

Addis Ababa University
College of Law and Governance Studies
School of Law

**The Role of Federal Attorney General in Ensuring the Protection of
Pretrial Rights of Criminal Suspects in Ethiopia: The Law and Practice in
Addis Ababa**

By:- Roba Tsegaye

Advisor:- Wondwossen Demissie (PhD)

May 2020, Addis Ababa

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A Thesis Submitted to the Law School of Addis Ababa University in Partial Fulfilment of the Requirements for the Degree of Masters of Laws/LLM/ in Human Rights Law

May 2020, Addis Ababa

Statement of Declaration

I, Roba Tsegaye, hereby declare that the thesis titled ‘The Role of Federal Attorney General in Ensuring the Protection of Pre-trial Rights of Criminal Suspects in Ethiopia: The Law and Practice in Addis Ababa’ is my own work and that it has not previously been submitted for assessment to another university or another qualification, and every source is duly acknowledged.

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Approval by Board of Examiners

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Acronym

AAPC	Addis Ababa Police Commission
ACHPR	African Covenant on Human and Peoples Rights
AComHPR	African Commission on Human and Peoples Rights
AG	Attorney General
BPR	Business Process Reengineering
DAG	Deputy Attorney General
FAG	Federal Attorney General
FBI	Federal Bureau of Investigation
FDRE	Federal Democratic Republic of Ethiopia
FGCJAO	Federal Government Criminal Justice Administration Organs
FGD	Focus Group Discussion
FHC	Federal High Court
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IPJBP	Investigating, Prosecuting and Justice Delivery Main Business Process
LELD	Law Enforcement Line Division
MoJ	Ministry of Justice
OCAG	Office of Central Attorney General
PM	Prime Minister
TGE	Transitional Government of Ethiopia
UDHR	Universal Declaration of Human Rights
UN	United Nations

Abstract

There have been persistent allegations of the violations of rights of criminal suspects on the course of investigation in Ethiopia. PM Abiy Ahmed (PhD) publicly admitted the existence of such problems, and made a pledge that his administration will work to rectify it. One of the means by which such problem can be curbed is by empowering the prosecutorial office to supervise criminal investigation. The FAG is charged with the duty to follow up criminal investigation and ensure its legality, which include ensuring the protection of pretrial rights of criminal suspects. Achieving this legal responsibility requires participating on investigation activities. The practice however shows that the public prosecutors do not participate on the investigation process in majority of cases. There are different underlying causes for this problem. The research finally forwarded recommendations to avert such problems and strengthen the protection scheme of the rights of criminal suspects.

Key Words: - Criminal suspects, Pretrial rights, Federal Attorney General

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Chapter One

Introduction

1.1. Background of the Research

As envisaged by the Criminal Procedure Code of Ethiopia (CPC) the pretrial stage of criminal proceeding covers the criminal justice administration activities undertaken within the limit ranging from the point where the police become aware or get suspicious of the attempt or commission of a crime and start investigation up to the institution of criminal charge by the public prosecutor.¹ The business of criminal justice administration is principally at the disposal of the state. Criminal laws and policies therefore designate different governmental agencies to perform activities allocated to them throughout the pretrial stage of criminal process. In Ethiopia principal stake holding governmental organs in that process include the police, the institution of public prosecution and the courts. It is understandable from the reading of parts of CPC that deal with pretrial criminal process that extensive power and responsibilities are conferred up on the police than the other organs having roles therein. Accordingly, police are authorized to take measures like arresting the criminal suspects, conducting interrogation, requesting for remand and keeping suspects under custody throughout the time permitted for further investigation, and undertaking measures restricting privacy of persons suspected of crimes.²

The criminal justice administration involves severe measures taken by the government with the view to repress intrusion in to greater interests.³ The governmental measures taken in such process by the state machineries have the intrinsic tendency to limit human rights of criminal suspects. As human rights, on the other hand, are inalienable rights human being are inherently entitled to enjoy, human rights instruments exert a powerful influence on criminal justice machineries with a view to protect such rights.⁴ To this end human rights instruments like the International Covenant on Civil and Political Rights (ICCPR) and Universal

¹ Criminal Procedure Code of Ethiopia, Proc. No.185 of 1961, book i – iii

² Simeneh Kiros, *Criminal Procedure Code: Principles, Rules and Practices*, (Xlibris Corporation, 2010) 109

