichael, (2014), "The Standard of Proof in Criminal Proceedings: The Threshold to Prove Guilt Under Ethiopian Law," *8 Mizan L. Rev. No.1*, at 96.

<sup>85</sup> M. Naughton, (2011), "How the Presumption of Innocence Renders the Innocent Vulnerable to Wrongful Conviction," *2 Irish J. of legal studies No.1*, at 47.

<sup>86</sup> FDRE Const., Art 13(1).

<sup>87</sup> N.H. Holland and H.H. Chamberlin, (1973), "Statutory Criminal Presumptions: Proof Beyond a Reasonable Doubt?," *7 Valparaiso Uni. L. Rev. No.2*, at 149.

<sup>88</sup> Hanna Arayaselassie Zemichael, (2014), "The Standard of Proof in Criminal Proceedings: The Threshold to Prove Guilt Under Ethiopian Law," *8 Mizan L. Rev. No.1*, at 87.

The application and interpretation of the right to presumption of innocence must be consistent with the principles of international laws which are adopted by Ethiopia.<sup>89</sup> All international agreements that contain fundamental human rights ratified by Ethiopia are an integral part of the law of the land.<sup>90</sup> Ethiopia also adopted and ratified the UDHR, ICCPR, ACHPR, other international conventions and instruments, which creates an obligation on the state party to promote and protect human rights.

The right to presumption of innocence provides a cornerstone for the fairness of the trial in the substantive procedural sense.<sup>91</sup> And, thus, secures to get adequate time and to enforce the principle of equality of arms. Therefore, the presumption of innocence should be accorded a broad meaning as a symbol of proper attitude of the state towards the individual claiming that it contributes to alleviating the sense of rejection and alienation.<sup>92</sup> It guards against miscarriage of justice and it is an aspect of fair trial.<sup>93</sup> The right to presumption of innocence is the crucial one for the recognition and prevention of fundamental human rights, it is subject to fairness and fully recognized and protected under the FDRE Constitution.

### **3.3.3. The Role of the Presumption of Innocence in Criminal Proceedings**

The right to the presumption of innocence is the fundamental human right. It guarantees to which any one charged with a criminal offence is entitled. This right in fact, a foundation of a number of individual rights which encompass to protect the right of the accused person and to ensure proper administration of criminal justice, which is integral to the fair justice.<sup>94</sup> Courts/judges serve dual purpose in relation to the right of presumption innocence. According to this right, the accused person will not be presumed as guilty in the criminal proceedings and it also requires the court/judges to ensure the proof of evidence is beyond reasonable doubt that the accused did commit the crime; otherwise the court/judges might let the accused go free or found him innocent based on the evidence.<sup>95</sup>

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<sup>89</sup> FDRE Const., Art 13(2).

<sup>90</sup> *Id.*, Art 9(4).

<sup>91</sup> T.N. Llunga Wansenga,(2011),The Presumption of Innocence Before the International Criminal Courts, (Unpublished, LLM thesis oxford Brookes University), at10.

<sup>92</sup> Kelali Kiros,(2011), The Bail Justice in Ethiopia: The Challenges to its Administration,(Unpublished, LLM thesis Addis Ababa University), at 65.

<sup>93</sup> R.J. Victor Cole,(2010), Equality of Arms and Aspects of the Right to Fair Criminal Trial in Botswana, (Unpublished, Thesis presented for the Degree of Doctor of Law at Stellenbosch University), at 262.

<sup>94</sup> A. Gopaul, (2005),The Impact and Constitutionality of Delayed Trials on the Rights of a Suspect or Accused Person During Criminal Proceedings, (Unpublished, LLM thesis university of South Africa), at 96-97.

<sup>95</sup> G.N. Chihaiia, Short Essay on Presumption of Innocence. ECHR, at <[www.wseas.us](http://www.wseas.us)>,at 193, accessed on June 12, 2017.

The presumption of innocence continues all through the trial process, open or closed, RTD or usual proceeding, and in spite of prima facie evidence (on the first appearance but subject to further evidence). It is generally accepted that guilt must be proved which ever standard of proof provides the greatest protection for the right to a presumption of innocence.<sup>96</sup> The right guarantees that accused has the benefit of doubt by imposing the burden of proof on the prosecution.<sup>97</sup> This right is one of the backbones of the right to a fair trial for the accused person. It is linked to the requirement that the court to determine the case impartially and without bias of prejudging. When the right of the accused person to the presumption of innocence is not enforced the entire notion of the right to fair trial becomes meaningless and miscarriage of justice will be happen. For this end court/judges is a means that enables the fairness of the criminal trial proceedings, which includes that the observation of the right of the accused starting with the presumption of innocence and ensuring that the accused person gets equal opportunity in the entire criminal proceedings with the prosecution in presenting their case to the court. This indicates that the fundamental safeguarding and vital role of presumption of innocence to the individuals and rendering fair judgment to the society as a whole in the criminal justice proceedings.<sup>98</sup>

Therefore, the right to presumption of innocence guards against unfairness and miscarriage of justice. Its core purpose is that ensuring fair trial to the accused person as an individual to the society in general as no doubt that conviction of innocent person shakes trust of the society in the criminal justice system. So that is protecting and implementing the right of the accused to the presumption of innocence must be observed in all criminal proceedings; whether in the usual or RTD system of criminal proceeding.

The right to the presumption of innocence has also significant role at shifting the burden of proof on the prosecution. It is based on the right to the presumption of innocence of the accused person that the prosecution is required to prove beyond reasonable doubt before the defendant is obliged to produce rebuttal evidences in order to defend him. Since the accused is presumed innocent according to the law, in other words, the procedural law puts the burden of proof beyond reasonable doubt upon the prosecution in the first place.

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<sup>96</sup> General Comment No.13, (UN.Doc. CCPR/C/GC/13/21), at Paragraph 7.

<sup>97</sup> Worku Yaze Wodage,(2010), Presumption of innocence and the requirement of proof beyond Reasonable Doubt: Reflections on Meaning, Scope and their place under Ethiopian Law, in Wondwossen Demissie (ed.), Human Rights in Criminal Proceedings: Normative and Practical Aspects, III Ethiopian Human Rights L. Series, at 118.

<sup>98</sup> E. Smith, (1999-2012), "The presumption of Innocence," Scandinavian studies in law, at 495.

The central aim of the right to the presumption of innocence is that protecting against wrongful conviction these who are not committed the crime and creating fair justice.<sup>99</sup> It is because if the criminal justice system has no real distinction between the innocent and the criminals the conviction comes at random and it leads to miscarriage of justice. Even conviction of one innocent person is contrarily to the human sense of justice and thereby it undermines the criminal justice system; it might entirely make the criminal justice administration useless and justice might have no meaning.

In order to protect the innocents from wrongful conviction or miscarriage of justice the presumption needs *inter alia*, when implementing their duties, the court/judge should not to start with the preconceive idea that the accused has committed the offence charged.<sup>100</sup> The court's/judge's prohibition to show any conviction as to the guilty of the accused at the time of criminal proceedings is considered to be derived from the requirement of open mindedness in the administration of criminal justice. In that manner the right to the presumption of innocence involves the question of burden as well as standard of proof in criminal proceedings.<sup>101</sup> Burden and standard of proof means duty to present convincing evidence, which supports the law and fact of the offence that submits up on the accused person to a trial with a certain standard that is beyond reasonable doubt or the evidence ensures that a reasonable person couldn't doubt that the accused is guilty.<sup>102</sup>

Presumption of innocence and burden of proof in Ethiopia legal system is a constitutional fundamental human right. The FDRE Constitution stipulates an absolute qualified protection as to the presumption of innocence by providing "*During proceedings accused persons have the right to presumed innocent until proved guilty according to law...*"<sup>103</sup> This statement of the provision has no any express limitation on the right of the accused to a presumption of

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<sup>99</sup> F. Pamela, (2016), The Presumption of Innocence and its Role in the Criminal Process, Criminal Law Forum, at 133. See also, United Nations Human Rights Office of the High Commission,(2014),United Nations Counter-Terrorism Implementation Task force, Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism, at 20.

<sup>100</sup> L. Laudan, The Presumption of Innocence: Material or Probatory?, at <<http://ssrn.com/abstract=1152886>>, at 5, accessed on August 10,2017.

<sup>101</sup> New York Law School, Presumption-European Union Competition Law, at <[www.eucomplaw.com](http://www.eucomplaw.com)> accessed on August 10, 2017.

