



ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
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LEGALITY OF TRAVEL BAN ON PERSONS ON BAIL

BY: ANDINET BEYENE AYELE

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By: ANDINET BEYENE AYELE

Advisor: Dr. SIMENEH KIROS

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ADDIS ABABA, ETHIOPIA

PLAGIARISM DECLARATION

I, ANDINET BEYENE AYELE, do hereby declare that this thesis “Legality of Travel Ban on Persons on Bail” is my original work and that it has not been submitted for any other degree or examination in any other university or college. In case other sources are used or quoted, they have been duly cited and acknowledged.

Declared by:-

Name:-Andinet Beyene Ayele

Signature:

Date.....

Approved by:-

Advisor

Signature

Date

.....

Examiner

Signature

Date

.....

Examiner Signature

Date

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ACRONYMS

UDHR	Universal Declaration on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
FDRE	Federal Democratic Republic of Ethiopia
ACHPR	African Charter on Human and People's Rights
ERCA	Ethiopian Revenue and Customs Authority
UN	United Nations
Crim.C	Criminal Code
Crim P.C	Criminal Procedure Code
HRC	Human Right Committee

Abstract

The right to bail is a fundamental right guaranteed to arrested persons stipulated under the FDRE Constitution, Crim.P.C and international human rights instruments Ethiopia has adopted. Bail is a principle and it should be denied under exceptional circumstances. Arrested persons are presumed innocent until proven otherwise, as they are not even charged with a crime. Once arrested persons are freed on bail they should enjoy their rights equally as others as they are presumed to be innocent. One of the basic rights which is also enshrined in the FDRE Constitution and international human rights instruments is the right to leave a country. This right implies that a person has a right to leave a country on a time of his choosing. In the FDRE Constitution, there are no exceptions or limitations to the right. The Crim.P.C also does not discuss a possible ban on individuals who are suspected of committing a certain crime when it illustrates the procedural aspect of criminal law. In addition, the fundamental rights and freedoms specified in the constitution are to be interpreted in a manner conforming to the principles of the UDHR, ICCPR and international instruments adopted by the country. Even though, the right to leave a country is a fundamental right, federal courts ban bailed individuals from leaving the country without legal and factual justifications. The travel ban adversely affects bailed individuals. In order to analyze state of the law and the gaps in practice, the researcher has used mixed research methods of doctrinal and empirical research studies. In addition, the researcher has also used qualitative research method by discussing legal rule analysis, case study and analysis of practice. The researcher has found out that there are no laws except the revised anti-corruption special procedure and rules evidence proclamation concerning corruption crimes, which stipulate a possible ban on right of movement. The practice of ban is in clear transgression of the rights or bailed individuals enshrined in FDRE Constitution and international human rights instruments.

Key terms and phrases; Persons on Bail, Legality of Travel Ban

CHAPTER ONE-Introduction

1.1 Background

The right to bail is a fundamental right enshrined under the FDRE Constitution.¹ The FDRE Constitution, under Art 19(6) states “persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.”²As clearly indicated in FDRE Constitution, bail is a basic right and it should be denied under exceptional circumstances. Once the individual is granted bail he/she should be presumed innocent and should enjoy his/her rights as equally as others with exceptions of the restrictions placed legally by the court.

As bailed individuals are presumed to be innocent one of the basic rights guaranteed is the right to leave the country. This is a fundamental right enshrined under the supreme law of the land; the FDRE Constitution³ and under international and regional human rights instruments adopted by the country. In addition, under the Constitution, all international treaties ratified by the country are considered as integral law of the nation.⁴ Moreover, fundamental rights and freedoms specified in it shall be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by the country.⁵ In the international and regional human rights instruments, this right is clearly stipulated under the UDHR⁶, ICCPR⁷ and ACHPR⁸.

The Constitution under art 32(1) states “any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes.”⁹ The UDHR under

¹ The Constitution of Federal Democratic Republic of Ethiopia, (FDRE Constitution), Proc. No 1/1995.

² Id, art 19(6).

³ Id, art 32(1).

⁴ Id, art 9(4).

⁵ Id, art 13(2).

⁶ Universal Declaration of Human Rights (UDHR).

⁷ International Covenant on Civil and Political Rights (ICCPR).

⁸ African Charter on Human and Peoples’ Rights (ACHPR).

⁹ FDRE Constitution, cited above at note 1, art 32(1).

art 13(2) states “everyone has the right to freedom of movement and residence within the borders of each state. In addition, everyone has the right to leave any country, including his own, and to return to his country.”¹⁰ The ICCPR under art 12(2), states “everyone lawfully within the territory of a state shall, within that territory, has the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.”¹¹ The ACHPR under art 12(2), states “every individual shall have the right to leave any country including his own, and to return to his country”.¹²

The conditions to curtail or restrict the right to leave a country are not specified in the FDRE Constitution and UDHR but conditions to restrict the right in exceptional circumstances are stipulated on ICCPR¹³ and ACHPR¹⁴. But when it comes to Ethiopia`s practice, except on suspects on corruption crimes, starting from the Constitution the country does not have laws enacted meant to restrict or curtail the right to leave the country. Even though, except on suspects on corruption crimes, the country does not have laws to restrict the right to leave the country, in practice bailed individuals can be banned from leaving the country by federal and Addis Ababa city courts. This issue arises when an individual is arrested and brought before a court of law for an alleged crime committed. In this case, Crim.C.C under art 59(2) states “the court shall decide whether such person shall be kept in custody or be released on bail.”¹⁵ If the court before which the arrested person is brought decides to grant bail for the arrested individual, it will do so as per the following conditions; under art 68 “where the application is allowed, the court shall fix the conditions on which bail is granted.”¹⁶

The court will consider the following in granting bail; “the choice of the guarantors and the amount to be guaranteed shall be in the discretion of the court, the court shall decide such matters having regard to: the seriousness of the charge, the likelihood of the accused's

¹⁰UDHR, cited above at note 6, art 13(2).

¹¹ICCPR, cited above at note 7, art 12(2).

¹²ACHPR, cited above at note 8, art 12(2).

¹³ICCPR, cited above at note 7, art 12(3).

¹⁴ACHPR, cited above at note 8, Art 12(2).

¹⁵ Criminal Procedure Code of Ethiopia, 1961, Art 59(2), Proc. No. 185.

¹⁶ Id, art 68.

appearance, the danger to public order which his release may occasion and the resources of the accused and his guarantors.”¹⁷ Here the court may release an arrested person on bail considering the above elements but as clearly seen in the provision banning an individual from leaving the country is not one of the powers granted for courts. The courts have taken upon themselves the power to ban arrested or bailed individuals from leaving the country but this is done without legal or factual basis.

Immigrations proclamation no.354/2003 is also adamant that “any person may only be prohibited from departing from Ethiopia by an order of a court given in accordance with the law.”¹⁸ However, even though, this proclamation strengthens the courts alleged power to ban arrested or bailed individuals from leaving the country, the courts themselves are not discharging this power under any legal basis. In addition, the immigration proclamation assumes that prohibition from leaving the country will be done in accordance with the law¹⁹ but again this presumed law does not exist except on corruption crimes. “Individuals who are bailed are just suspects who deserve to be regarded with only ”²⁰ at this stage, as they are not charged with any crime. If courts are to ban bailed individuals from leaving the country without any legal basis then it’s a grave transgression on the bailed individual’s fundamental right of travel.

The paper tries to check and analyze the legality of travel ban on bailed individuals and the effect of this transgression on the fundamental right of individuals.

1.2Statement of theProblem

The right to bail is a basic right clearly stipulated under the FDRE Constitution. Arrested persons should be freed on bail and this right should not be denied unless there are exceptional circumstances. Once arrested persons are bailed out, they should be presumed innocent and should enjoy their rights except the restrictions placed by courts according to the law. One of the fundamental rights recognized to persons including bailed individuals is the right to leave a country, which is enshrined under the FERE Constitution and international and regional human

¹⁷ Id, art 69

¹⁸ Immigration proclamation, 2003, Art 6, Proc. No.354.

¹⁹ Ibid

²⁰Merriam-Webster, Suspect Definition and Meaning, <https://www.merriam.webster.com/dictionary/suspect>, last searcheddate May 15, 2024.

rights instruments which Ethiopia has adopted. The constitutional provision concerning the right has not indicated exceptions to the right. The Crim.P.C also does not indicate scenarios where this right might be restricted or curtailed.

The only law which provides that a right to leave the country might be restricted is the anti-corruption special procedure and rules evidence proclamation concerning corruption crimes. In practice, individuals who are arrested in suspicion of committing any crime can be banned from leaving the country by the application of the police investigator assigned to the case as a condition to get bail or can be banned after being bailed on a later date.