³ P.H.P.H.M.C. Van Kempen (ed.), *Criminal Law and Human Rights*, (Ashgate Publishing Limited 2014) xi

⁴ *ibid*

Declaration of Human Rights (UDHR), African Charter on Human and Peoples Rights (ACHPR), among others, provide for principles and rights meant to protect the interest of criminal suspects throughout the criminal justice process. Such rights and principles include, but not limited to, the principles of legality and presumption of innocence, the right to liberty, the right to privacy, and the right to procedural fairness.⁵

Ethiopia ratified multiple regional and international human rights instruments affirming such rights and principles, and made them to be the integral part of national laws by the application of Article 9 sub article 4 of the Constitution of Federal Democratic Republic of Ethiopia (hereafter FDRE Constitution). The FDRE Constitution itself and other pertinent domestic laws of Ethiopia also contain provisions affirming such rights.⁶ Observance and protection of those principles and fundamental rights are therefore the process value against which the criminal justice process would be judged.⁷

Despite the existence of such international and domestic human rights instruments there have been allegations of human rights violation throughout the criminal process in Ethiopia. This problem of course occurs in many other countries too.⁸ ‘Officials scarify, without remedy, the process values for desired outcome for various reasons.’⁹ Consequently ‘an intricate and interrelated system of checks and balances that guarantee fairness, and will, as far as humanly possible, prevent mistakes’ is need to be contained in criminal justice administration.¹⁰

In this regard the Ethiopian criminal procedure code and some other subsequent pertinent laws vest the institution of public prosecution with the power to supervise the criminal investigation.¹¹ The recently established Federal Attorney General (FAG) is also vested with the power to follow up criminal investigation so that it would be conducted and completed

⁵ *ibid*, xii-xxiii

⁶ Simeneh (n2) 44-45

⁷ *ibid*

⁸ Dato Param Cumaraswamy and Manfred Nowak ‘Human Rights in Criminal Justice Systems’(2009) Seminar Report on 9th Informal Asia Europe Meeting
<<https://www.asef.org/images/docs/9thHRSeminarReport.pdf>> accessed 20 January 2020

⁹ R. S. Summers ‘Evaluating and Improving Legal Process- a Plea for Process Value’ (1974) as cited in Simeneh (n2) 45

¹⁰ Chrisje Brants & Stijn Franken, ‘The Protection of Fundamental Human Rights in Criminal Process General report’ (2009) 5 ULR 8

¹¹ Simeneh Kiros, ‘Normative, Institutional and Practical Challenges in the Administration of the Criminal Justice in Ethiopia’(2010) EHRJ 33 -34

appropriately, and to ensure its legality.¹² The proper implementation of such legal arrangement would have the effect of strengthening the protection scheme and observance of pretrial rights of criminal suspects.

1.2. Statements of the Problems

In 2009 the Federal Government Criminal Justice Administration Organs (CJAO)¹³ jointly conducted Business Process Reengineering research (hereafter BPR research) on the state of justice administration in Ethiopia with the aim of identifying its problems and making it undergo fundamental reforms.¹⁴ One of the problems identified was its ineffectiveness in enabling the crime investigation to be conducted in accordance with the law owing to the reasons like disorganized nature of the functions of the police and public prosecutors; existence of legal gaps; and flawed working cultures.¹⁵ Based on their shared dedication to avert this and other problems identified by the BPR research a new structure called the Investigating, Prosecuting and Justice Delivery Business Process (IPJBP)¹⁶ has been established, and its implementing manual was approved.