<sup>102</sup> Worku Yaze Wodage, (2014), "Burden of Proof, Presumptions and Standard of Proof in Criminal Cases," 8 Mizan L. Rev. No.1, at 256-257.

<sup>103</sup> FDRE Const., Art 20(3).

innocence.<sup>104</sup> So any restriction up on this right is not constitutionally tolerable. The right to presumption of innocence incorporates so many things. One of these are, presumption of innocence demands that the prosecution to prove each and every element of the offence.<sup>105</sup> It is arguably a universal rule of law and the burden of proof is on the prosecution.<sup>106</sup> Any doubt in the element of the offence or any defense which would prevent conviction should benefit/favor the accused person.<sup>107</sup> In determining whether the prosecution proved beyond reasonable doubt the charge that was brought against the accused, the court/judge must carefully consider all the evidence presented in light of the legal and factual elements of the offence charged. Even though the accused person introduces evidence, the burden of proof remains on the prosecution.<sup>108</sup>

In practice, however, there are some instances in which the burden of proof rests upon the accused person and the constitutionality of such circumstances is questionable. More importantly, the state has adequate resource and legally trained manpower which is essential for the investigation and prosecution of crimes. The accused, on the other hand, may not have the same equipment as that of the government. To balance these, equipping equality through enforcing the principle of the right to the presumption of innocence is among the necessary procedural requirements for the fair trial. So that requiring the accused person to prove his innocence puts him at a significantly disadvantage position and violates the principle of equality of arms as well as presumption of innocence. Furthermore a conviction could result despite the existence of a reasonable doubt as to the guilty of an accused person would be inconsistent with the fundamental human right, which is the right to the presumption of innocence. This also implies that how the nature of legal presumption lies at the heart of the right to presumption of innocence.

#### **3.3.4. Legal and Factual Guilt and Innocence**

Presumption of innocence is the legal principle that a person who is accused of a crime to be considered as innocent person in the criminal trial proceedings unless and until proven guilty

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<sup>104</sup> This stand also confirmed by Simeneh Kiros. See, Simeneh Kiros Assefa,(2012), "The Principle of the Presumption of Innocence and its Challenges in the Ethiopian Criminal Process", 6 Mizan L. Rev. No.2, at 274.

<sup>105</sup> *Ibid.*

<sup>106</sup> African Commission on Human and Peoples' Rights, "Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa," African Union DOC/OS (XXX) 247, at 16, See also J. Zhang,(2009), "Fair trial rights in ICCPR," 2 J. of Politics and L. No. 4, at 40 and General Comment, *Supra* note 96.

<sup>107</sup> Worku, *Supra* note 102.

<sup>108</sup> S.Z. Fisher,(1969), Ethiopian Criminal Procedure: A Source Book , (Addis Ababa Haile Sellassie I University) , at 311.

beyond a reasonable doubt. The term guilt or innocence has legal and factual perspectives.<sup>109</sup> Of course, the presumption entails the treatment of an accused person as legally rather than factually innocent. Legal guilt means that the prosecution has proven the committed acts of the crime by the accused person beyond a reasonable doubt after the process of the law in the court. On the opposite, an accused is legally innocent if the evidence of the prosecution doesn't prove his/her guiltiness beyond reasonable doubt.<sup>110</sup> From this we can understand that the judgment of legally guilt or innocence is decided not by the intention of individuals but by the judicial process. On the other hand, factual guilt means that the accused person committed the act of the crime even if he/she found innocence at the court by the reason of failing the prosecution's evidence. Conversely, the accused is factual innocence if he/she did not commit the crime even if he/she found guilty at the court.<sup>111</sup> This indicates that factual guilt or innocence is based on the act of individuals and the judgment is not rendered through the legal process of the court but by the individual's private knowing and intention.

For the criminal trial proceedings in general and the RTD system as a criminal trial proceedings, the existence of an interrelationship between fact and law is the main foundation in rendering fair and reliable decision by the court of law. Mostly, there is a relationship between fact and law in the criminal trial proceedings. But sometimes factually innocent accused persons are found legally guilty and vice-versa. In other words, the legal outcome does not always coincide with the factual event. This is true even the accused person admits the offence charged. According the opinion of the author of this paper admission of the charge itself doesn't insure that the legal guilt is based on factual guilt. It needs additional evidence, which supports the fact of the charge is beyond reasonable doubt, the admission of the accused person is truthful as well as based on his/her consent and with an awareness of the consequences otherwise the discrepancy between fact and legal outcome may stem from mistakes in decision making process.<sup>112</sup> Those, who are factually guilty but who would be acquitted at trial also certainly beneficiary and the factually innocent but who would be guilty at trial are subject to penalty. The outcome of both of these is mischarge of justice and gives a negative impact on the public trust and confidence in the criminal justice system in general.

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<sup>109</sup> J.L. Barkai, (1977), "Accuracy inquiries for all Felony and misdemeanor pleas Voluntary pleas but innocent defendants?," 126 Uni. Pennsylvania L. Rev. No.88, at 98-99.

<sup>110</sup> Lundgren and Johnson, PSC, Defending the guilty, at <<https://lundgrenjohson.com>> accessed on September 18, 2017.

<sup>111</sup> *Ibid.*

<sup>112</sup> Barkai, *Supra* note 109, at 99-100.

Therefore, to render the judge/court the guilt of an accused person the prosecution must gather and offer evidence, which proves that the accused is legally and factually guilty as charged beyond reasonable doubt. This is intended to minimize wrongful conviction and mischarge of justice.<sup>113</sup>

### **3.4. The Nexus between Presumption of Innocence and Real Time Dispatch System**

As noted above, RTD system has a great role in defining the scope of the right to the presumption of innocence. The interaction of RTD system with the presumption of innocence raises a number of complex and interlocking questions in the criminal proceedings. Presumption of innocence is a mainstay in the consideration of fairness. It is the foundation of all those rights, which are connected with a fair trial. Because when the accused person's right to the presumption of innocence is enforced in the entire criminal proceedings, all the fundamental human rights of the accused person has been proved and the justice also administered in accordance with the law.

The principle of presumption of innocence tries to strike a balance between the two competing rights, which are the right of the victim and the society at large for the wrongdoing and the right to fair trial of the accused person. In other words, the principle of presumption of innocence balances the right of the victim and the accused for a fair trial by shifting the burden of proof from the accused to the prosecution who has to prove beyond reasonable doubt on the fact as well as legal that the crime was committed by the accused.<sup>114</sup> The right to the presumption of innocence emanates from the requirement that no innocent person can be held accountable and it gives guarantee to the accused person a benefit of doubt, when the prosecution couldn't prove the elements of the offence beyond reasonable doubt the court to conclude up on the innocence of the accused.<sup>115</sup> This right is deliberately designed to protect individuals from conviction without striving to find out the truth. So that is the right to presumption of innocent has a nexus upon ensuring of fair trial and judgment in the RTD system of criminal proceeding through conducting equal opportunity to the accused with the accuser.<sup>116</sup>

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<sup>113</sup> M. Dyck, *Criminal Law, Are You Guilty?*, at <[www.michaeldyck.ca](http://www.michaeldyck.ca)> accessed on September 6, 2017.

<sup>114</sup> N. Tiwari, (2010), "Fair trial visa vis criminal justice administration: A critical study of Indian criminal justice system," *2 J. L. and Conflict Resolution No.4*, at 68.

<sup>115</sup> Smith, *Supra* note 98, at 490-504.

<sup>116</sup> M. Fedorova, S. Verhoeven and J. Wouters, (2009), "Safeguarding the Rights of Suspects and Accused Persons in International Criminal Proceedings" Leuven Center for Global Governance Studies and Institute for International law, working paper No. 27, at 6.

## CHAPTER FOUR

### **Real Time Dispatch and Its Implementation under Criminal Division of Federal Courts in Addis Ababa: Practical Analysis**

We have noted thus far about the notion of RTD system, the right to presumption of innocence, and the relationship between presumption of innocence and RTD system. Hereinafter, we shall see and discuss the practices of RTD system under Criminal Division Federal Courts normally residing in Addis Ababa and its impacts upon the right to presumption of innocence of criminal defendants. Under this chapter, we shall also explore and discuss the potentials and limitation of RTD system in brief.