Even though, there are no exceptions to the right under the FDRE Constitution, the right is not considered as one of the non-derogable rights under the international and regional human rights instruments which Ethiopia has adopted. Therefore, limitations can be placed on the right but that should be justified in the presence of exceptional circumstances and being provided by law. In the Ethiopian case, there are no legal justifications to ban bailed individuals from leaving the country except the ones` suspected of committing corruption crimes. In corruption cases, the suspects can be banned from leaving the country as it is provide by law but even this is not a free ticket for the state to ban individuals suspected of committing corruption crimes without proving the circumstances justifying the ban, as the reasons for the ban should be considered in conformity to the standards in the international and regional human rights instruments.

In practice, except on corruption crimes, the police investigators or public prosecutors won`t invoke any legal justification when applying for the ban on the right to leave the country. The application by the police or prosecutors can be made orally or in writing but either way usually does not show the legal justification for the request. The request usually say that the bailed individual concerned will not appear for the trial as he is a flight risk, therefore, will ask the individual`s right to leave the country be curtailed.

The court which is entertaining the bail hearing will hear the request from the police or prosecutors and will ban the individual concerned if he/she is convinced by the request. But the court concerned will not invoke any legal justification for the ban except on individuals` who are suspected of committing corruption crimes. In addition, courts does not follow due process in the process of banning the bailed individual from leaving the country, as the bailed individual concerned will not be given the chance to refute the request and reasons for the ban. If the bailed

individual is out on bail and the request by the police or prosecutor is launched on a later date, usually the individual will not be called upon and the case is seen in absentia. In this case, the bailed individual concerned will know about being banned from leaving the country when he/she tries to leave the country for whatever reason.

The researcher observed that the practice of travel ban is in clear transgression of the right to leave the country. The decision to ban arrested and bailed individuals from leaving the country has no legal justification except for suspects of corruption crimes but even here the justifications for the ban are not evaluated. If arrested or bailed individuals are to be banned from leaving the country it should be provided by law for specific crimes that they are suspected of and the circumstances of the case should justify it i.e. it should be necessary to protect national security, public order, public morality, public health and the right of others.

1.3 Research Objective

The FDRE Constitution and international and regional human rights instruments that Ethiopia has adopted consider the right to leave a country including one's own as a fundamental right. The research will indicate the current legal framework, protection and guarantees provided by the right to leave a country which is often overlooked and disregarded unduly in Ethiopian practice. Then the researcher will indicate the gap in practice where there is no law which justifies the right to be curtailed, the gap in practice in applying the existing law where there is one and the adverse effect of banning bailed individuals from leaving the country where there is no legal or factual justification. The research will enable readers to understand the legal gap and practice in banning bailed individuals from enjoying this fundamental right. The research will also help to provide possible remedies to the stated gaps and problems.

1.4 Research Questions

The researcher wants to answer the following questions in doing this research;

1. What are the gaps in the law and practice in banning bailed individuals from leaving the country?
2. What are the justifications for banning bailed individuals from leaving the country?
3. What are the legal and practical effects of travel ban on bailed individuals?

1.5 Hypothesis

The following could be considered as a general tentative findings or conclusions of the research;

1. There is no legal basis to ban bailed individuals from leaving the county except the ones who are suspected of corruption crimes.
2. Even on bailed individuals who are suspected of corruption crimes, being provided by law is not enough for the ban, the circumstances for the ban are not being interpreted in light of the standards set out under the international human right instruments.
3. Where ban is ordered without legal and factual justifications; the basic principles of rule of law, presumption of innocence, due process of law and being treated equally before the law are being violated.

1.6 Literature Review

The right to be released on bail is a fundamental right guaranteed for arrested persons and it should be denied only on exceptional circumstances. Bailed individuals should be presumed innocent until proven otherwise as they are not even charged with a crime. Therefore, they should enjoy all the rights guaranteed under the FDRE Constitution. One of the basic rights guaranteed for individuals is the right of movement. “Liberty of movement is an indispensable condition for the free development of a person. Freedom of movement is the norm in human history, and the right to free movement, as recognized in international human rights instruments, can be usefully connected to notions of individual self-determination.”²¹ The history of people is filled with travelling from one place to another, from one country to another, because of this basic necessity, the right to leave a country including one`s own is given utmost importance. The right to leave the country is enshrined in the FDRE Constitution “any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to”.²² The Constitution does not put forth scenarios or instances where this right might be

²¹ Colin Harvey and Robert P. Barnidge, Jr., the right to leave one`s own country under international law, <https://www.iom.int/sites/g/files/tmzbd1486/files/2018-07/TP8.pdf>, page 1, last searched date May 16, 2024.

²²FDRE Constitution, cited above at note 1, art 32(1).

curtailed. In addition, the Crim.P.C does not incorporate provisions which justify the ban on bailed individuals from leaving the country.

It was very difficult to get legal texts and commentaries on the right to travel abroad and the limitations which can be placed on the right. The one law where a possible ban is stipulated by law is the anti-corruption special procedure and rules evidence proclamation, which under art 6(d) stipulates “where the suspect is released on bail, the court may order to prohibit the suspect from going abroad”²³ Therefore, it can be said travel ban is provided by law in case of suspects of corruption crimes. Another legal provision which discusses the ban on the right to leave a country is the immigration proclamation 354/2003 under art 6 which states “any person may only be prohibited from departing Ethiopia by an order of a court given in accordance with the law.”²⁴ Here the provision assumes a person could be prohibited from leaving the country, it should be done by the order of a court and the order should be given in accordance with the law.

In practice bailed individuals are banned from leaving the country even for crimes which are not related to corruption. Even though, the practice is there, concerns a lot of people and adversely affects the rights of the bailed individuals, laws are not enacted to regulate it, legal texts and commentaries on the matter are not widely available.

There is certainly a knowledge gap in understanding the legal framework of the right to leave the country, how it should be understood and implemented, how it should be restricted if the need be and the correlation and the need to implement the right with what is stipulated under the international and regional human rights instruments which Ethiopia has adopted.

Since the researcher did not find legal texts and commentaries on the right to leave the country and the limitations which can be placed on it domestically, the researcher tried to look into some theories, views and findings from outside the country. On this basis one research I tried to look into is titled, “The right to leave one’s own country under international law”²⁵, which explores how the HRC of the UN has examined the right to leave a country, has interpreted the right in

²³ Revised anti-corruption special procedure and rules evidence proclamation concerning corruption crimes, 2005, art 6(d), proc. No. 434/2005, Neg.Gaz. year 11, no,19.

²⁴ Immigration Proclamation, cited at note 18, art 6.

²⁵ Colin Harvey and Robert P. Barnidge, Jr., The right to leave one’s own country under international law(2005),<https://www.iom.int/sites/g/files/tmzbd1486/files/2018-07/TP8.pdf>, last searched date May 15, 2024.

light of state practice and whether international law requires, or allows, states to prevent their nationals from leaving their own states and if that could be construed as a violation of the right to leave. The research also examined the general comments and communications of the HRC which are important because they form the basis for understanding the right. This research part helped me to further understand the importance and universality of the right and how it should be restricted if need be considering the elements under international human rights instruments provisions and the HRC general comments and communications.

Another journal the researcher has come across is a journal article titled “eroding the presumption of innocence: pre-trial detention and the use of conditional release on bail”,²⁶The journal discuss contrary to the presumption of innocence, the rate of increase in pre-trial detention and restrictive conditions once released on bail be.

By analyzing the current legal provisions and practice on the right to movement and how it is being curtailed the research will help to clearly indicate the gap in the law and practice of travel ban and shares recommendations to rectify it.

1.7 The Research Method

Since the research analysis gaps in law and practice of banning bailed individuals, mixed research methods of doctrinal and empirical research studies were employed. In order to show the state of the law and gap, I will employ doctrinal research method. Here the relevant domestic and international laws will be examined. To examine the practice of travel ban where there is no legal justification, I will employ empirical research method to answer if the practice has legal and factual justifications.

In addition, in undertaking the research, the researcher has used qualitative research method. Accordingly legal rule analysis, case study and analysis of practice will be researched.

In legal rule analysis, the relevant laws on the right to travel abroad and the limitations where the right might be curtailed will be researched. Here the primary and secondary source are finding the domestic laws, international human rights instruments, laws, articles, journals, court decision and internet sources that are relevant to the research.

²⁶ Nicole Marie Myers, eroding the presumption of innocence: pre-trial detention and the use of conditional release on bail (2017), <https://doi.org/10.1093/bjc/azw002>, last searched date May 15, 2024.

In evaluating case study, 6 criminal cases of bail and injunction files where bailed individuals were banned from leaving the country were evaluated. The cases were all entertained at Federal courts. The case study will help to show how the courts proceeded with the ban on travel in clear transgression of due process of law and presumption of innocence.

In analyzing the gap in the law and practice of applying travel ban, questioners were used as tool to collect data from concerned public prosecutor, bailed individuals concerned and judges are collected and are used as vital input to the research in understanding the gap in law and practice and to recommend ways to rectify it.

1.8 Limitations of the Research

Even though shortage of literature is a common problem in conducting a research, in this particular study the researcher has found it very difficult to find legal texts, commentaries, articles and books which were conducted domestically on the right to leave the country and the limitations which can be placed on it. Most of the legal materials found are on the general rules and application of the criminal procedure law. The right to leave the country and the limitations which can be placed on it seems to be considered solely as an extension of bail right considerations.