This structure envisaged the arrangement whereby the investigating police officers and public prosecutors would be organized under single work process, and aimed at achieving the criminal justice administration that adheres to values like fairness, accessibility, efficiency and promptness.¹⁷ According to the new system introduced by the BPR the public prosecutors are authorized to participate on each steps of criminal investigation, and the detail routine roles they would play therein are provided in the manual.¹⁸

In spite of such arrangements there had been consistent allegations by rights groups that the government violates human rights of criminal suspects on the course of criminal

¹² The Federal Attorney General Establishment Proclamation, Proc. No 943/2016, Federal Negarit Gazette 22nd Year No. 62, art 6/3(a)(b)

¹³ The institutions comprised under the FG CJAO are the Ministry of Justice, the Federal Courts, the Federal and Addis Ababa Police Commissions, and the Federal Prison Administration

¹⁴ FG CJAO, በፌዴራል መንግስት የወንጀል ፍትህ አስተዳደር ወንጀልን የመመርመር፣ የመከራከርና ወሳኔ መስጠት ዋና የስራ ሂደት አዲስ አሰራር (Unpublished, Addis Ababa 2010)1-2

¹⁵ *ibid*, 28-31

¹⁶ Translation mine, it is named የመመርመር፣ መከራከር እና ወሳኔ መስጠት የስራ ሂደት in original document

¹⁷ *ibid*, at 2

¹⁸ FG CJAO, በፌዴራል መንግስት የወንጀል ፍትህ አስተዳደር አካላት ወንጀልን የመመርመር፣ መከራከርና ወሳኔ መስጠት ዋና የስራ ሂደት የማስተግበሪያ ማኅ-ዋል (Unpublished, Addis Ababa 2010) 77-78

investigation. This fact was later publicly admitted by the current PM Abiy Ahmed (PhD)¹⁹ and former AG Birhanu Tsegaye,²⁰ and measures have been taken on some personnel alleged to have been participated on violation of criminal suspects during the investigation process. The criminal charge instituted against the police officers, after PM Abiy Ahmed took office, for the violations of suspects' rights in detention centres indicates that most of the acts of violations they are accused of were committed after the justice sectors reform envisaged by the above mentioned BPR research was introduced.²¹

It could be assumed that had the public prosecutor's office appropriately played its role of supervising criminal investigation such human rights violations might not have been committed to that extent. In order to avoid vicious circle of such violation it is, *inter alia*, important to study the current legal and practical aspects of prosecutorial roles in supervising criminal investigation and ensuring protection of the rights of criminal suspects, and suggest appropriate recommendation to curb the problems thereof, if any, with the view to strengthen the protection scheme of suspects' rights in the criminal proceeding.

1.3. Objectives of the Research

The main objective of the research is enhancing the protection of pretrial rights of criminal suspects by exploring the legal and practical aspects of prosecutorial role in supervising legality of criminal investigation in Addis Ababa, and forwarding appropriate recommendations as to solution for the underlying problems therein.

If implemented properly such supervisory role would strengthen the protection schemes of pretrial rights of criminal suspects, and as such the specific objectives of the research are:-

- Discussing and analysing normative frameworks on the roles of Federal Attorney General (FAG) in supervising criminal investigation in general and ensuring protection of suspects rights specifically;
- Discussing the nature of practical activities the FAG is performing to discharge the roles it is assigned to conduct in the course of criminal investigation;

¹⁹ Speech of the PM <<https://www.youtube.com/watch?v=xHN8UwxPjZY>> accessed 14 January 2020

²⁰ Speech of the AG <<https://www.youtube.com/watch?v=Vjx0Hy9wb3A>> accessed 14 January 2020

²¹ Federal Attorney General vs Com. Alemayehu Hailu (et al), Federal First Instance Court Lideta Division 12th Criminal Bench, Court File No. 272703. The case is pending, and the time of commission of crime they were accused of is mentioned as being from 2010-2018.

- Analysing whether the practical activities it is performing throughout the pretrial stage of criminal proceeding would enable it to discharge its legal responsibilities pertinent to protection of suspects rights;
- Analysing the causes for discrepancies between the law and practice, if any.

1.4. Literature Review

Some literatures found out that the public prosecution service was not to discharging its duty of supervising criminal investigation in Ethiopia.²² Some unpublished research papers and reports also indicated that the reforms envisaged by the BPR documents were not implemented as intended.²³ Literature specifically dealing with the legal and practical aspects of the role of FAG in ensuring the protection of rights of criminal suspects during the pretrial stage of criminal proceeding is not available to the writer's endeavour. This paper, therefore, is intended to fill the gap existing in this regard.

1.5. Research Questions

The questions to be addressed by the research are the following;

The central question of the research is:-

- What does the current legal and practical aspect of the role of FAG in ensuring protection of the rights of criminal suspects during the pretrial stage of criminal proceeding looks like in Addis Ababa?