#### **4.1. The Implementation of Real Time Dispatch under Criminal Division of Federal Courts in Addis Ababa and Some Practical Cases**

This part, attempts to discover and examine the performance of RTD system under criminal division of Federal Courts normally residing in city of Addis Ababa. But before we proceed into looking at the implementation, it is appropriate first to see and put some preliminary remarks on the measurement of the success of the criminal justice administration/system, and some standards against which the right to speedy trial should be measured.

In any criminal justice administration of any country, one can have trust and guarantee on the criminal justice system of the country only where the criminal justice system is strong and effective on the ground rather than on system design. Of course, the system design has irreplaceable role in the criminal justice system of the country in order to be effective in all aspects. In particular, the effectiveness of criminal justice system on the ground/in practice can be expressed by way of the time required to dispose criminal cases. Timely disposition of criminal cases is one measure whether the criminal justice administration is effective or not.<sup>117</sup> However, the time required to dispose criminal cases must be reasonable to the prosecutor, defendants, and the judiciary equally according to the circumstances of the case. To this effect Barker test or balancing standards of speedy trial measurement, which are the length of the delay, amount of prejudice suffered by the defendant, reason for the delay, and assertion of right are necessary to consider the circumstance in particular case in order to allow the court to properly decide on the speedy trial claim.<sup>118</sup> The test does not simply review individual interests

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<sup>117</sup> In this paper, the words Timely disposition and Speedy trial are used interchangeably.

<sup>118</sup> *Barker v. Wingo*, (407 U.S. 514, 1972).

of defendants but it also considers the interests of the society in defending itself from crime.<sup>119</sup> To put in a different way, the RTD criminal division of Federal Courts in Addis Ababa should balance at least the following four factors in combination:

**A. The length of the delay-** The BPR document introduced specific time limits within which the RTD criminal cases shall end.<sup>120</sup> Nonetheless, it is worth noting that trial cannot be too speedy, for this might violate due process. Both sides must have time to organize their cases and witnesses must be given time to appear. The standards are not intended to stress prompt disposition of criminal cases to the detriment of the interests of the parties and the public, including the victim and witnesses, in the fair, correct, and quick ruling of criminal cases. In implementing standards of timely resolution of criminal cases, jurisdictions should seek to assure both prosecutors and accused persons have ample chance to investigate their cases, discuss with witnesses, review documents, make apt motions, and conduct other critical aspects of case disposition. Jurisdictions should also seek to guarantee that courts have sufficient time to read and comprehend criminal charges, to examine issues of law when needs arises, to hear properly witnesses of the parties to the case, to discover and summon additional witnesses and to discover and gather documentary as well as demonstrative evidences, if any, that may be brought by the court itself, to write reasoned decisions and to make other important activities that are necessary for the proper disposition of criminal cases.

**B. The amount of prejudice suffered by the defendant** -This matter is concerned whether the accused person or persons suffered prejudice from the delay of the disposition of a case. Like anxiety, disappearance of defense witness or other evidences, etc.

**C. The reason for the delay-** This test identifies that which delays can be considered to be undue or unreasonable. The main issue here is who the cause of the delay is. The causes of the delay of the cases might be the accused person himself, the prosecution, the police, the witnesses of the parties, other government units, and/or the courts, etc. This probe is resolved by evaluating the reason of the delay. When we know the causes of the delay, we may be in a position to find the solution, if any.

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<sup>119</sup> *Ibid.*

<sup>120</sup> BPR Document, *Supra* note 3, at 29-30, sets a specific time limit for rendering a decision within 4 hours if the offence is simple or medium, within 8 hours if the offence is serious and the accused admits the offence charged. If the accused denies the offence charged, to render a decision within 7 days for simple, within 11 days for medium and within 18 days for serious offence.

**D. Assertion of rights-** This subject is related to the issue of waiver of legally recognized rights. If the accused person failed to demand or exercise his/her speedy legally recognized trial rights, he/she forfeits the privilege to benefit from speedy trial protection. In this regard, waiver means an intentional relinquishment of legally or constitutionally recognized right of the accused person.<sup>121</sup> But this test matters the court to take in to consideration the accused person's waiver against the strength of his/her effort that affected by the length of delay, reason deter for delay and private prejudice and so on.

Having said this, next we shall see how, when and where RTD is introduced under the criminal division of Federal Courts in Addis Ababa for the first time.

The criminal division of Federal Courts in Addis Ababa starts RTD system in order to resolve backlog cases and to render judgment with in short period of time for the flagrant offences in the year 2006.<sup>122</sup> RTD system has been developed and introduced for the first time under the Federal First Instance Courts in Addis Ababa, which is at Arada 5<sup>th</sup> and Lideta 9<sup>th</sup> criminal divisions.<sup>123</sup> The RTD system is benchmarked from France.<sup>124</sup> After benchmarked the system from France and starting its application as a pilot test under the above mentioned two criminal divisions of Federal Courts in Addis Ababa its application is progressively extended from the year 2007 to all criminal division of Federal Courts in Addis Ababa, not only for the flagrant offences but also for simple and medium criminal cases where all relevant evidences are available before a court of law and has no complication to render decision within short period of time as such.<sup>125</sup>

For the proper execution of RTD system, RTD criminal divisions within the Federal High Court and First Instance Courts in Addis Ababa have been organized. Under such divisions, judges have assigned in their respective courts.<sup>126</sup> When the accused person and prosecution's evidence are available in most of these RTD benches, the court usually starts the litigation process and rendering decision within short period of time. Of course, often the period of time that takes for rendering decision over RTD cases is not in accordance with the 2010 BPR document.<sup>127</sup>

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<sup>121</sup> Barker v. Wingo, *Supra* note 118.

<sup>122</sup> Meargu, *Supra* note 62.

<sup>123</sup> *Ibid*, Mulatu, *Supra* note 36. See also BPR Document, *Supra* note 3, at 4.

<sup>124</sup> Mikale, *Supra* note 4.

<sup>125</sup> *Ibid*.

<sup>126</sup> *Ibid*.

<sup>127</sup> The Study of Federal Criminal Justice Administration, Implementation of Real Time Dispatch Technique to the Flagrant offence and the Like, (2016, Unpublished, Federal First Instance Court), at 47-48.

Setting aside whether the court renders decision pursuant to the time mentioned under the BPR document or not, the litigation process starts without the need to determine and providing the date of trial and sending summons both for the accused and prosecution witnesses, when the prosecution filed the case and the investigating police officer brought the accused from police custody as well as the police brought prosecution witnesses of the case.<sup>128</sup> The RTD criminal division then will give the charge of the offence to the accused person at the trial after verifying his/her identity.<sup>129</sup> But almost all accused persons do not have any knowledge about the content of the charge brought against them, their constitutional rights, as well as the trial procedure.<sup>130</sup> Immediately after the court gave the charge to the accused person, the RTD criminal division's judge will begin reading the charge brought against them and then asks whether he/she pleads guilty or not guilty without explaining both the factual and legal elements of the charge.<sup>131</sup> Further, almost all criminal divisions' judge will not ask whether they need some more periods of time in order to understand the offence charged and to the preparation of the defense.<sup>132</sup>

Under the RTD system criminal division of Federal Courts in Addis Ababa, except for justifiable grounds, which are necessitating conducting in a closed session like cases which relates to sexual abuse, trials are conducted publicly. The existing courtrooms whether under the High Court or First Instance Court are programmed to RTD criminal divisions.<sup>133</sup> Public trial is ranging from a trial which is not completely secret to one where all who wish to attend may do so.<sup>134</sup> That means when the trial is open to the public at large the court officers, witnesses, persons who has an interest with the case proceeding, anybody who needs to attend the preceding of the case, the accused and his families are allowed to attend on the hearing. However, in practice in the cases of RTD the accused have no any knowledge when and at which court come forward. The police investigator and prosecutor only decide it.<sup>135</sup> By this reason, in most RTD criminal divisions the

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<sup>128</sup> Personal observation at Federal First instance Court Nfase selk lafto bench, in 2017 and interview with Hiwot Adane, Public Prosecutor of Federal Attorney General, on 4 December 2017.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> Interview with Meaza Araya, Public Prosecutor of Federal Attorney General, on 20 December 2017.

<sup>132</sup> *Ibid.*

<sup>133</sup> Interview with Gedeyelew Genbeto, Judge and Court Manager of Federal First Instance Court, on 8 December 2017 and Personal observation at all Criminal Divisions Under Federal Courts in Addis Ababa in 2017.