1.9 Significance of the Research

Even though the right to leave a country is a fundamental right enshrined under the FDRE Constitution and under international human rights instruments adopted by Ethiopia. The right is often overlooked and easily disregarded by courts, police investigators and public prosecutors. There is a tendency to see the right as only an extension of bail considerations. Often times courts don't hesitate to ban arrested and bailed individuals from leaving the country when the request is brought by the police or prosecutor. This ban concerns quite a lot of people. But even though, it is a fundamental right and the ban has devastating consequences, legal commentaries, journals and researches in the area are not easy to come by. Therefore, this research will help to shine a light on this often overlooked but basic right.

1.10 Thesis Organization

The research paper is divided into four chapters. The first chapter gives detailed information

about the thesis paper this includes background, research problem, research objective, research questions and hypothesis, literature review, significance of the research and research methodology.

The second chapter deals with the right to bail, the right to leave a country under the FDRE Constitution and the international and regional human rights instruments that Ethiopia has adopted. The chapter also discusses the limitations of the right to leave a country.

The third chapter is devoted to explaining the gaps in the law and practice while implementing travel ban on bailed individuals. Here the travel ban will be considered in light of basic human rights principles. The practical implications of travel ban will also be discussed. The chapter discusses the availability of laws to restrict the fundamental human right.

The fourth chapter is the last of the thesis paper and it discusses general conclusion and recommendations.

2. CHAPTER TWO

THE RIGHTS AND RESTRICTIONS OF BAIL AND RIGHT TO TRAVEL; THE RELATIONSHIP BETWEEN THE TWO

2.1 The Right to Bail and How it is Applied under Ethiopian Laws

The right to bail is a fundamental right granted to arrested persons enshrined in the FDRE Constitution under art 19(6) “persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.”²⁷. According to the constitution bail is the rule and can be denied in exceptional circumstances. The right to bail is also a fundamental right stipulated under the international and regional human rights instruments Ethiopia has adopted, which are considered as integral part of the law of the country and should be interpreted conforming to them.²⁸ Moreover, in the ICCPR under art 9(3) “it shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”²⁹

The Crim.P.C also stipulates how bail will be granted and the pre-conditions which have to be met to secure bail. “Where the application for bail is allowed, the court shall fix the conditions on which bail is granted. The choice of the guarantors and the amount to be guaranteed shall be in the discretion of the court. The court shall decide such matter having regard to the seriousness of the charge, the likelihood of the accused's appearance, the danger to public order which his/her release may occasion and the resources of the accused and his guarantors.”³⁰ After bail is granted, the bailed individual has to fulfill the condition set out by the court. “When the bail bond has been entered into and all formalities complied with, the accused shall be released from custody.”³¹ If the legality and formality of bail is strictly followed it will help to administer

²⁷ FDRE Constitution, cited above at note 1, Art 19(6).

²⁸ Id, art 9(4) and 13(2).

²⁹ ICCPR, cited above at note 7, art 9(3).

³⁰ Civil Procedure Code, cited above at note 15, art 68 and 69.

³¹ Id, art 72.

criminal justice. “Bail plays a central role in the administration of the criminal justice by balancing the interest of the individual in securing her liberty pending investigation or trial and the interest of criminal justice administration by securing her continued attendance. Bail may also be seen as an extension of the principle in the criminal justice system that such person is presumed to be innocent until proven guilty.”³²Therefore, the main justification for the right to bail is the presumption of innocence.

2.1.1 Presumption of Innocence as a Basis for the Right to Bail

Arrested persons should be presumed innocent until proven to be guilty. The FDRE Constitution under art 20(3) states “accused persons have the right to be presumed innocent until proved guilty according to law.”³³ The presumption of innocence as outlined in the Constitution extends to arrested persons as well, as they are not even charged with any crime. Besides the FDRE Constitution, the UDHR, under art 11(1) states “everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law.”³⁴ The ICCPR under art 14(2) states “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”³⁵ In addition, in the ACHPR, under art 7(1) (b) states “the right to be presumed innocent until proven guilty by a competent court or tribunal.”³⁶This presumption is extended even for persons who are already charged with a crime let alone arrested persons who may or may not be charged as the case may be. If arrested persons are presumed to be innocent then they should always be freed on bail unless the circumstances of the case are exceptional enough so as to deny bail. If arrested persons are not granted bail failing the exceptional circumstances then they are considered guilty as they are already serving time.

2.2 Freedom of Movement under the FDRE Constitution

Arrested persons should be presumed innocent until proven otherwise. The presumption of innocence on arrested persons dictates that they should be granted with bail unless the

³² Simeneh Kiros Assefa, (2009), CRIMINAL PROCEDURE LAW: PRINCIPLES, RULES AND PRACTICE, p. 232.

³³ FDRE Constitution, cited above at note 1, art 20(3).

³⁴ UDHR, cited above at note 6, art 11(1).

³⁵ ICCPR, cited above at note 7, art 14(2).

³⁶ ACHPR, cited above at note 8, art 7(1)(b).

circumstance of the case is exceptional enough to deny one. Arrested persons who are released on bail should enjoy the rights and freedoms guaranteed equally as everyone else. One of these fundamental rights is the right to leave a country. This is a fundamental right clearly enshrined in the supreme law of the land, the FDRE Constitution. The Constitution under art 32(1) state “any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right of liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he/she wishes to.”³⁷ Accordingly, the right concerns all Ethiopians and foreign nationals who are legally present and gives them the right to leave the country whenever they wish to do so. This constitutional provision does not exclude anyone from enjoying the right or it does not stipulate a scenario where the right can be restricted even in exceptional circumstances where ban from leaving a country can be said to be justified.

The right to leave a country is also one of the fundamental rights enshrined under international and regional human rights instruments which are considered integral law and should be interpreted conforming to them as they are adopted by Ethiopia. In the UDHR, which is considered “as a global road map for freedom and equality which protects the right of every individual, everywhere,”³⁸ the right is stipulated under art 13(2) “everyone has the right to leave any country, including his own, and to return to his country”.³⁹ This right does not include exceptions to it or scenarios where the right can be curtailed. In the ICCPR, which is “a key international human rights treaty and considered as one of the international bill of human rights,”⁴⁰ it clearly stipulates under art 12(2) that “everyone shall be free to leave any country, including his own”.⁴¹ Here as well the right is granted to everyone, every human being and the right includes right to leave a country including one`s own. In the ACHPR, the right is stipulated clearly under art 12(2), “every individual has the right to leave any country including his own”.⁴²

³⁷ FDRE Constitution, cited above at note 1, art 32(1).

³⁸ Amnesty international, Universal Declaration of Human Rights, <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>, last searched date May 15, 2024.

³⁹ UDHR, cited above at note 6, art 13(2)

⁴⁰ American civil liberties union, FAQ, ICCPR, <https://www.aclu.org/documents/faq-covenant-civil-political-rights-iccpr>, last searched date May 15, 2024.

⁴¹ ICCPR, cited above at note 7, art 12(2).

⁴² ACHPR, cited above at note 8, art 12(2).

2.3 The Relationship Between Right of Bail and the Right of Movement

From the outset the right of bail and the right to leave a country are totally different rights which are both fundamental rights discussing a separate set of protections and rights. The two fundamental rights are enshrined separately on the FDRE Constitution and on international and regional human rights instruments that Ethiopia has adopted. In the FDRE Constitution, bail rights are stipulated under part one-human rights as one of the rights granted to arrested persons.⁴³ On the other hand, the right to leave the country is stipulated under part two-democratic rights, as a freedom of movement for Ethiopians and Foreign nationals.⁴⁴ Therefore, in principle both are fundamental rights stipulated to protect different sets of freedoms and one is not superior to another in any way.

When the application for bail is considered it is made according to the provision of the Constitution and the Crim.P.C i.e. bail is considered a principle and should be denied on exceptional circumstances, “The plain reading of the Constitution indicates that the law does not deny bail a priori, but it gives grounds for the court to assess the situation.”⁴⁵

Furthermore, once bail is granted the details will be governed by the Crim.P.C. In the Constitution and the Crim.P.C that deals with bail there is no mention of a link with the right to leave a country. The one law which discusses a link between bail rights and the right to leave a country is the anti-corruption special procedure and rules of evidence proclamation, which discuss if bail is allowed for a person who is a suspect on corruption crimes then he/she can be banned from leaving the country.

In the Ethiopian practice, there is a tendency to see the right to leave the country as only an extension of bail considerations. Bail consideration and the right to leave the country are not considered a separate issues but rather the latter a simple extension to the former considerations. When court grant bail for an individual suspected of a given crime, banning the individual from leaving the country by an application of police investigators is seen as a natural extensions and considerations to grant bail.

⁴³ FDRE Constitution, cited above at note 1, art 19(6).

⁴⁴ Id, art 32(1).

⁴⁵ Simeneh Kiros Assefa, cited above at note 32,p-236.