The specific sub questions are:-

- What is the place of human in pretrial stage of criminal proceeding?
- What are the implications of pertinent legal provisions on the role of FAG to ensure the protection of the rights of criminal suspects in pretrial stage of criminal proceeding?

²²Ethiopian Ministry of Capacity Building, 'Comprehensive Justice System Reform Program Baseline Study Report'(CILC, 2005)101

²³See for example Melaku Erjamo et al, በፌዴራል መንግስት የወንጀል ፍትህ አስተዳደር ወንጀልን መመርመር፣ መከራከር፣ ውሳኔ መስጠና ማረምና ማነጻ ዋና የሥራ ሂደት መሰረታዊ የሥራ ሂደት ለውጥ አፈጻጸም ዳሰሳ ጥናት (Unpublished, Addis Ababa 2015)15-22; FAG, (2011) በጀት ዓመት በሱፐርቪዥን የተለዩ ችግሮች፣ የመፍትሄ ሃሳብና ማስፈጸም የድርጊት መርሃግብር የተጠቃለለ የዕቅድ ሰነድ (Unpublished, May 2018 Addis Ababa)14

- Is the FAG taking practical measures enabling it to properly execute its legal responsibility of ensuring the protection of pretrial rights of criminal suspects within its jurisdictional baseline in Addis Ababa?
- Is there a gap between the law and practice in discharging such responsibilities?
- What are the causes for discrepancies between law and practice, if any?

1.6. Research Methodology

The type of research is mostly empirical one. Based on the research questions to be addressed the approach of both qualitative and quantitative research methods are employed. Primary and secondary sources of data are used. Accordingly questionnaires were distributed to and Focus Group Discussions (FGD) were held with some prosecutors and investigating police officers. Interviews were also conducted with some of them and detained and sentenced persons.

The criminal prosecution power of FAG is exercised by different departments organized under the Law Enforcement Line division. These departments with the power of criminal prosecution comprises four criminal directorates, 10 branch offices in each sub cities of Addis Ababa, and one branch office at Dire Dawa City Administration.

The data collection covered all of the criminal directorates, owing to the fact that they handle serious crimes in which there would be high probably for violations of suspect rights, and five branch offices. These branch offices are Akaki Kaliti, Nifas Silk Lafto, Arada, Lideta, and Kolfe Keranyo branch offices. A total of 33 prosecutors from the four directorates and 38 prosecutors from branch offices, in aggregate 71 public prosecutors were participated on filling questionnaire and FGD.

Regarding police departments, there are different number of police stations and departments in sub cities of Addis Ababa. The sample of police stations constituting at least half of a total police stations belonging in the sub cities are randomly selected. Accordingly three out of six police stations in Akaki Kaliti, four out of eight police stations in Nifas Silk Lafto, three out of five police stations in Lideta, three out of five Police stations in Arada, four out of eight police stations in Kolfe, in sum seventeen police stations have been covered. The investigation departments of Addis Ababa police commission and federal police commissions are also covered. Regarding participants, eight investigative police officers from Addis Ababa Police Commission, twelve from Federal Police Commission, fifteen from Akaki Police Station, eleven from Nifas Silk Police Stations, nine from Arada police Stations, seven

from Lideta Police Stations, thirteen from Kolfe Police Stations totally seventy five investigative police officers were participated on questionnaire and FGD. Twelve individuals leading different prosecution and investigation departments were participated on interview.

Regarding the person under detention a total of fifty three detainees were participated on interview. From kalaiti prison eight convicted individuals were also participated. Totally sixty one detainees were participated. The selection of participants and informants was made through random sampling.

Other sources like cases, legislations, books, articles, reports, policy and other unpublished governmental documents, and internet sources were also used. Personal observations were also undertaken. Then inductive reasoning is used, and conclusions are derived in lights of the laws discussed above.

The sort of question employed in the questionnaires is semi structured one. Accordingly alternative answers from which the participants are asked to select one or more are listed alongside the blank space in which they can list out their answers laying out of the listed alternatives, if any. The listed alternative answers were selected based on the survey made on the relevant documents personal observations and informal discussions conducted with some stakeholders. The interviews were made for personnel leading different departments of public prosecution office and the investigation departments, and some of the detainees and persons imprisoned on conviction. The types of questions used for the interview are open ended.