<sup>134</sup> C.S. Krueger, (1953-54), "Public Trial in Criminal Cases," *Michigan Law Review*, vol.52, at 133.

<sup>135</sup> Interview with Zeleke Dalelo, Head of Federal Attorney General Bole Division Office, and with Wasihun Gudisa, Public Prosecutor of Federal Attorney General, on 12 December 2017 as well as Personal observation at kirkos, Nfase Selk Lafto, Arada, Yeka, Addis Ketema and Akaki Kaliti Federal Attorney General Division Offices, in 2017.

accused and witnesses only attend on the hearing. The families of the accused and a person who seeks to attend the case on the hearing couldn't get the chance.

With this brief background, due to time and space of the paper reasons, we proceed to examine five practical criminal cases that were already disposed in the RTD system under criminal divisions of Federal Courts residing in Addis Ababa involving constitutional rights in general and presumption of innocence in particular.

#### **4.1.1. *Federal Public Prosecutor v. Samuel Alemshet*<sup>136</sup>**

In this case Samuel Alemshet was charged under Art 669(3) b of FDRE Criminal Code of 2005 with three counts before the Federal First Instance Court of RTD division in Nfase Selk Lafto bench. He was indicted for the alleged aggravated theft crime that was committed at night by climbing over and breaking houses. He was arrested on 11 September 2014 and after five days of his arrest the prosecutor files the case through the RTD system on 16 September 2014. On the same day, the charge presented to the accused person at the trial and the accused admits the offence charged to the court without the assistance of legal counsel. However, the law requires that the criminal charge must be notified to the defendant sufficiently in advance of the trial to enable him to prepare his defense. Art 20(5) of the FDRE Constitution also guarantees that every accused person in Ethiopia shall have the right to have the assistance of counsel for his defense, who, if the accused is unable to obtain the same by his own funds and miscarriage of justice would result, shall be assigned and provided to the accused by the court. Further, the FDRE Constitution, under Art 9(2) and 13(1), imposed upon the courts the duty to ensure observation of the constitution and to obey it. Finally, on 18 September 2014 the court convicted the defendant on the three counts and sentenced him to twelve years rigorous imprisonment until then, the accused was under police custody. After the final decision of the First Instance Court the accused brought the case before the Federal High Court criminal appellate division by filing the memorandum of appeal. One of the appeal grounds of the appellant is the constitutional/legal representation right.

The appellate court has varied the Federal First Instance Court decision of conviction and sentence and remanded the case to it based on provisions 20(5) of the FDRE Constitution and Art 14(3) (d) of ICCPR. Furthermore, the appellate court has decided that the courts are under

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<sup>136</sup> *Federal Public Prosecutor v Samuel Alemshet*, (Criminal File No. 89123, Federal First Instance Court Nfase Selk Lafto Bench, September 18, 2014 and Criminal File No. 145345, Federal High Court Akaki Kaliti Bench, June 30, 2015), (Unpublished).

obligation to respect and enforce fundamental rights even without the application of the accused persons to that effect.

The cause of the failure in this regard seems that the general prevailing perception of RTD cases at that time. It is true that the overwhelming majority of the defendants in RTD cases is indigent and has no trial knowledge at all. But since the BPR document provided pre-determined time limits for the disposition of RTD cases it requires judges to report in this regards, RTD judges usually rushed to finish their task within the specific time limits without giving sound consideration of the accused person's right to adequate time, presumption of innocence, defense counsel and other rights. As a result, miscarriage of justice may occur. This has affected the realization of the goal of the criminal law.

#### **4.1.2. *Federal Public Prosecutor v. Ytbareke Abebe*<sup>137</sup>**

With this case Ytbareke Abebe was charged under Art 32(1) (a) and 665(1) of the FDRE Criminal Code of 2005 before the Federal First Instance Court Gulale bench for the alleged commission of theft crime along with other person. He was arrested on 7 November 2015 and after nine days of his initial day of arrest, the prosecutor filed the charge, on 16 November 2015 that to be processed through the RTD system. On the same day the charge presented to the accused person at the trial. The accused litigated by producing his own defensive witness. Finally, within eight working days the court convicted the defendant and sentenced him with two years and three months imprisonment. Until then, the accused was remained under the police custody since the court did not granted him bail with or without surety. After the final decision of the First Instance Court the accused brought the case before attention of the Federal High Court criminal appellate division upon the filing of appeal. He has appealed on many grounds. One of the grounds of the appeal was that the prosecution's evidence didn't prove the commission of the charge beyond reasonable doubt. Further, he argued that the defense witnesses disproved the charge, namely non-commission of the theft crime. The Federal High Court criminal appellate division accepted the appellant appeal and reversed the finding and sentencing of the Federal First Instance Court. As a result, the division ordered acquittal of the applicant on the ground that no case for prosecution within the framework of Art 141 of the Criminal Procedure Code.

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<sup>137</sup> *Federal Public Prosecutor v Ytbareke Abebe*, (Criminal File No. 51713, Federal First Instance Court Gulele Bench, November 25, 2015 and Criminal File No. 003035, Federal High Court Arada Bench, May 10, 2017), (Unpublished).

#### **4.1.3. *Federal Public Prosecutor v. Elias Meseret*<sup>138</sup>**

In this case Elias Meseret was charged under Art 525(1) (b) of FDRE Criminal Code of 2005 for his act of possession narcotic or psychotropic herb called Cannabis before the Federal high court Ledeta bench. He was arrested on 8 February 2016 and after three days of his arrest the prosecutor files the case through the RTD system on 11 February 2016. On the same day the charge presented to the accused person at the trial, the court heard the case in a division of court with one judge sitting and the accused admit the offence charged to the court. Finally on 25 February 2016, the court convicted the defendant and sentenced him with 3 years and 7 months imprisonment as well as fined him 5000 birr. Until then, the accused was under police custody. Then the accused appealed to the Federal Supreme Court but the court affirmed the lower court conviction and the sentence. After the exhaustion of his appeal right, the appellant brought the case before attention of the Federal Supreme Court Cassation bench. The appeal grounds of the appellant is the right to heard by a division of the court with not less than three judges sitting and the right to get explanation about the charge.

The Federal Supreme Court Cassation bench varied the Federal Supreme and High Court decisions of conviction and sentence based on the reason that the court has an obligation to explain to the accused person the offence brought against him and the offence charged is punishable not less than five years rigorous imprisonment. Offences those are punishable with more than fifteen years rigorous imprisonments also heard by a division of the court with not less than three judges sitting.

#### **4.1.4. *Federal Public Prosecutor v. Anuwar Shelemew*<sup>139</sup>**

In this case Anuwar Shelemew was charged under Art 494(1) of FDRE Criminal Code of 2005 for his act of arson on property before the Federal first instance court Nfase Selk Lafto bench. He was arrested on 23 September 2017 and after the police investigation was completed the prosecutor file the case through the RTD system on 6 November 2017. On the same day the charge presented to the accused person at the trial and the court heard the prosecution evidences and ordered the accused to defend the case. But the accused told the court that he did not have defense evidence. As a result, on the next day which is on 7 November 2017 the court convicted

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<sup>138</sup> *Federal Public Prosecutor v Elias Meseret*, (Criminal File No. 175673, Federal High Court Ledeta Bench, February 25, 2016 and Criminal File No. 131327, Federal Supreme Court Cassation Bench, August 3, 2017), (Unpublished).

<sup>139</sup> *Federal Public Prosecutor v Anuwar Shelemew*, (Criminal File No. 129463, Federal First instance Court Nfase Selk Lafto Bench, November 7, 2017), (Unpublished).

the defendant and sentenced him with thirteen years rigorous imprisonment. Until then, the accused was detained under the police custody.

But according to Art 494(1) of the Criminal Code, the crime of arson is punishable with rigorous imprisonment of not more than ten years imprisonment. However, the Federal First Instance Court adjudicated and imposed thirteen years of rigorous imprisonment, which is beyond the maximum punishment of the crime in question.