In fact, the right of bail and the right to leave a country are linked and there should be a relationship between the two but that should be done only when it is prescribed by law and when the reasons for the ban are exceptional and compelling. In case of bail considerations, if travel ban is to be ordered then that should first be provided by law. Moreover, being provided by law will not be enough to ban bailed individuals from leaving the country, the circumstances of the case should be exceptional as outlined under the “ICCPR and ACHPR”⁴⁶; to protect national security, public order, public health, morality and rights and freedoms of others and the ban should not infringe on other rights under the instrument. If the link between the bail right and the right to leave a country being curtailed is not made according to law and the circumstances of the case found to be justified in conformity with the international and regional human rights instruments, then the right to leave a county should not be violated as a pre-condition to get bail.

2.4 Exceptions on the Right to Leave the Country

The right to leave a country including one`s own is not restricted or exceptions to the law is not provided in the Ethiopian constitution or on the UDHR. But under the ICCPR and ACHPR, the right is not considered as one of the non-derogable right as it can be restricted by states. States can derogate from this right and may ban an individual from leaving the country but there should be exceptional circumstances to justify it.

Under the ICCPR, states can restrict the right to leave a country provided that it is “provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”⁴⁷ Even though, there could be derogation from this right, there should be compelling reasons which are designed to protect the society as a whole.

In addition, “all restrictions of the right to leave must be narrowly interpreted. In general comment no. 27, the HRC warns that any restrictions must not impair the essence of the right and that the relationship of the norm to the exception must not be reversed. Restrictions should use precise criteria and not confer unfettered discretion on those charged with their

⁴⁶ ICCPR, cited above at note 7, art 12(3) and ACHPR, Cited above at note 8, art 12(2).

⁴⁷ ICCPR, cited above at note 7, art 12(3).

execution.”⁴⁸ Furthermore, “the principle of proportionality must be respected not only in the law but also in the administrative practices. Finally, the UN HRC in General Comment No. 27 warns that “the application of the restrictions permissible under article 12, paragraph 3 needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination.”⁴⁹ Therefore, the travel ban should not be exercised in transgression of the other rights stipulated under the ICCPR and it should not be discriminatory.

Under the ACHPR, the right to leave a country may only be restricted when “provided by law for the protection of national security, law and order, public health or morality”.⁵⁰ Therefore, it is not enough or will not be legal under this instrument to just say a ban on travel for a particular crime is declared but the ban should be justified to protect the society as a whole in addition for being a suspect of a given crime no matter how serious that crime may seem.

2.4.1 Specific Limitation on the Right to Leave a Country

2.4.1.1 Necessary Circumstances

2.4.1.1.1 To Protect National Security

National security has been described as the ability of state to cater for the protection and defense of its citizens.⁵¹ “National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”⁵² Here the onus is on the state to prove the ban is necessary to protect the nation and its political independence as a whole. “The state cannot invoke reason of national security for imposing limitations to prevent merely local or relatively isolated threats to law and order.”⁵³ National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate

⁴⁸ Issue Paper: the right to leave a country, <https://rm.coe.int/the-right-to-leave-a-country-issue-paper-published-by-the-council-of-e/16806da510>, Council of Europe commissioner for human rights, date accessed May 15, 2024.

⁴⁹ Ibid

⁵⁰ ACHPR, cited above at note 8, art 12(2).

⁵¹ Segun Osisanaya, National Security Vs Global Security, <https://www.un.org/en/chronicle/article/national-security-versus-global-security>, para. 5, last searched date May 16, 2024.

⁵² UN (Economic and Social Council), Siracusa Principle, 1984, p.8, no. 29.

⁵³ Id, p.8 no.31.

safeguards and effective remedies against abuse.”⁵⁴ The systematic violation of human rights undermines true national security and may jeopardize international peace and security.

Crimes relating to the FDRE Constitution, the Constitutional order or terrorism crimes can be considered to trigger national security issue but just the label of being a suspect of the crime will not be enough under this element. The state should prove that not banning the suspect from leaving the country will be dangerous for the national security of the nation.

2.4.1.1.2 To Protect Public Order

One of the basic responsibilities of a state or government is to protect public order. States are responsible for defending public order and safety. “In humanitarian law, the term public order describes the general conditions that must exist so that individuals can enjoy their rights and freedoms.”⁵⁵ “The notion is generally understood to include both legal and physical guarantees of freedom, security, and peace of mind, which are necessary for individuals to live together in a society.”⁵⁶

In addition, in the Siracusa principle public order (*ordre public*) is defined as “the sum of rules which ensure the functioning of society or the set of fundamental principles on which a society is founded.”⁵⁷ Public order shall be interpreted in the context of the purpose of the particular human right which is limited on this ground. For the purpose of this research the right which is limited on the ground of public order is the right to leave a country. Therefore, the onus is on the state to show banning the person concerned is necessary to protect the public order. “State organs or agents responsible for the maintenance of public order shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.”⁵⁸ The state is given the discretion to invoke public order to as compelling reason to ban travel but if there no check and balance in the system, the state may abuse its power as it is the one who invokes the reason, deliberates and decides on the validity of the reasons.

⁵⁴ Ibid

⁵⁵ Medicines Sans Frontieres: The Practical Guide to Humanitarian Law, <https://guide-humanitarian-law.org/content/article/3/public-order/>, para. 1, last searched date May 16, 2024.

⁵⁶ Id, para 3.

⁵⁷ Siracusa principle, cited above at note 52, p.7, no.22

⁵⁸ Id, p.8, no.24

2.4.1.1.3 To Protect Public Health

Public health is the science of protecting and improving the health of people and their communities. This work is achieved by promoting healthy lifestyles, researching disease and injury prevention, and detecting, preventing and responding to infectious diseases. Overall, public health is concerned with protecting the health of entire populations.⁵⁹ Here, also the state and government are in charge of protecting and improving the health for their citizens. “Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. Due regard shall be had to the international health regulations of the World Health Organization.”⁶⁰

2.4.1.1.4 To Protect Morals of a Society

“Moral relates to principles of right and wrong in behavior”⁶¹ of a given society. Right and wrong in one country or society is different from another country or society. The principle of right and wrong of one society is influenced by its religion, culture, education level. Protecting the moral of a given society has also been given importance and any action which damages that can be said to justify travel ban on individual or individuals who are accused of disrupting that. But here the critical word to understand is what is moral of a given society. “Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.”⁶² The onus is on the state to show the ban on travel justified to respect the moral values of a society but the state cannot use this exception to unduly discriminate among persons.

Moral of a society changes from time to time and what constitutes moral is not accepted by all, therefore, the state may well abuse this reasoning if left totally to it unchecked.

⁵⁹CDC foundation: What is Public Health, <https://www.cdcfoundation.org/what-public-health>, last searched date May 15, 2024.

⁶⁰ Siracusa principle, cited above at note 52, p.8, no, 25-26.

⁶¹Merriam-Webster: Moral Definition and Meaning, <https://www.merriam-webster.com/dictionary/moral>

⁶² Siracusa principle, cited above at note 52

2.4.1.1.5 To Protect the Rights and Freedoms of Others

In addition, people have rights and freedoms, these rights and freedoms are stipulated in international and regional treaties which are agreed by states. Moreover, states legislate their own domestic laws to govern rights and freedoms of their people. A person cannot act in a manner which puts the rights and freedoms of others at risk. If a person's action infringes the rights and freedoms of others then these can be a basis for a ban to leave a country.

The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations.⁶³

2.4.1.1.6 Being Consistent with the Other Rights Recognized in the Covenant

The ICCPR consists whole set of civil and political rights. These rights and freedoms include the right to life, liberty, security of person and the fundamental principles of equality and non-discrimination among others. This requirement insists that the ban on the right to leave a country should be effected in a way that does not infringe on other rights and freedoms granted under the instrument. "The UN Human Rights Committee in General Comment No. 27 warns that "the application of the restrictions permissible under article 12, paragraph 3 needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the rights enshrined in article 12, paragraphs 1 and 2, were restricted by making distinctions of any kind, such as on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁶⁴ In light of this requirement, there should be a proper check on the state so that the travel ban will not be handed unfairly, as the accusation leveled at the Federal government of Ethiopia, in restricting issuance of passport and banning from travelling abroad on people who were from Tigray during the height of the recent conflict between the Tigrian forces and the Federal government.

⁶³ Ibid

⁶⁴ Noted above at note 40

2.4.1.2 Prescribed for by Law

According to the ICCPR the right to leave a country including one`s own is a rule and it can only be restricted in exceptional circumstances. The first condition for travel ban is being prescribed by law. “No limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.”⁶⁵ The ban on the right to leave a country should first be promulgated by national law of the country. In Ethiopian case, the one law which stipulates possible ban is the revised proclamation no.434/2005 to provide for special procedure and rules of evidence on anti-corruption. The proclamation under Article 6 stipulates that there could be an injunction on the right of movement on a person who is suspected of committing corruption crime. “Where the suspect is released on bail, the court may order to prohibit the suspect from going abroad.”⁶⁶

Moreover, the law which restricts or bans persons from leaving a country should not be inconsistent with other fundamental rights provided under the ICCPR. “Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.” Before enacting the law states should make sure the travel ban on certain individuals under certain circumstances are justified and needed. The state should not abuse its power and enact the travel ban to restrict the right of persons unreasonably. “Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.” The ban on travel should “adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.” When laws are enacted to ban persons from leaving the country, the law should clearly indicated under which conditions travel ban may be justified. In addition, if a person is banned from leaving abroad unlawfully then the person should be able to challenge that and get it lifted.