1.7. Scope of the Research

The FAG has different structures organized under four line divisions in Amharic *zerf*. Among these line divisions the structures designated to perform activities of criminal prosecution are organized under a *zerf* called the Law Enforcement Line Division. Accordingly there are four criminal directorates authorized to handle serious and complex crimes and ten branch offices organized in each sub cities of Addis Ababa, and one branch office at Dire Dawa City Administration. It delegates its prosecutorial power on the ‘federal crimes’ committed in geographical jurisdiction of regional states to the Justice Office (or AG Offices) of the respective regions. The scope of this thesis is limited to addressing research questions with in the prosecutorial power framework of FAG under its jurisdiction in Addis Ababa City Administration.

1.8. Limitation of the Research

The restriction of movements and shutdown of offices caused by the pandemic of Covid-19 also created difficulties on data collections. In addition, some individuals were found unwilling to cooperate for interviews, questionnaire group discussion, and providing documents requested

Chapter Two

The Place of Human Right in Pre-trial Stage of Criminal Proceeding

2.1. Introduction

This chapter discusses the place of human rights in the pre-trial stage of criminal proceeding. It starts by providing general highlights on the nexus between criminal justice system and human rights. It then discusses the elements of the pre-trial stage of criminal process in Ethiopia. After highlighting some of the fundamental rights involved in the course of criminal investigation, it ends up with providing the legal frameworks that makes the human rights compliance of criminal investigation imperative.

2.2. An Overview on the Nexus Between Criminal Justice System and Human Rights

Criminal justice system refers to the collection of state machineries at different tier of government to deal with the crime within a given legal framework set by the authorized organs.²⁴ Crime inflicts harm on the orderly living of the public. The criminal justice system, therefore, evolved as a series of rational responses taken by successive regimes to criminality.²⁵ Societies in the past, before the advent of modern law, used to rely on custom, magic, and religion to maintain order.²⁶ The modern laws of many countries can be traced either to the common law or civil law traditions, which in turn have their own distinctive features and historical backgrounds.²⁷

Criminal laws lay the legal foundation for criminal justice system, and it is the enforcement of these laws that sets the institutional machineries of criminal justice system in motion.²⁸ Criminal law comprises substantive, procedural and sentencing laws.²⁹ The central purpose of substantive criminal law is preserving order and peace necessary for the existence of human collectively.³⁰ To this end, it aims at preventing crimes by giving prior notice as to the acts

²⁴ Dennis Hoffman, *Criminal Justice*, (IDG Books Worldwide Inc.2000)1

²⁵ Ian Marsh et al, *Criminal Justice: An Introduction to Philosophies, Theories and Practice*, (Routledge London and New York, 2004)59

²⁶ Mitchel P.Roth, *Crime and Punishment: A History of Criminal Justice System*, 2nd ed., (USA, 2011)3

²⁷ Edward L. Glaeser and Andrel Shleifer, 'Legal Origins'(2002) *vol 107QJE* 1193

²⁸ Kenneth J. Peak, *Introduction to criminal Justice Practice and Process*, 3rd ed., (Sage Publication, London 2019)

²⁹ Kempen, (n 3)xi

³⁰ Philippe Graven, *An Introduction to Ethiopian Pena Law*, (Haileseliassie I University,196)5

constituting crimes, and providing penalties to be imposed on transgressors so that they would, among others, be deterred from creating further threat to the community, and potential offenders get lessons from them.³¹ The criminal procedural law sets rules to be followed in implementing the substantive laws throughout the whole process of criminal proceeding.