#### **4.1.5. *Federal Public Prosecutor v. Tewoderos Assefa*<sup>140</sup>**

This cassation petition was brought before the attention of the Federal Supreme Court Cassation Division up on the cassation motion of the accused or convicted person. He had filed cassation application before the Federal Supreme Court Cassation Division alleging that the conviction and sentencing of both the Federal High Court Lideta bench and Federal Supreme Court had fundamental error of law. The background of the case showed that the petitioner namely Tewoderos Assefa was charged under Art 27(1) and 540 of the FDRE Criminal Code of 2005 for the alleged attempted ordinary homicide crime before the Federal High Court Lideta bench. He was arrested on 5 October 2015 and after the police investigation was completed the prosecutor file the case through the RTD system on 22 October 2015. On the same day the charge presented to the accused person at the trial and the court heard the cases. On 9 March 2016 the court convicted the defendant and sentenced him to eleven years rigorous imprisonment until then, the accused was under the police custody because of not granted the bail by the court. Then, the accused appealed to the Federal Supreme Court and the court affirmed the lower court conviction and the sentence. After the exhaustion of appeal right, the accused brought the case before attention of the Federal Supreme Court Cassation bench. One of the appeal grounds of the petitioner is the prosecutor's evidence didn't proof the petitioner's commission of the alleged attempt of homicide crime beyond reasonable doubt before the lower courts and as a result, his conviction and sentencing was erroneous.

Finally the Federal Supreme Court Cassation bench alters the Federal Supreme and High Court conviction and sentence based on the reason that the act of the petitioner is common willful injury and it is punishable under Art 556 (2) (a) of the criminal code. Accordingly the cassation bench decides to sentence with one year and six months imprisonment.

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<sup>140</sup> *Federal Public Prosecutor v Tewoderos Assefa*, (Criminal File No. 171427, Federal High Court Ledeta Bench, March 9, 2016 and Criminal File No. 138023, Federal Supreme Court Cassation Bench, December 4, 2017), (Unpublished).

From all these cases what can or should observe is that, just to summarize the above cases, in RTD cases accused persons do not have or get sufficient time to comprehend the legal and factual elements of the charge brought against them and to prepare their defense. Further, RTD criminal divisions do not have adequate time for the examination of both the factual and legal elements of the case as well as for playing its own truth finding role. It is a general principle of criminal responsibility that offences are divided into “legal” and “fault (factual)” elements.<sup>141</sup> Depending on the offence, fault may be established by proving intention, or negligence. Generally in order to constitute the offence, both the legal and fault elements must be present at the same time. It is also required for the prosecution to prove, that the accused person knew that all the facts constituting the ingredients necessary to make the act criminal were involved in what he was doing. So, it needs its own sufficient time, but the practice shows otherwise. As a result, they are not in a position of ensuring the principle of presumption of innocence.

Furthermore, the use of the RTD system often resulted in routine rejection of the accused person’s bail right. Almost all accused persons were denied the bail right and this is also restricts the constitutional right of the accused person to present evidence in his defense. This has obvious implication on the fairness of the trail and clearly nullifies the principle of presumption of innocence ensured under the FRDE Constitution. The limitations are not only infracting the accused person’s right to presumption of innocence but also lead to miscarriage of justice. Because among the means to exist miscarriage of justice is unfair proceedings of the trial or in other words not respecting and enforcing of the rights of the accused person especially the right to presumption of innocence.

## **4.2. An appraisal of the Practice**

### **4.2.1. Potentials of the Real Time Dispatch Application**

No doubt that the performance of RTD system as stated under BPR document and governing laws made positive progress in the effectiveness of the administration of Federal criminal justice. There are certain achievements that have improved the criminal justice system. Some of the evident achievements are discussed below.

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<sup>141</sup> I. Bantekas and S. Nash,(2<sup>nd</sup> ed.,2003), International Criminal Law, (London: Cavendish Publishing Limited), at 141.

#### **4.2.1.1. Timely Disposition of Cases**

As noted, the most significant stimulus for the adoption of RTD system from France and establishment of RTD criminal divisions under Federal High Courts and First Instance Courts in Addis Ababa is to make criminal proceedings to be completed within a pre-determined specified period of time. Of course, this system does not serve for all types of criminal offences. It is meant to provide for the flagrant, simple, and medium offences with clear evidence or not complicated for making a decision within short period of time. In such cases, RTD system helps for timely disposition of criminal cases. To put it differently, criminal cases are disposed within a day-mostly on plea cases-or much shorter period than the previous practice after the implementation of the RTD system.

The RTD system has strong linkage with plea hearing. Mostly in this system the plea hearing is without interrupted way either without appointment or within short period of appointment. This is also minimizes the disintegration problem occurred in plea hearing and the RTD system is among the mechanisms that can be implementing to resolve such problem. As this system hearts on the issue of rendering decision within a short period of time its implementation process is that in considering the minimization of overloading criminal files, litigant's and witness's travel expense, disappearance of witness before giving his/her testimony to the court, fading of witness memories over time, stay of exhibit at police stations for long period of time, it also reduces the time that an accused may suffer from personal anxiety etc. Therefore, the RTD system helps for speed trial and rendering decision within short period of time. With accordance this system the time between the occurrence of the crime and the day decision is rendered will be mostly very short. This is also plays significant role in reduction of the number of backlog files, discontinued of files due to absence of witnesses and the accused through facilitating in serving victims of crimes and witnesses as well as in introducing an effective accomplishment within a short period of time and facilitating to compensate the victim of the crime within short period of time or to retrieve his/her toll.

#### **4.2.1.2. The Public Trust**

In any criminal justice system expeditious decision making of criminal cases is one cause for public trust. As stated above, Federal criminal justice administration introduced RTD system to that effect. Although the criminal justice system in general has so many defects the introduction and the coordinated implementation of RTD system, as stated under the BPR document and governing legislations has, developed and promoted public trust to some extent. The public feels

better served by the judicial institution. It is so because the public gets criminal justice within a short period of time due to the application of RTD system and coordination of the justice sector. In particular, the coordinated implementation of RTD system further promoted the victims' and others confidence in the criminal justice system.<sup>142</sup> The judge and court manager of Federal First Instance Court, namely Ato Gedeyelew Genbeto, said that the RTD system application under criminal divisions of the Federal Courts residing in Addis Ababa some what benefits the society, not just individual litigant and witness of the case only.<sup>143</sup> Moreover, it avoids the problem of storage of deposited exhibits at the police stations for a long period of time, the question of handling details of the item, the place of deposit, transport cost for the production of the item from the police station to the place of court, etc. These all achievements give some relief and satisfaction to the public and thereby help the public to develop trust and confidence on the criminal justice system, to believe on the rule of law and prevailing of justice. However, this does not mean that the public at large have satisfaction and full of trust on the criminal justice system.

#### **4.2.1.3. The Victim Side<sup>144</sup>**

The RTD system application supports the victim of the criminal conduct to get his/her compensation, a specific amount of restitution or to return their personal property for the wrongful act, which causes damage, as soon as possible in short period of time. Because mostly accuses are willing to compensate, restitution or to return the property of the victim from the time he/she receive the offence charged and stands in front of the trial of the court. Since disposition of criminal cases was expeditious, the victim of the criminal conduct can easily claim his/her damages against the responsible person/persons and gets any type of compensation within short period of time or at a relevant time.

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<sup>142</sup> From the year 2011, the Federal criminal justice administration celebrate "justice week" every year. At the time of celebrating the criminal justice administration collects opinion of the public on the criminal justice proceedings, its strength, and weakness from every corner of Addis Ababa sub city as well as woredas. This was done by formulating panel discussion with the public every year. At this time almost every year the public says that, the decision making of Real Time Dispatch criminal benches within short period of time gives some relief and develops our trust on the justice system but what remains is that, the offences of Real Time Dispatch criminal benches are selective and most offences are proceed through the usual decision making process. The usual decision making process also very slow and hopeless sometimes disappearance of witnesses may happen. This leads to miscarriage of justice and leads to say there is no justice at all. ,(interview with Ato Gedeyelew Genbeto, Judge and Court Manager of Federal First Instance court, on 8 December 2017).

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*, and Interview with Zeleke Dalelo, Head of Federal Attorney General Bole Division Office, on 12 December 2017.