In case of individuals who are on bail, which this paper focuses on, there should be a clear law which stipulates a possible ban from leaving the country on the crime they are suspected of.

2.4.1.3 Proportionality

⁶⁵ The Siracusa principles on the limitation and derogation provisions in the ICCPR-B. Interpretative Principles Relating to Specific Limitation Clauses i. "prescribed by law"

⁶⁶ Corruption art

Besides being prescribed by law, the measure of travel ban proposed on bailed individuals should be necessitated to the circumstances of the case. The principle of proportionality requires state to consider the individual's circumstances; choose the least restrictive option; and make a reasoned decision, including why they consider any restriction on human rights to be justifiable to begin with. There must also be a balance between the individual's rights and the interests and rights of others (e.g. public safety).

When states gear up to ban individuals from leaving the country, besides the measure being prescribed by law, the compelling circumstances like protecting public order the ban should be absolutely necessary.

CHAPTER THREE

THE GAPS IN PRACTICE OF TRAVEL BAN AND EFFECTS ON THE RIGHTS OF BAILED INDIVIDUALS

3.1 Introduction

The right to leave a country at a time of one's choosing is one of the fundamental rights enshrined in the FDRE Constitution and under the international and regional human rights instruments adopted by Ethiopia. The constitution does not illustrate a scenario where the right can be restricted⁶⁷. But the ICCPR⁶⁸ and ACHPR⁶⁹ do specify the right as one of the rights which can be restricted by states when it is provided by law and there are exceptional circumstances justifying it.

In Ethiopia's practice, in federal courts individuals whose bail hearing is being entertained for different crimes can be banned from leaving the country as a pre-condition to get bail or can be banned at a later date often by a new file and without being called upon for their own case. It can be said that the right to leave the country can be banned on suspects of corruption crimes as it is provided by law but even on that the practice should be seen in light of the international human rights instruments Ethiopia has adopted. This chapter analysis, the legality of the ban, the practice and the adverse effects on the individuals who are banned. As part of analyzing the legality, practice and effects on the rights of bailed individuals' questioners were dispersed to the bailed individuals themselves, police investigators, public prosecutors, judges and lawyers to incorporate their opinion on the matter. In addition, the author reviewed cases, from which in three of which the author himself was in charge of representing the bailed individuals as a lawyer.

⁶⁷ FDRE Constitution, cited above at note 1, art 32(1).

⁶⁸ ICCPR, cited above at note 7, art 12(3).

⁶⁹ ACHPR, Cited above at note 8, art 12(2).

3.2 Legality of Banning Bailed Individuals from Leaving the Country

In federal courts of Ethiopia, arrested persons can be banned from leaving the country as a pre-condition to get bail or can be banned at a later date by the application of the public investigator or public prosecutor assigned to the case. Often times, the police investigator or public prosecutor does not mention any law to back up the petition of ban from leaving the country and the courts themselves entertaining the cases do not invoke any law to justify the travel ban except on corruption crimes. Therefore, even though individuals are banned from leaving the country in practice, the petition for the ban and the decision on the ban does not invoke any law. If an arrested person is to be banned as a pre-condition to get bail or if a request is launched to ban on bailed individual from leaving the country after the individual is set free on bail, then the request for the ban and the decision on the ban should certainly need to detail the legal backing for doing so. As the right to leave the country is a fundamental right enshrined under the FDRE Constitution and international and regional human rights instruments which Ethiopia has adopted, it cannot be restricted unless it is provided by law and where the reasons are exceptional and proportional.

The police investigators and public prosecutors seem to totally forget and overlook the magnitude of the right to leave the country when requesting an arrested individual or bailed individual to be barred from leaving the country. This can be seen from the simplicity of their request; the request can be made orally or in written form but doesn't properly detail the reasons for the ban let alone the legal justifications. The police investigators and public prosecutors usually just say or write that the individual concerned will not be present for trial or is a flight risk, therefore, should be banned from leaving the country.

The court which is considering the travel ban request from the police investigator or public prosecutor, usually will hear the details of the request and if the court thinks the request is justified they will ban the individual from leaving the country often times without giving the opportunity to the arrested or bailed individual to refute the petition or accusation leveled by the police or prosecutor even as he/she is present before the court. The courts are also overlooking the magnitude of the right as they believe an arrested or bailed individual right to leave the country can be curtailed simply by the application of the police and by the sole discretion of the court. They seem to totally disregard the importance of the right which is enshrined in the

domestic and international instruments. Moreover, in addressing the request of the travel ban, the courts seem to totally focus on the right of bail, they seem to believe that if bail is granted then the right to travel can be curtailed as of right and the restriction on the concerned individual's right to travel should be the least of his/her worries and should just be grateful being freed on bail.

3.2.1 Legality of Travel Ban in the FDRE Constitution

The right to leave the country whenever someone chooses is a fundamental right protected under the FDRE Constitution. The Constitution does not provide any exceptions to the right, therefore, the practice of a ban by courts from leaving the country cannot be claimed to have a Constitutional backing. In fact, it clearly infringes on the fundamental right enshrined in the constitution. In addition, the Constitution under art 9(4) clearly stipulates that all international agreements ratified by Ethiopia are an integral part of the law of the land. Moreover, under art 13(2) fundamental rights and freedoms including the right of movement is to be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia.

Under ICCPR and ACHPR, the right to leave a country including one's own is not classified as one of the non-derogable rights as this right can be restricted by states but only in exceptional circumstances. Under the ICCPR, if the state concerned proves that the ban from leaving the country "is provided by law, and if it is necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the Covenant"⁷⁰ then the ban on the right to leave a country can be said to be justified.

Under the ACHPR, in order for the travel ban to be legal "the right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health and morality."⁷¹ Here too the onus is on the state to prove that there are exceptional circumstances to protect national security, law and order, public health and morality in asking for travel ban of an individual and on top of this, the need for the travel ban and the circumstances which justify it should be provided by law.

⁷⁰ ICCPR, cited above at note 7, art 12(3).

⁷¹ ACHPR, cited above at note 8, art 12(2).

Under the international convention on the protection of the rights of all migrant workers and members of their families, migrant workers are given specific freedoms and privileges, one of those privileges is the right not to be banned from leaving their own country unless it is provided by law and the reasons justify the ban. “Migrant workers and members of their families shall be free to leave any state, including their state of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.”⁷²

3.2.2 Legality of Travel Ban in the Crim. P. C

Under the Crim.P.C courts have the right and the duty to put forth conditions when they order to release an arrested individual on bail. “Where the application is allowed, the court shall fix the conditions on which bail is granted. The choice of the guarantors and the amount to be guaranteed shall be in the discretion of the court. The court shall decide such matter having regard to: the seriousness of the charge; the likelihood of the accused's appearance and the danger to public order which his release may occasion and the resources of the accused and his guarantors.”⁷³ According to the Crim.P.C under art 68 and 69, the only discretion available to the court is to choose the guarantors and the amount to be guaranteed. If the arrested individual meets the condition set out by the court, meaning if the guarantors and amount to be guaranteed is furnished then he/she should be released. “When the bail bond has been entered into and all formalities complied with, the accused shall be released from custody.”⁷⁴The Crim.P.C provisions on granting bail does not give the power to the court to ban the arrested individual from leaving the country as a pre-condition to bail or the right to ban the bailed individual on a later date. The only remedy available for courts after the arrested individual is granted bail are in the case of mistake or fraud and in case of new facts. In case of mistake or fraud “if through mistake, fraud or otherwise, insufficient sureties have been accepted the court may issue a warrant for the arrest of the person released on bail and when such person appears, the court may

⁷² United Nations Treaty, 1990, international convention on the protection of the rights of all migrant workers and members of their families-art 8(1).

⁷³ Criminal Procedure Code, cited above at note 15, art 68 and 69.

⁷⁴ Id, art 72.

order him to find sufficient sureties. Where he refuses or is unable to do so, the court shall order that he be remanded.”⁷⁵ And in the case of new facts “where certain facts are disclosed which were unknown when bail was granted, the court may at any time of its own motion or on application reconsider the conditions on which bail has been granted and may order the released person to produce new sureties or to be remanded.”⁷⁶ There are no other powers granted to the court when considering granting bail, specifically, the court is not granted the power to ban arrested individuals from leaving the country. Even after the arrested individual is out on bail if mistake or fraud or if new facts are discovered in the process of granting bail, the only remedy the court has is to force the bailed individual to furnish new sureties or be remanded on custody.