Regarding institutional framework all the three organs of government - legislative, executive, and judicial bodies- have their own respective role of enacting, executing and interpreting criminal laws respectively.³² In the context of Ethiopia too while the legislative organs are empowered to enact the criminal laws,³³ the intelligence organ,³⁴ police, prosecution, and the courts have active role in its execution.³⁵

Criminal justice system, as a mechanism enabling the state to carry out its central function of providing security to the people, is system with coercive nature at the disposal of the state and intrinsically has the feature of violating individual rights.³⁶ Such repressive nature of the measures taken by justice machineries is a necessary wrong meant to repress other more severe wrongs.³⁷ To this end the reputations, financial position, liberty, and even life of individual persons would be put at risk in the process of criminal justice administration.³⁸ Human Rights, on the other hand, are primarily meant to protect personhood of humankind with the fullest sense of capability.³⁹ Human right instruments, as such, provide for normative grounds aimed at protecting individuals against, among other, coercive power of the state.⁴⁰ Protecting peace and security of the public through the operation of criminal justice system, and protecting the human rights of individuals are, therefore, the two competing values the criminal justice administration faces. It has been stated that the regime of criminal justice

³¹ The Criminal Code of Federal Democratic Republic of Ethiopia, Proc. No 414/2004, Art1

³² Hoffman(n26)1

³³ The Constitution of the Federal Democratic Republic of Ethiopia, Proc. No 1/1995, Federal Negarit Gazette, 1st Year No. 1, Art 55/5

³⁴ National Intelligence and Security Service Reestablishment Proclamation No. 804/2013, *Federal Negarit Gazette*, Article 8, and the Criminal Justice Policy of Federal Democratic Republic of Ethiopia, (February, 2011)6

³⁵ The Criminal Justice Policy of FDRE (February 2011)8. It provides that execution of criminal laws include conducting investigative, prosecution and trial activities.

³⁶ Kempen, (n 3)xi

³⁷ *ibid*, xi

³⁸ Stefan Trechsel, *Human Rights in Criminal Proceedings*, Volume xii/3, (Oxford University Press, 2005)

³⁹ James Griffin, *On Human Rights*, (Oxford University Pres,2008)32-33

⁴⁰ Kempen, (n 3)xi

administration encompasses governmental measures having the effects of affecting, curtailing and removing human rights, and it is the battle field where human rights are tested.⁴¹

Regarding the place of such competing values conflicting approaches have been taken by the crime control and due process models of justice administration. Different mind-sets, goals and results lie under the two models.⁴² The crime control model is conservative one, and it seeks peaceful society by taking proactive measures against the outcasts to repress criminal conducts.⁴³ The approach taken by this model gives priority to the protection of society by repressing crime even in such a way that unfairly affect the rights of criminal suspects, and, as such, it has the potential to lead the innocent persons to be prosecuted.⁴⁴ The due process model on the other hand seeks to maintain society in more defensive approach by emphasizing on the rights of individuals.⁴⁵ This model by emphasizing that the courts first priority should be protecting the constitutional rights of the accused, would have the effect of slowing down the criminal justice process and affording the opportunities to cover mistakes.⁴⁶

Dealing with crimes and protecting individual rights are, however, not mutually exclusive subjects. In a contemporary world international human rights laws gets momentum and even sovereignty would not be raised as valid defence for violating individual rights due to widespread robust influence of international human rights regimes.⁴⁷ This regime of human rights gives special consideration to the sanctity of personhood and would no more tolerate the stances of sticking merely to the approaches held by the crime control model. Moreover the protection of human rights would not be realized in isolation from the realm of criminal justice administration. The effective protection of human rights is possible only in presence of the comprehensive criminal justice system.⁴⁸ As such the approach of prioritizing one model over the other would not fit the needs of modern criminal justice administration. The

⁴¹ M. Cherif Bassiouni, 'Human Rights in the Context of Criminal Justice: Identifying International Procedural Protection and Equivalent Protections in National Constitutions'(1993)3 DJCIL235

⁴² Kelly F. Sockol, 'Crime Control Model v. Due Process Model'(2014)
<https://www.academia.edu/12005016/Crime_Control_Model_v._Due_Process_Model> accessed 30 January 2020

⁴³ *ibid* 3-4

⁴⁴ *ibid* 4&5

⁴⁵ *ibid*

⁴⁶ Peak, (n28)62-63

⁴⁷ Bassiouni, (n41)238

⁴⁸ Kempen, (3)xii

writer therefore believes that a rather middling approach that balances both the values discussed above should be taken.