#### 4.2.2. Limitations of the Real Time Dispatch Application

As we already stated above, the implementation of RTD system made positive progress in the effectiveness of the administration of criminal justice. However, its implementation is not free from limitations. Thus, there are certain shortcomings that have affected the system. Some of the glaring findings are:-

In the RTD system, the public prosecutor will forthwith decide whether to prosecute or not in order to bring the case to the court within one or two days without delay after completion of the police investigation.<sup>145</sup> In such proceeding, if the suspected/committed crime is bail- able the arrested person's right to bail is respected at the pre- trial court. But mostly the investigator police and the prosecutor bring the case to the RTD criminal trials before the due date of the remand which is granted to enable the investigation to be completed.<sup>146</sup> Usually, if the remands date is due police request another remand by showing the prepared charge of the prosecutor and citing readiness of the charge to submit to the RTD criminal division in order to hold the suspect under police custody and thereby to bring his case through RTD criminal proceeding system.<sup>147</sup> At this time, most of arrested/accused person was silence because he/she haven't any knowledge what the court and the police officer doing so. After hearing police officer's argument, most of the time the court gives one or two additional days and the prosecutor submits the charge within the given time interval to the RTD criminal divisions. Until then, the accused person will remain under the custody of police. This is done intentionally in order to be processed the case through the RTD system.<sup>148</sup>

Since the case is brought to the RTD criminal divisions the accused person have not adequate time to raise his/her rights to bail because the court immediately starts to hear prosecution's witness and other evidences after the charge gives to the accused person, reading out, explain and asked his/her plea regarding the offence charged and if the accused denies it.<sup>149</sup> Intermittently the accused raises the right to bail but the court reject and gives an issue/order to remain in jail until the final decision is taken.<sup>150</sup> However, unless right to bail is prohibitive according the law any accused person have the right to release on bail.

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<sup>145</sup> Interview with Zeleke Dalelo, Head of Federal Attorney General Bole Division Office, on 12 December 2017.

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> Meaza, *Supra* note 131.

<sup>150</sup> *Ibid*

The other limitation is that, accused person has the right to get sufficient explanation about the charge brought against him.<sup>151</sup> The legal ground of this right is to understand properly why he/she was being prosecuted and to present possible litigation grounds to the charge leveled against him/her.<sup>152</sup> To understand the legal and factual elements properly and present legal grounds for the case also needs sufficient period of time. However, this right is not respected entirely under RTD criminal division of Federal Courts in Addis Ababa because of the charge presented to the accused person at the trial as he/she presence at the court of trial.<sup>153</sup> The author of this paper also prove this information through trial observation, as my observation from the RTD criminal division of Federal Courts in Addis Ababa, the charges are notified to the accused person at the bench as he/she is presence to the court and he/she can't access before his/her presence to the court like the usual criminal trial proceedings.<sup>154</sup> Of course, all RTD criminal divisions of Federal Courts in Addis Ababa explain the charge to the accused person and there is no any RTD criminal division proceeding without explanation of the charge. But the time to understand the offence charged properly is not enough as the usual criminal proceedings.

Further, under the RTD criminal division of Federal Courts in Addis Ababa when the case decided to be processed through the RTD system the accused person will be brought to the court at any time within the working day and hours of the judiciary, which is usually determined by the police investigator and public prosecutor only. Due to this, the accused himself may not have any information when and where he may bring before a court of law for trial. As result, he cannot inform his relatives, his witnesses, and his legal counsel about when and where he may bring before a court of law for trial. There is no other means that these to know the date of hearing. Under RTD, the court will hear the case immediately after the accused is brought to trial. That means there is no trial schedule and there is no means of communication. Because of this, the accused and prosecution's witness only present before a court of law at the first time of the hearing. Of course, the Federal Courts in Addis Ababa programmed the courtrooms to RTD criminal trials. Except for reasonable grounds to hear cases in a closed session in order to protect the right to privacy of the concerned parties, public moralities and national security all RTD criminal divisions are proceed the hearing in an open way. But if the families of the accused and any person, who seeks to attend on the hearing date of the case of the accused couldn't get the

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<sup>151</sup> FDRE Const., Art 20(2).

<sup>152</sup> Explanatory of The 1995 Constitution of Federal Democratic Republic of Ethiopia, at 39.

<sup>153</sup> Interview with Wasihun Gudisa, Public Prosecutor of Federal Attorney General on December 12, 2017.

<sup>154</sup> Personal observation at all Criminal Division of Federal Courts in Addis Ababa, in 2017.

chance the trial is not open as the ordinary way of public trial hearing which is the accused, his families and any person who needs to attend gets information about the hearing date and time of the case of the accused at the trial. Most of accused person are also present for trial without any legal knowledge and getting a legal consult. However, getting legal counsel is a governmental duty, if the litigation is without legal counsel the accused forfeits the ability to challenge the issues and the system receives none of the benefits of factually guilty of the accused person. This indicates that the concept of right to presumption of innocence of an accused person is more linked to the principle of the right to counsel and it involves the idea of fairness as well as preventing miscarriage of justice by enabling the accused person to learn his legal rights and to ensure that discovered facts are beyond reasonable doubt. But the RTD criminal division of Federal Courts in Addis Ababa mainly focused on rendering expeditious decision making and giving an adjournment to get a legal counsel is very limited. The accused person himself didn't raise the issue either due to lack of legal knowledge or hacked off by his/her detainment and presented to the trial of the court within short period of time.<sup>155</sup>

Moreover, protecting and enforcing the right to equality is another mechanism of creating fair trial and at the same time protection of the right to presumption of innocence. The FDRE Constitution recognizes the principle of equality. This right gives guarantee to all persons for equal and effective protection of the law without any discrimination.<sup>156</sup> The right to equality before the law is the base of various constitutional rights. Fundamental human rights protection without the rule of law and equality before the law is unthinkable. Especially with the accused person, he/she have no any knowledge of law about his/her rights, duties and the trial proceedings. As the right to equality is applicable to all persons, the rights of the accused person emanates from this basic fundamental human right.<sup>157</sup> The accused as a person have also the right to equality, which implies that the accused person should get equal treatment with the public prosecutor in the court's litigation process. Because equality provide conditions for fair trial and aimed at offering the accused an equal chance of litigation in trial with the prosecutor in other words it gives a right to the accused person to confront the prosecutor in trial. In order to confront the prosecutor in trial the accused person must get the opportunity of equal treatment with the prosecutor in preparing and presenting the evidences both on law and on fact. This is

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<sup>155</sup> Meaza, *Supra* note 131.

<sup>156</sup> FDRE Const., Art 25.

<sup>157</sup> Solomon Abadi, (2002), Teaching Materials for The Study of Constitutional Law II (Human Rights Focus),(Unpublished, MU Law Library), at 53.

also more linked with the getting of adequate time to understand the offence charged. To exercise effectively the right to equality of the accused person the court requires implementing their function with impartiality and avoiding bias.<sup>158</sup> The right to equality has also great impact on the right of the accused to fair trial and ensuring the principle of equality of arms. To ensure equality of arms, it needs reasonable ground of litigation to the prosecutor, who is legally trained and has sufficient financial resource as well as to the accused, the person who have no any knowledge of law and experience of courts litigation proceeding. If the court fulfills this requirement some of the fundamental aspect of human right, which is that the accused person's right to fair trial with full equality by presuming the accused as innocence is respected and enforced as well as rule of law and justice is prevailed.

However, this right is not fully respected and enforced under RTD criminal division of Federal Courts in Addis Ababa. Accuses of RTD criminal divisions under these courts brought without getting information on the offence he/she charged and without adequate time and communicating with legal counsel. This has obvious its own implication on the principle of presumption of innocence. According to the author of this paper, respecting and enforcing the right to equality of the accused person starts from giving respect to the right to a presumption of innocence and it goes up to enforcement. If the right to presumption of innocence is respected the accused gets adequate time to understand the factual and legal elements of the offence charged and to litigate their cases properly.

In general, the RTD criminal division under Federal Courts in Addis Ababa has limitations on giving adequate time to the accused person, which imposes on the right of the accused to presumption of innocence. The information gathered from the questioner of this research also proves the existence of the limitation upon the right to presumption of innocence as the following:-

No.	Participants on the questionnaire	Response		Total participants
		Yes	No	
1	Judges	37	15	52
2	Prosecutors	52	26	78
<b>Total response</b>		<b>89</b>	<b>41</b>	<b>130</b>

<sup>158</sup> OSCE, Office for Democratic Institutions and Human Rights,(2012) Legal Digest of International Fair Trial Rights, (OSCE/ODIHR) , at 39-49.

Which means that from 130 participants on the questionnaire 68.46% of them confirmed the existence of the limitation up on the accused person's right to presumption of innocence.