3.2.3 The Legality of Travel Ban in the Anti-Corruption Special Procedure and Rules of Evidence Proclamation

The anti-corruption special procedure and rules of evidence proclamation is the exception in enacting that a person who is suspected of a corruption crime can be banned from leaving the country. Therefore, it can be said that the ban on travel is provided by law in this circumstance, nevertheless, this is only one of the consideration to ban an individual from leaving the country under the ICCPR and the ACHPR, necessity to protect national security, public order, public health or morals or the rights and freedoms of others should also be considered when deliberating to ban the individual under these crimes. Even though, travel ban is provided by law under corruption crimes, as the right to leave a country is a fundamental Constitutional right the justifications for the ban should be interpreted in light of the international human rights instruments Ethiopia has adopted. If we take one crime of corruption in the corruption crimes proclamation no.881/2015, as an example under art 18, “any public servant or employee of a public organization who, with intent to obtain an advantage, directly or indirectly, from any person interested in a matter brought to his attention by reason of his responsibility or duty or to benefit or injure any party interested in such matter, fails, without good cause, to decide on or delays the matter or abuses the interested party contrary to law, manuals or directives or accepted office practices, shall be punished.”⁷⁷ According to the anti-corruption special procedure and rules

⁷⁵ Id, art 73.

⁷⁶ Id, art 74.

⁷⁷ Corruption Crimes Proclamation, 2015, Art 18, Proc. No.881, Neg. Gaz. Year 21, No.36.

of evidence proclamation under art 6(d), a person who is accused of a corruption crime even as relatively as simple as this, can be banned from leaving the country.

3.2.4 The Legality of Travel Ban under the Immigration Proclamation no.354/2003

The immigration proclamation states that an individual may be banned from leaving the country, “any person may only be prohibited from departing from Ethiopia by an order of a court given in accordance with the law.”⁷⁸ This law has three elements, first; there can be a prohibition from leaving the country, second; this should be done by an order of a court and third; the order of the court should be given in accordance with law. The first two parts of the law are clear assuming it is provided by law to prohibit a person from leaving the country to the specific crime a person has been accused of, the order to do so should be by an order of a court of law. But on the third part it says the order of ban should be given in accordance with law, here it is assuming that there is a law which allows courts to ban individuals from leaving the country and the order should be passed accordingly. Clearly there are no provisions granting the power to courts to ban an individual from leaving the country under the FDRE Constitution or the Crim.P.C. The right to leave the country can only be said it is provided by law on suspects of corruption crimes but on other crimes, it is wrong for the immigration provision to assume that there is a law to back the ban on individuals. In addition, the immigration law clearly says that the ban to leave the country should be passed only by the order of the court in accordance with the law, here this part of the provision seems to suggest that if there is no legal justification for the ban then it cannot be used to ban individuals from leaving the country. In practice, courts do not invoke any law except on corruption crimes as there are none but the immigration office does not refuse to comply claiming lack of legal justification. In practice, the immigration office accepts whatever is ordered by the courts and implements the travel ban accordingly.

3.3 The Adverse Effect of Travel Ban on Basic Legal Principles

3.3.1 Introduction

People leaving one country for another for different reasons is an old phenomenon. The reasons for travel are numerous and the duration of travel may vary accordingly. People leave a country

⁷⁸ Immigration Proclamation, cited above at note 18, art 6.

for family reasons, education, to escape political persecution, for economic reasons, for work or other reasons. Therefore, the right to leave a country is vital to those who chose to do so and the fact that the right to leave a country may be exercised unlawfully or unjustly will adversely affect the right of banned individuals.

3.3.1.1 Rule of Law

The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.⁷⁹ Even though, the rule of law is a set of many principles and burdens the responsibility on states to fulfill and respect them, one of the responsibilities that states have is to be accountable to the laws which are publicly promulgated. In the case of banning bailed individuals from leaving the country the state through courts is not being accountable to the law which is publicly promulgated. According to the FDRE Constitution under art 32(2) people have the right to leave the country. The state has the duty to respect the right of individuals to leave a country and should refrain from any action which infringes on this fundamental right. This very right which is protected by the supreme law of the land is being disregarded without any legal basis. In addition, as the principle of governance under prevalence of rule of law expects the laws to be consistent with international human rights norms and standard, even though, there are laws which stipulate the ban on to leave a country, the laws and the reasons which are provided to ban an individual should be considered and interpreted in light with the international human rights norms and standards.

Moreover, the principle of governance under rule of law expects adherence to principle of avoidance of arbitrariness. The right to leave the country is a fundamental right enshrined in the Constitution. The Constitution does not provide a scenario where this right might be restricted. In addition, the country didn't enact other laws excepton suspects of corruption crimes. In practice,

⁷⁹ United Nations: What is the rule of law-UN and the Rule of Law, <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>, para 2, last searched May 16, 2024.

bailed individuals are banned from leaving the country for a whole range of crimes where it is not provided by law to ban the bailed individual for the suspicion of such crime. This action by the state through courts is arbitrary.

There are instances where the state through courts banned bailed individuals from leaving the country for suspicion of a crime where travel ban is not provided by law or the circumstances for the ban was justified under the international human rights instruments adopted by Ethiopia. The researcher investigated four criminal files to this effect which were entertained at Federal Courts. The first Asnaku Negane Vs Federal Police,⁸⁰ second Aselefech Mekonnen Vs ERCA,⁸¹ both suspects were suspected of a contraband crime, third Betelehem Tadesse Vs Federal Police,⁸² who was suspected of human trafficking and the forth, Sidi Mohammed Vs. ERCA,⁸³ who was suspected of illegal money transfer. In all cases, the suspects were banned from leaving the country as a condition to grant bail or at later date by a separate file.

3.3.1.2 Presumption of Innocence

In the FDRE Constitution, under art 20(3) “during proceedings accused persons have the right to be presumed innocent until proved guilty according to law.”⁸⁴ Even though the presumption of innocence is stipulated under accused persons` rights, it can be certainly argued that the presumption extends to individuals who are on bail as bailed individuals are not even charged with a crime. Therefore, any bailed individual should certainly be considered innocent until proved otherwise. But when bailed individuals are banned from leaving the country without any legal basis or justifications, thereby, they are unable to fulfill their task by leaving the country be it work, family, health issue or others, then we can certainly say their presumption of innocence is violated. If a person is presumed innocent until proven otherwise then he/she should not be

⁸⁰ Asnaku Negane v Federal Police (Criminal File No, 170161, Federal First Instance Court, Federa First Instance Court, August 29, 2017)

⁸¹ Aselefech Mekonnen v Ethiopian Revenue and Customs Authority (Criminal File No, 177144, Federal First Instance Court)

⁸² Betelehem v Federal Police (Criminal File No, 229091, Federal First Instance Court , May 15, 2023)

⁸³ Sidi Mohammed v Ethiopian Revenue and Customs Authority (Criminal File No 147100, Federal First Instance Court, March 28, 2016)

⁸⁴ FDRE Constitution, Cited above at note 2, Art 20(3)

objected to restrictions justified on people who are guilty of certain crime. Bailed individuals have the right to be presumed innocent until proven otherwise, if that is the case; they should be able to enjoy their rights and freedoms as any free individuals. When bailed individuals are banned from leaving the country for a suspicion of a crime where a possible ban for a suspicion of such crime is not provided by law and where the bailed individuals are stuck in the country, it can certainly be said their right to be presumed innocent is greatly infringed upon. When a bailed individual is banned from leaving the country for a crime travel ban is not provided by law and the reasons for the ban are not justified then he/she is being considered guilty of the crime he is accused of and is already serving punishment as a form of travel ban which may be dispensable for the person concerned.

3.3.1.3 Due Process of Law

In addition, for the absence of any legal basis for ban on travel on bailed individuals either on the Constitution or other laws of Ethiopia except on corruption cases, often times due process of law is not respected in practice of entertaining the application of ban on bailed individuals. Due process of law is “a course of legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights. In each case, due process contemplates an exercise of the powers of government as the law permits and sanctions, under recognized safeguards for the protection of individual rights”.⁸⁵ In banning individuals from leaving the country, the police investigator or public prosecutor may request for the ban when an arrested person right of bail is considered or at later date. If the application for the ban is launched while the arrested individual`s bail is being considered then he knows about the request but usually judges don`t give the opportunity for the arrested person to have his/her say and to refute the reasons which are stated to demand a ban. In the cases which were investigated by the researcher, which are 1st. *Betelehem Tadesse v Federal Police*,⁸⁶ and 2nd. *Aselefech Mekonnen v ERCA*,⁸⁷ even though, the suspects were present when application for the

⁸⁵Encyclopedia Britannica, due process, <https://www.britannica.com/topic/due-process>, last searched date May 16, 2024.

⁸⁶ *Betelehem v Federal Police*, cited above at note 86.

⁸⁷ *Aselefech Mekonnen v Ethiopian Revenue and Customs Authority*, cited above at note 85

ban was submitted they were not given the opportunity to refute the reasons which were presented by the investigators.