2.3. Human Rights in the Pre-trial Stage of Criminal Proceeding in Ethiopia

2.3.1. Introductory Remarks

The pre-trial stage of criminal proceeding comprises the criminal justice process ranging from the commencement of criminal investigation to the institution of charge by the public prosecutor. The justice machineries start operating towards a certain specific criminal case up on recipient of information through the means of complaint, accusation, or by having personal observation regarding commission of a crime.⁴⁹ Receiving information would be followed by undertaking of investigation in to the alleged crime to find out the truth. The criminal investigation, as truth finding process, comprises steps, *inter alia*, like arresting, detaining, and interrogating the criminal suspects and certain measures having the effects of restricting his/her privacy.

Finding out the truth is, however, not the purpose allowed to be attained at any cost. There are minimum standards set by human rights laws and other pertinent legislations that should be obeyed by the criminal justice machineries. In the context of Ethiopia laws like the Criminal Procedure Code (CPCE), the FDRE Criminal Code, and the FDRE Constitution contain numerous rights and principles meant to protect criminal suspects from the illegitimate intrusion in to their rights. Most importantly the constitution, which is supreme law of the land, devotes more than one third of its content to human rights and fundamental freedoms.⁵⁰ Human rights instruments adopted by Ethiopia like the International Covenant on Civil and Political Rights (ICCPR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁵¹ and the African Charter on Human and Peoples Rights (ACHPR)⁵² sets minimum standards need to be respected and protected by authorities in the course of criminal investigation. The FDRE Constitution provides that

⁴⁹ Simeneh, (n2)89

⁵⁰ Adem Kassie, 'Human Rights Under the Ethiopian Constitution: A descriptive Overview'(2011) 1(5)MLR41

⁵¹Treaty Ratification Status, available at

http://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN> accessed 5 April 2020

⁵² ACoHPR

<http://achpr.org/statepartiestotheafricancharter>> accessed 5 April 2020

international agreements ratified by Ethiopia are part and parcel of domestic laws.⁵³ Moreover, the human rights provisions of the constitution are required to be interpreted in a way conforming to UDHR and international instruments adopted by Ethiopia. Though the UDHR was initially adopted as non-binding declaration the state practices and the *opinio juris* depict that it currently obtained the status of customary international law having binding effect on all states.⁵⁴ Its provisions are also contained in several binding international and regional human rights treaties adopted subsequently.

2.3.2. Setting Justice in Motion

I. Complaint

Some crimes called complainant offences do not have the effect of jeopardizing the interest of general public, but predominantly affects the interest of individual victims, and as such undertaking investigation process⁵⁵ and conducting prosecution⁵⁶ regarding such crimes require prior institution of complaint by the victim or persons driving rights under her/him. Furthermore, even in case of flagrant offences arresting suspects for the crimes punishable with simple imprisonment of less than three months,⁵⁷ which covers the compliant offences, is not permissible under the CPCE.

II. Accusation

Accusation is another condition that triggers the setting of justice in motion regarding non-compliant offences. Unlike complaint accusation can be instituted by any person having information exposing the commission of crime ‘with a view to criminal proceeding being instituted.’⁵⁸ Accusation can be made against unknown offender in which case the informant is required to give detail specifications, to the best of his/her knowledge, as to the identity of the suspect.⁵⁹ Anonymous accusation is also possible for serious breach of law and the police is, whenever become aware or get suspicious of the commission of a crime, duty bound to

⁵³ Constitution (n33) Art 9(1)&(4)

⁵⁴ Hurst Hannum, ‘*The Status of the Universal Declaration of Human Rights in National and International Law*’(1996) 25 GA.J. INT’L & COMP.L.278

⁵⁵ Simeneh, (n 2)92-93.

⁵⁶ Criminal Code (n31) Article 212 and Simeneh(n2)92-93

⁵⁷ CPC (n1)Art 50

⁵⁸ *ibid*, Art 11/1

⁵⁹ *ibid*, Art 15

start criminal investigation.⁶⁰ Making false accusation is a criminal act and punishable under Article 447 of the FDRE Criminal Code.

III. By the Initiation of the Police

The police can conduct arrest without court warrant, as will be discussed below, in case of flagrant offences and when the conditions provided under article 51 of the CPC are fulfilled. One of the effects of arrest on flagrant offence is that it makes the proceeding to be set in motion without formal institution of accusation.⁶¹ On the cases provided under article 51 complaint or accusation may not have been necessary instituted before the police apprehend the suspect. In such cases arrest of the criminal suspects, therefore, marks formal setting of justice in motion.