#### **4.2.2.1. Major Reasons for the Limitations**

As stated above, there are definite shortcomings in the application of RTD system. The point of discussion here is what the causes of these shortcomings are. According to this study, some of the causes are as follows.

##### **4.2.2.1.1. Setting Specific Time Limit**

The time needed for completion of criminal litigation and decision making may depend upon the nature and the circumstances of the case and the competency of the court. The specific time limit within which RTD criminal cases should be processed at court is set under the BPR document. Due to this, the courts have rushed to finish their task within the specific time limits without well considering the case at hand. As a result, miscarriage of justice may occur. This has affected the realization of the goal of the criminal law. But, what matter most is not meeting the specific time limits, but rather meeting the aim of the criminal law. It is worth nothing that the pre-specified time limits for the disposition of RTD criminal cases produced good results on some cases and thereby advanced public confidence, while it paved the way for the violation of due process and justice on others. The accused person's right to be notified of the precise offence which he is alleged to have committed, and to be acquitted unless every element of that offence is proved at trial. This requires its own time that might be impossible to put rigid pre-specified time limits for the disposition of RTD criminal cases. However, the BPR document provided strict pre-specified time limits for the disposition of RTD criminal cases. And that becomes one of the causes of the aforementioned shortcomings in the application of RTD system.

##### **4.2.2.1.2. Lack of Sanction**

As it is stated above, the aim of RTD system is to make the process of criminal proceedings expeditious without violating the rights of the accused. The FDRE Constitution and the Criminal Procedure Code provided unspecified time limit. In addition, the BPR document provided pre-specified the time limit for the disposition of criminal justice. But this document doesn't provide sanction of any sort where the rights of the accused person are not enforced and protected. Even they are not required to reason out the cause of the failure, be it a deliberate or otherwise. However, sanction is the essence of enforcement. This negatively affected the observation and enforcement of the rights of the accused to presumption of innocence, and it paved the way for discriminatory application of the system over individuals.

#### **4.2.2.1.3. Lack of Clear Real Time Dispatch Management Framework**

The relationship between various criminal justice institutions is not well determined under the BPR document for the implementation of RTD system. To put it in a different way, the relationship between the public prosecutor and police, the court and the public prosecutor, as well as the court and the police for the purpose of RTD system, which needs to design a route map that highlights the key steps to handle the case; detailed guidance on each step describing actions needed to be done in order to make the case ready; case progression roles and responsibilities setting out the duties of police, prosecutors, judges and their staff at each step of the RTD process; a list of offences to be managed in the RTD system settings out the statement and the particulars of each offence. Lack of this hinders the timely processing of criminal cases through respecting the right of the accused to presumption of innocence.

#### **4.2.2.2. Impacts of the Limitation**

The limitations have its own prejudice not only on the right to presumption of innocence but also up on the rule of law and the criminal justice system. We shall discuss under this sub title how it prejudices the limitation of RTD under criminal division of Federal Courts in Addis Ababa.

##### **4.2.2.2.1. Impacts up on the Rule of Law**

Rule of law is the fundamental principle as well as the common understanding of all sectors of society to obey the law and that the law dominates over other individual interests.<sup>159</sup> Enforcement of law as an essential requirement, fairness and justice as a value to be pursued is indispensable of rule of law. In the rule of law every person should subject to the same law the government organ also have an obligation to act according to the law. Pursuant to the criminal proceedings rule of law associated with the right to fair trial, which are getting adequate time, presumption of innocence, equality of arms, etc. The right to a presumption of innocence lies at the heart of rule of law. Any person who was charged of an offence has the right to presumption of innocence until the offence charged against him/her is proved by a competent court in accordance with the prescribed law. The right to presumption of innocence is not only one of the guarantees of rule of law but human rights also. As the presumption of innocence is rule of law that compels during proceedings to find the accused not guilty unless proves beyond reasonable doubt the court has an obligation to protect from any prejudicial activities up on this fundamental right of the accused.

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<sup>159</sup> Cambodian, *Supra* note 14, at 7.

A criminal trial is a means which enables the administrative authority to consider the law for the offence charged person. The proceedings of the trial must be fair and include the observation of the rights of the accused starting with the presumption of innocence and ensuring that the accused right is protected. When we look the RTD system under criminal division of Federal Courts in Addis Ababa it has defects on the proper handling of the right to a presumption of innocence of the accused which associates with the rule of law. Seeing rule of law is a measure of legal protection against arbitrary trial proceedings and it requires the court to follow the law as well as to ensure that laws have been applied in an equal and non discriminatory manner. Not respecting and enforcing properly the right to a presumption of innocence of the accused have also prejudice the ultimate goal of serving society as a whole and individuals in particular according the law and the offering of greater assurance that final judgment well be accurate. The above respondents on the questionnaire also confirmed this idea. Therefore, the defects of not fully respecting and enforcing the right to a presumption of innocence of the accused person under RTD criminal division of Federal Courts in Addis Ababa prejudices the very purpose of the obeying rule of law. The constitutionally written rights of an accused person to a presumption of innocence also weaken its essential practical significance that protects those accused of a crime during a criminal trial proceedings.

#### **4.2.2.2.2. Impacts up on the Criminal Justice System**

Criminal justice system is a composed of three justice organs which is that the police, prosecutor, and courts.<sup>160</sup> The overarching purpose of the criminal justice system of the FDRE is that ensuring peace, order and the security of the state, its peoples and inhabitants for the public good either by giving due notice of the crimes and penalties prescribed by law or by punishing and reforming the criminals and/or by taking measures depending upon the circumstances of the cases. By so doing, it is possible to prevent or at least reduce of the commission of criminal offences and thereby it paves the way for prevalence of rule of law in the country.<sup>161</sup> However, the punishment and the measure to be taken must be proportionate to the offence committed. Because fairness in criminal justice process is not only discovery of truth further the assurance of fully recognize the rights of the accused. So criminal justice system is found in the principle of fairness and respecting the right of the accused. Rights of the accused person are fundamental to

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<sup>160</sup> Team Charter, *Supra* note 5, at 2.

<sup>161</sup> K. Daly, (2011), Aims of the Criminal Justice System, at 3-4, Revise chapter 13, which was Published in Crime and Justice: A Guide to Criminology (3<sup>rd</sup> ed., 2006), ed. by G.Smith, M.Israel and K. Daly, (School of Criminology and Criminal Justice Griffith Univeristy).

the fair criminal justice proceedings. The right to a presumption of innocence is hard core in the existence of fair criminal justice system.

The existence of fair criminal justice system also builds public confidence. In order to have public trust the justice system needs to operate in accordance with the rule of law. Oppressive measure will ultimately undermine the credibility of the justice and the legal system as well as erode the public trust. Respecting and enforcing rights of an accused person starting from presuming as innocent person candour by the court and perceived by the observers and participants is the basis for the acceptance and credibility of the criminal justice system. The fair application of the rights of the accused persons is crucial to public perception and trust on the criminal justice system.

Although achieving of fair criminal justice with public trust and confidence is the onus of all criminal justice organs in general. The entire process of respecting and enforcing the rights of the accused person involve the whole array of criminal justice process involves on the judicial action. The courts have the onerous task of working pursuant to the rule of law. Any defect on the criminal proceedings leads to miscarriage of criminal justice. The limitations of RTD system under criminal division Federal Courts in Addis Ababa on the right to presumption of innocence also prejudice up on the existence of fair criminal justice. The above respondents on the questionnaire also confirmed this idea. Therefore, the limitations of RTD application under criminal division of Federal Courts in Addis Ababa not only prejudice on the rendering of fair justice but also up on the criminal justice system as a whole.

## CHAPTER FIVE

### Conclusion and Recommendations

#### 5.1. Conclusion

The aim of implementing RTD system under criminal division of Federal Courts in Addis Ababa is making criminal justice expeditious with ensuring the protection of rights of the accused. The criminal justice administration tries to strike a balance between the search for the truth and the fairness of the process. For this end the FDRE Constitution requires that, to convict the accused, the government must persuade the fact finder beyond a reasonable doubt of every fact necessary to constitute the offence charged. During proceedings accused persons have the right to be presumed innocent until proven guilty according to law.<sup>162</sup> So, the fundamental Ethiopian criminal law principle is that an accused is presumed innocent. However, this right was not enforced properly under RTD criminal divisions of Federal Courts in Addis Ababa. In these divisions accused persons don't get adequate time to understand the legal and factual elements of the offence charged and to prepare for litigation. Courts do not have sufficient time to examining the factual and legal elements of the case and for playing its own role in finding the truth by examining the evidences, which the accused person knew that all the facts constituting the ingredients necessary to make the act criminal were involved in what he was doing. So, it needs its own sufficient time, but the practice shows otherwise in RTD cases. As a result, they are not in a position of ensuring the principle of presumption of innocence. How a court could understand and conclude over both the factual and legal elements of the case within a fraction of seconds, minutes, or hours?