There are also instances where after an arrested person is bailed from custody, the request for the ban which were launched by a separate petition and opened under what is called an injunction file. Here usually the case is heard ex-parte and the bailed individual will not be called upon. The police investigator or public prosecutor will provide his reasons for the ban of the bailed individual and if the court is convinced, the person concerned will be banned from leaving the country without knowing anything about it. A judge who is seeing whether to ban the right to travel or not usually will not call upon the bailed individual concerned. Regarding this issue, the researcher investigated two files which are 1st.Asnaku Negane v Federa Police,⁸⁸ and 2nd.Sidi Mohammed v ERCA⁸⁹. In the first case, the suspect`s bail hearing was entertained on file no. 170130. On this file, the suspect was granted bail and set free by posting birr 50,000(fifty thousand birr). Then the bailed individual was banned from leaving the country on another file, injunction file, file no. 170161, where a separate file was opened based on the application of the police. In the file, the bailed individual was not called upon and the case was seen in absentia.

Similarly, in the second file, the suspect bail hearing was entertained on the file no, 147100. On this file, he was released from custody on bail and the bail bond was set on birr 10,000(ten thousand birr). After the person was released on bail, a separate file, file no. 148525 was opened by the court following the request for a ban on travel. Similarly, the bailed individual was not called upon on the second file and the person was banned from leaving the country in absentia.

3.3.1.4 Equal Treatment before the Law

Every person has the right to be treated equally and should enjoy the rights provided by law without any discrimination. As this is a fundamental right it is clearly stipulated under the FDRE Constitution “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”⁹⁰ Concerning the right to leave a country, the government has the duty to refrain from any action which infringes on this basic right. Unless a bailed individual is banned from leaving the country in accordance with law and the reasons for the ban are said to

⁸⁸Asnaku Negane v Federa Police, cited above at note 84

⁸⁹Sidi Mohammed v ERCA, cited above at note 87

⁹⁰ FDRE Constitution, cited above at note 1, art 25

be justified in light of the requirements stipulated under the international human rights instruments that Ethiopia has adopted, the ban cannot be legal or justified thereby, will restrict the banned individuals from enjoying their rights like everybody else.

In practice, bailed individuals can be banned from leaving the country for wide range of crimes like contraband, human trafficking, theft and others. The only law which has justification for a possible ban is suspicion on corruption crimes. Bailed individuals, who are banned from leaving the country except on suspicion of corruption and where the reasons for the ban are not compelling, are not being treated equal before the law in exercising their right to leave the country as there is no legal justification for the ban.

3.4 Practical Implications of Travel Ban

Besides the transgression on the legal principles, travel ban which are not rendered without legal basis and where the reasons for the ban were not justified have real life consequences on bailed individuals.

3.4.1 Family Ties

“The family is the natural and fundamental unit of society and is entitled to protection by society and the State.”⁹¹ Family as a natural and fundamental unit of society is guaranteed by the state, therefore, the state should refrain from any act which may endanger this unit of society unlawfully. In addition, family is recognized and given protection and guarantees under international human rights instruments. In the UDHR under art 16(3) states “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁹² In the ICCPR under art 23(1) states “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”⁹³

Bailed individuals who have family outside of the country when banned unlawfully from leaving the county he/she is being denied from enjoying the right and protections granted for families. The bailed individual may be banned from leaving the country for a long time which will be unbearable for families; one outside the country and the other stranded in the country.

⁹¹ Id, Art 34(3)

⁹² UDHR, cited above at note 6, art 16(3)

⁹³ ICCPR, cited above at note 7, art 23(1)

3.4.1.1 The Rights of the Child

As part of a family, children are granted with special rights. In the FDRE Constitution under art 36(1)(c) states that “every child has the right to know and be cared for by his or her parents or legal guardians”⁹⁴ This right is also clearly enshrined under the ICCPR, “every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.”⁹⁵ Here the child is granted with a right that must be fulfilled by his family and the State. The value of family’s; the child’s parents presence for the wellbeing of the child cannot be overstated. In the Convention on the Right of the Child, under art 9(1) states that “parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”⁹⁶ “In accordance with the obligation of State parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State party for the purpose of family reunification shall be dealt with by States parties in a positive, humane and expeditious manner.”⁹⁷ States are duty bound to respect this right of the child but if the state ban the parents and legal guardians of the children unlawfully from leaving the country then states are responsible for the neglect of the child and his/her rights being not observed.

When bailed individuals are banned from leaving the country without legal and factual basis, the children’s` rights are being violated as they are robed from getting the protection of their fathers or mothers.

3.4.2 Maintaining Employment

The FDRE Constitution under art 41(2) stipulates a right of individuals to choose their occupation,”every Ethiopian has the right to choose his or her means of livelihood, occupation and profession.”⁹⁸ According to this provision, the individual can choose what to do and where

⁹⁴ FDRE Constitution, cited above at note 1, art 36(1)(C)

⁹⁵ ICCPR, cited above at note 7, art 24(1)

⁹⁶ United Nations, Convention on the Right of a Child, 1989, Art 9(1)

⁹⁷ Id, art 10(1)

⁹⁸ FDRE Constitution, cited above at note 1, art 41(2)

to do the work; accordingly, a person may be engaged in a profession outside of the country. The right is also guaranteed in the UDHR, under art 23(1) “everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”⁹⁹ And in the ICESCR under art 6(1) “the State parties to the Covenant recognize the right to work, which includes the right of everyone the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”¹⁰⁰

If a person is banned from leaving the country without legal basis and where the reasons for the ban were not justified as per the international human rights instruments criteria then the ban clearly infringes the persons` right which has Constitutional and international human rights instruments backing. The bailed individual right to work and the choice of what to do should be safeguarded but there are instances where bailed individuals who have proper work outside of the country banned from leaving the country for all the wrong reasons.

3.4.3 Education

Education is a fundamental right guaranteed to everyone, in the ICESCR under art. 13(1) "the State Parties to the Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms."¹⁰¹ “The State parties to the Covenant undertaken to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities”¹⁰² Ethiopia has ratified the ICESCR and it has to take the necessary steps to implement the rights and freedoms provided. Under the covenant, education is a fundamental right directed to everyone and there is a choice as to which school to learn.

The education rights of bailed individuals who are attending or to attend school outside of the country are violated when they are banned from leaving the country without legal and factual basis.

⁹⁹ UDHR, cited above at note 6, art 23(1)

¹⁰⁰ International Covenant on Economic Social and Cultural Rights (ICESCR), art 6(1)

¹⁰¹ Id, art 13(1)

¹⁰² Id, art 13(3)

3.4.4 Legal Immigration

Immigration is a common phenomenon undertaken for various reasons. ‘International migration in Ethiopia is as old as the country itself.’ In Ethiopian, context people immigrate to other countries for economic reasons, family reunion, to escape political persecution and others.

But not all acts of immigration is illegal “everyone has the right to seek and to enjoy in other countries asylum from persecution.”¹⁰³ A person can claim an asylum outside of Ethiopia.

In the ICCPR under art 13, a person has a right to seek refuge in another country “an alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”¹⁰⁴

In the international convention on the protection of the rights of all migrant workers and members of their families under art 8(1) “migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the part of the Convention.”¹⁰⁵ Migrant workers have rights to leave their country of origin and engage in work in another country. When the right to leave abroad on migrant worker who is on bail is restricted without legal and factual justifications for the ban then it is a clear violation of his/her rights under the convention.

3.4.5 Health Matters

In the ICESCR under art 12(1) states that “state has responsibility to attain to the health needs of the society. “The States parties to the Covenant recognize the right of everyone to the enjoyment

¹⁰³ UDHR, Cited above at note 6, art 14(1).

¹⁰⁴ ICCPR, cited above at note 7, art 13.

¹⁰⁵ United Nations Convention, 1990, international convention on the protection of the rights of all migrant workers and members of their families, art 8(1).

of the highest attainable standard of physical and mental health.”¹⁰⁶ Citizens have the right to the enjoyment of the highest standard of health; therefore, if a person is suffering from health crisis he should be able to exhaust all the health assistance and remedies provided inside or outside of the country. The state should not restrict any individual from accessing health assistance outside of the country by banning the individual without legal and factual basis. Bailed individuals who are banned from leaving the country without legal and factual justifications are indeed restricted from accessing medical services outside of the country unduly and it could result in life changing consequences.

3.5 The Practice of Banning Bailed Individuals from Leaving the Country

3.5.1 Who Initiates Travel Ban on Arrested and Bailed Individuals?

A person can be arrested according to the Crim.P.C where “the offence is such as to justify arrest or where the person summoned fails to appear, the investigating police officer shall take such steps as are necessary to effect his arrest”.¹⁰⁷ An individual can also be arrested, in other circumstances of arrest, that is, arrest without warrant for flagrant cases and arrest without warrant by the police¹⁰⁸. After the individual is under arrest for suspicion of committing a crime then he/she “has to be brought before a court of law within 48 hours from being arrested.”¹⁰⁹ A court before which the arrested individual is brought shall “decide whether such person shall be kept in custody or be released on bail.”¹¹⁰ If the court decides to grant bail in the first time where the arrested individual is brought before it or decides to grant bail after giving time for the police to investigate the case, then the police investigator or public prosecutor assigned to the case may ask the individual to be banned from leaving the country.

3.5.2 When and How are Bailed Individuals Banned from the Country?

The police investigator or public prosecutor assigned to the case may ask the arrested person to be banned from leaving the country while the court is considering the matter to grant bail. The

¹⁰⁶ ICESCR, cited above at note 104, art 12(1)

¹⁰⁷ Criminal Procedure Code, cited above at note 15, art 24.

¹⁰⁸ Id, art 50 and 51.

¹⁰⁹ Id, art 29(1).

¹¹⁰ Id, art 59(1).

police investigator or public prosecutor may also ask the ban from leaving the country on the bailed individual in a later date after the arrested individual was granted bail and set free.

The request for the ban on arrested individual by the police investigator or the public prosecutor may be made orally or by a petition letter if the request is made while the court is considering bail for the arrested individual who is present before it. The police investigator or public prosecutor may also ask the court for the ban on a later date by submitting a petition for this effect. In this scenario, the petition to ban the bailed individual can be entertained in conjunction with the previous bail file or by a new one called an injunction file, opened specifically to consider the request and process it.

3.5.3 How is the Ban from Leaving the Country Effected?

A person may be banned from leaving the country when his bail hearing is being considered or on a later date while he/she is out on bail. Whatever the case maybe, the order to ban bailed individuals is rendered by courts. This order in turn will be sent to the immigrations office to be effected. “Any person may only be prohibited from departing Ethiopia by an order of a court given in accordance with the law.”¹¹¹ The immigration office will black list the list of persons who are ordered to be banned from leaving the country, thereby, they will not get the necessary documentation and services if they wish to travel abroad.

3.5.4 The Duration of Travel Ban

In requesting the travel ban, the police investigator and public prosecutors do not usually specify for how long they want the ban to last. They will just claim since the person who is about to be bailed out is a flight risk, he/she should be denied from leaving abroad. The court which is considering bail may specify the ban to last until the police investigator wraps up his/her investigation or the judge may not mention any thing about the duration of the ban. In practice, in either case, once the individual is banned from leaving the country, the police investigator or public prosecutor which applied for the ban will not take the initiative to speedily wrap up the investigation assuming and taking responsibility for they have aided in banning of the fundamental rights of a person. In fact, the individual on whom a travel ban is ordered on will not be treated any differently than those who are not banned on working on his case speedily.

¹¹¹ Immigration Proclamation, Cited above at note 13, Art 6

CHAPTER FOUR

CONCLUSION AND RECOMMENDATION

4.1 Conclusion

The right to bail is a fundamental right guaranteed to arrested persons. The fundamental right is enshrined under the FDRE Constitution, in international human rights instruments adopted by Ethiopia and the Crim.P.C. The right to bail is guaranteed considering the presumption of innocence. Arrested persons are presumed to be innocent unless it is proven otherwise as they are not even charged with a crime. Once arrested persons are freed on bail, they should enjoy their rights and freedoms equally as others. These rights and freedoms guaranteed to persons include the right to travel outside the country. Travelling from one country to another is a common activity by people. People travel from one country to another for many reasons; in search of better living conditions, for work, for health reasons, because of family ties, to scape political persecution are just the few reasons. The right to travel from one country to another is a fundamental right enshrined in the FDRE Constitution and international and regional human rights instruments of UDHR, ICCPR and ACHPR which are adopted by Ethiopia. The right to leave a country is a rule and should be limited on exceptional circumstances. The limitations which justify travel ban can be summarized as necessary conditions, being prescribed by law and proportionality. The necessary conditions include protecting national security, public order, public health, morals of others, the rights and freedoms of others and consistency with other rights recognized under the ICCPR, therefore, the state which is urging for a travel ban under these conditions has the obligation to prove its claim as per the raised necessary condition. Being prescribed by law dictates that a national legislation should be enacted, which is accessible to all, specifying the right which will be restricted. But the law should not be enacted arbitrarily and should be reasonable to justify the cause. In addition, the state should put in place a procedure which will help individuals to rectify the decision on travel ban when this is rendered unjustly.

Even though, the right to leave a country is a fundamental right and should be restricted when there are exceptional circumstances and when it is prescribed, in federal courts, the right is often

times restricted on persons on bail without any legal basis except for suspects of corruption crimes for which is provided by law. But even the legality of a ban handed out on persons who are accused of committing corruption crimes is questionable as it is not rendered considering the requirements put forth under international human rights instruments adopted by Ethiopia.

In practice, courts grant bail for an arrested person then they ban the bailed person from travelling abroad when requested by a police investigator or public prosecutor assigned to the case. Courts may ban the arrested individual during his/her bail hearing often without giving the opportunity to the bailed individual to refute the reasons and request made. The bailed individual may also be banned on a later date after being free on bail. When the police investigator or public prosecutor requests the bailed individual be banned from leaving the country on a later date, the petition may be seen on the previous bail hearing file or on a separate file, specifically opened for this purpose by the court registrar and secretary. In most of these cases, the bailed individual is not called upon and the hearing on whether to ban the individual concerned from leaving the country or not is held without his/her presence. The practice of the courts is in clear transgression of the legal principles of presumption of innocence and due process of law. When travel ban is handed out on bailed individuals failing the presence of exceptional circumstances and when it is provided by law, the court is presuming the bailed individuals are guilty as their basic right is restricted like a convicted criminal who is serving prison sentence. In addition, the courts do not respect due process of law, as they don't give opportunity to refute the accusation and application brought against them to impose travel ban. Moreover, courts give travel bans without calling upon the bailed individual concerned.

4.2 Recommendations

4.2.1 The right to leave a country is a fundamental right; therefore, if this right is to be curtailed on bailed individuals, legislation for suspicion of specific crimes should be passed in conformity with the constitution of Ethiopia art 32(1), UDHR art 12, ICCPR art 13 and ACHPR art 12(2). The law should be a national law which is accessible to all. The law for the ban should be just and reasonable. A bailed individual should not be banned from leaving the country just for any crime and just because it's requested by the police investigator or public prosecutor without considering the exceptional nature of the reasons for the ban. The legislation should concern suspicion on crimes which are considered to be grave as per the CC and other criminal

proclamations. Moreover, the ban should only be allowed to be applied in exceptional circumstances and the request for the travel ban should be proportional to the crime and circumstances. The ban should only be necessitated to protect public security, order, health, morality and to protect the rights of others. Therefore, in order for the ban on travel to be legal and fair, first the potential ban on suspicion of grave crimes should be provided by law and the compelling circumstances where a ban may be accepted should also be stipulated in the law or the circumstances should be interpreted in light of the International and Regional Human Rights Instruments adopted by Ethiopia. In addition, the legislation concerning ban on the right to travel should also consist a right to appeal to the next higher appellate court, on the order of the court which banned the individual.

4.2.2 Even after legislation is passed concerning travel ban in specific grave crimes in accordance with the constitution and international human rights instruments Ethiopia has adopted, the ban should last for specific period of time. If the travel ban is not time bounded or if it's given for example saying until the criminal investigation is concluded, the police investigator or public prosecutor will not be under any obligation to wrap up the investigation in expedite manner, in the meantime, the individual will bear the negative consequence of him/her being denied from leaving the country be it not being able to work, suffer from health problems, not getting education or others.

4.2.3 In the case of suspicion of committing corruption crimes, even though, it is provided by law under the anti-corruption special procedure and rules of evidence proclamation. Courts should not ban individuals who are suspected with the crime just because the potential ban is provided by law and it's requested by police investigator or public investigator. The court should realize that the right to movement is a fundamental right and the limitation on the right should be interpreted according to requirements provided in the ICCPR under art 13(3) and ACHPR under art 12(2).

4.2.4 Whenever a request is brought by a police investigator or public prosecutor for the arrested or bailed individual right to leave a country be banned, the individual concerned should always be called upon and should be given the opportunity to refute accusations labeled by the police prosecutor or public prosecutor as the case maybe and to be given the opportunity to be heard to his/her side of the story.

4.2.5 In requesting for a ban on arrested or bailed person, the police investigator or public prosecutor seems not to be aware or be concerned or is indifferent about the right which is to be curtailed or restricted. When the petition is launched not a single law is cited and it's not always brought in exceptional circumstances. In addition, the judges ban an arrested or a bailed individual from leaving the country, often times, just because it's requested by the police investigator or public prosecutor and they too don't seem to acknowledge the magnitude of the right which is to be curtailed. Often, they don't hear the arrested or bailed individual side of the story or may hear the ex-party without the arrested or bailed person, therefore, in order to rectify this major problem proper training on the legal framework of the right to leave a country should be provided to the police investigators, public prosecutors and judges so that the whole process of banning from leaving the country should be done legally, following due process and respecting presumption of innocence of the individual.

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