It seems that it is difficult, if not impossible, to decide over both the factual and legal elements of the case within a fraction of seconds, minutes, or hours. The criminal trial creates and reflects value by determining and announcing which conduct is sufficiently wrong to deserve blame and punishment. It guides conduct by giving citizens good reason to comply, both by manifesting the underlying moral justification for the law and by providing incentives to obey. Law stands not only to punish the guilty body, but also to protect the innocent. There is a core principle that says it is better if 10 criminals go free than one innocent person. So courts of law must have ample time for disposition of criminal justice upon a case depending on the nature and circumstances of each and every criminal case. Since the nature and circumstances of each and every case is

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<sup>162</sup> FDRE Const., Art 20(3).

usually different, it seems that it is hardly possible to set specific time for disposition of each and every criminal case in advance.

Further, the use of the RTD system often resulted in routine rejection of the accused person's bail right. Almost all accused persons were denied the bail right and this also restricts the constitutional right of the accused person to present evidence in his defense. This has obvious implication on the fairness of the trial and nullifies the principle of presumption of innocence ensured in FDRE Constitution. Any shortcoming of the criminal proceedings might lead to miscarriage of justice.

Moreover, in the RTD criminal divisions the relatives of the accused person and any other persons who need to be present at the hearing of the criminal case would not have the opportunity to attend the trial of the criminal case. This defect also plagues the rule of law and the administration of criminal justice at all levels.

In general, the specific time limit within which the process of judgment ends is one obstacle to the appropriate realization of the accused person's right to presumption of innocence in these courts. The BPR document introduced specific time limits within which the RTD criminal cases shall end. However, it is worth noting that trial cannot be too speedy, for this might violate due process. Both the court and accused person must have time to organize the case and witnesses must be given time to appear. The standards are not intended to stress prompt disposition of criminal cases to the detriment of the interests of the parties and the community, including the victim and witnesses, in the fair, correct, and quick ruling of criminal cases. In implementing standards of timely decision of criminal cases, jurisdictions should seek to assure both prosecutors and accused persons have ample chance to investigate their cases, discuss with witnesses, review documents, make apt motions, and conduct other critical aspects of case disposition. The information and opinions obtained in the course of field interviews and written questionnaires also indicated quite clearly that the requirement of converting the right to a presumption of innocence into reality and providing mechanisms for meaningful enforcement. Therefore, the application of RTD system under criminal division of Federal Courts residing in Addis Ababa has limitations and thereby, it prejudices the delivery of fair criminal justice. Of course, its implementation has significance either. The variance in this regard rests upon the circumstances of the application.

## 5.2. Recommendations

The purpose of RTD system is not only swift disposition of justice, but also rendering fair criminal justice. So in order to rendering just justice, it is recommended that the following needed attention:

- (1) The Federal government criminal justice administration should provide legal standards against which the right to speedy trial should be measured. In the absence of legal standards, be rigid or flexible, it is difficult to measure the exercise of the right and to enforce the right equally on every one.
- (2) All Federal Judges that are assigned under RTD divisions of Federal Courts usually residing within Addis Ababa should pay attention for the enforcement of the constitutional right of accused persons to presumption of innocence. In order to do this, the Federal Court Judges must be give continues training regarding the enforcement of the right of the accused. There is need in this regard to train judges and other judicial officers on their exact role in the enforcement of the accused person's constitutional rights.
- (3) The Federal government criminal justice system must be revised the BPR document to set controlling mechanism or disciplinary measures where the right(s) of the arrested and accused persons is not observed or properly enforced.
- (4) The relationship between the Federal justice organs must legally determined and regulated taking into account the legal and professional independence of the Federal justices' organs. Otherwise, the legal and professional independence of the Federal justices' organs will be in danger. Besides, fusion of power and function will happen and thereby it paves the way for disagreements among them. In turn, it might unnecessary delay the delivery of justice.
- (5) In order to implement the RTD system properly, the federal government criminal justice administration must set clear criteria for the regulation of cases that can be process through RTD system like countries of France and United Kingdom either by a means of guide lines or through legal process.

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## **Annexe- 1 Data collection Tools**

**Addis Ababa university school of pose graduate Faculty of Law**

**Questioner for the thesis on Real Time Dispatch (RTD) and Presumption of innocence**  
**under Criminal Division of Federal Courts in Addis Ababa**

This questioner is prepared to assess the situation of Real Time Dispatch (RTD) and the right to a presumption of innocence under criminal division of Federal Courts in Addis Ababa. This questioner is only to those who working under Federal Courts in Addis Ababa and to public prosecutors in Addis Ababa Federal attorney general. To This end, kindly I request your cooperation to answer the following questions by ensuring you that the information obtained accordingly serves only as academic research purpose and will be held confidently. Thanking in advance.

N.B no need of writing your name.

Please show your answer by putting the mark (√) , (X) or circling it.

What is your job?

**Judge**

**Public prosecutor**

1. Did you work in RTD criminal trials?  
A. Yes                      B. No
2. Do you think the implementation of RTD system is benefited to the accused person?  
A. Yes                      B. No                      C. I have no idea
3. If your answer to the question number 2 is No why?  
A. Fully it violates the right of the accused.  
B. Mostly it violates the right of the accused.  
C. Infrequently it violates the right of the accused.
4. Do you think the accused person's right to presumption of innocence is violated in the RTD system criminal divisions?  
A. Yes                      B. No                      C. I have no idea
5. If your answer to the question number 4 is yes what is the reason for the violation of the accused person's right to presumption of innocence in the RTD criminal trials?  
A. Not clear headed on the constitutional rights of the accused person

- B. None precise on the Constitutional Rights of the accused
  - C. Mostly the attention in RTD system criminal trials is on the expeditious decision
  - D. Accuses of RTD criminal trials are impeaches of flagrant
  - E. None
  - F. I have no idea
6. If you think the RTD system violates the accused person's right to presumption of innocence is there any impact?
- A. Yes
  - B. No
  - C. I have no idea
7. If your answer for the question number 6 is yes where on?
- A. Rule of law
  - B. Constitutional right of the accused
  - C. Criminal justice system
  - D. I have no idea
  - E. A and B are the answer
  - F. A and C are the answer
  - G. B and C are the answer
  - H. A,B and C are the answer
  - I. None
8. Does the RTD system result any problem which is not parting in the above questions?
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9. Please explain if you have any additional idea about the RTD criminal trials.
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***Thank you so much!***

**An interview conducted with judges under Federal Courts in Addis Ababa  
and public prosecutors in Addis Ababa Federal Attorney General**

**Interview guideline**

1. What is RTD? What is its purpose and from where it benchmarked?
2. When it develops RTD under Criminal division of Federal Courts in Addis Ababa?
3. What do you think the RTD system for criminal proceedings is needed?
4. What the advantage and results of RTD system under Criminal division of Federal Courts in Addis Ababa?
5. Who decides the first hearing trial date of the case in the RTD system criminal division Federal Courts in Addis Ababa?
6. Do you think the accused person's the right to presumption of innocence is respected in RTD system criminal division of Federal Courts in Addis Ababa?
7. Is there any problem you faced in RTD criminal division of Federal Courts in Addis Ababa?

## **Annexe - II Cases**

1. *Federal Public Prosecutor v Anuwar Shelemew* (Criminal File No.129463, Federal First instance Court Nfase Selk Lafto Bench, November 7, 2017)
2. *Federal Public Prosecutor v Elias Meseret* (Criminal File No.175673, Federal High Court Ledeta Bench, February 25, 2016 and Criminal File No.131327, Federal Supreme Court Cassation Bench, August 3, 2017)
3. *Federal Public Prosecutor v Samuel Alemshet*, (Criminal File No. 89123, Federal First Instance Court Nfase Selk Lafto Bench, September 18, 2014 and Criminal File No.145345, Federal High Court Akaki Kaliti Bench, June 30, 2015)
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