2.3.3. Investigative Measures

I. Arrest

Arrest in criminal proceedings can be defined as ‘the act of apprehending a person for the alleged commission of an offense’.⁶² The forms of arrest expressly provided by the CPCE are arrest with court warrant and arrest without warrant. Effect wise the police summon also entails, as will be discussed below, the arrest of persons summoned and appeared obeying the summon.

The CPC under article 49 provides that arrest should, as a matter of principle, be conducted only on court warrant. The court issues arrest warrant as requested by the investigative police only when ‘the attendance of person before the court is absolutely necessary and cannot otherwise be obtained.’⁶³ Hence, producing grounds warranting the fulfilment of such preconditions for issuing warrant is expected from the police officer applying for the grant of arrest warrant.

There are two exceptional circumstances expressly provided by CPC under which arrest without court warrant can be conducted. The first is on the case of flagrant offences,⁶⁴ and the second one is under the conditions provided by article 51 of the code. The three types of

⁶⁰ *ibid*, Arts 12 and 22

⁶¹ *ibid*, Art 21/1

⁶² UNGA Res 43/173, (9th December 1998), (a)

⁶³ CPC (n1) Art 54

⁶⁴ *ibid*, Art 50, 19 and 20

flagrant offences provided by the code are flagrant offence, quasi flagrant offence and assimilated case of flagrant offence.

Flagrant offence refers to the case when the offender is found committing, attempting to commit or has just committed the offence⁶⁵. The quasi-flagrant case refers to the situation when ‘the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised’⁶⁶The Assimilated cases of flagrant offence refers to the situation when the police are immediately called to, or a cry for help has been raised from the crime scene.⁶⁷ In addition to the requirements listed, another condition attached to arrest without warrant in flagrant cases is that it cannot be effected unless the crime is punishable for not less than three months of simple imprisonment.⁶⁸

The situation under which the police can conduct arrest without warrant as provided under article 51 of the code include, when the police reasonably suspect that a person has committed or is about to commit an offence ‘punishable for imprisonment for not less than one year.’⁶⁹ Most of the serious crimes listed under the criminal code and other proclamations providing for punishable criminal acts can fall under the ambit of such offences warranting arrest without court warrant. Regardless of the punishment they may entail, there are some crimes specifically listed that justify arrest without warrant. Accordingly, to mention some, police can arrest, without having court warrant, a persons who is in act of breaching peace, or reasonably suspected of, among others, evading police supervision, being deserter of armed or police forces, or holding articles which are fruit of a crime.⁷⁰

Another ground on which arrest without warrant can be conducted is on police summons. Though the law doesn’t expressly provide that the police summon ends up on arrest, it fails to set rules for the unconditional release of person suspected of committing crime and appeared on summon.⁷¹The options left to the police officer, therefore, are either to release him/her on bond as provided under article 28 of CPCE, or detain and bring him/her before the court as provide under article 29/1 of the same code. Both options have the effect of restricting the liberty of person, and hence summon entails an arrest. Other mandatory rules attached to the

⁶⁵ *ibid*, Art 19/1

⁶⁶ *ibid*, Art 19/2

⁶⁷ *ibid*, Art 20

⁶⁸ *ibid* Art 50

⁶⁹ *ibid*, Art 51

⁷⁰ *ibid*, Art 51/2. Other offences warranting arrest without warrant are also listed under this article.

⁷¹ Simeneh (n2)145 &146

arrest are that the police should prove identity of the person to be arrested, and should take proportional measures to effect the arrest only when the suspect is not submitted to such measures voluntary.⁷²

II. Interrogation

Interrogation is questioning of the person as to the alleged crime. Pursuant to article 27 of the CPC the investigative police officer interrogates persons arrested under article 26, 50 or 51.⁷³ The reading of these provisions indicates that only custodial interrogation is envisaged by CPC.

III. Restriction of Privacy

The right to privacy as provided under Article 26 of the FDRE Constitution includes the rights not to be subjected to search of one's own home, person or property, and the inviolability of one's note, correspondences and means of communications like telephone, telecommunications and electronic devises. It also includes the right not to be subject to seizure of property under one's possession. There are legal limitations set to be imposed on the right to privacy in the process of criminal proceeding. The first limitation is a search conducted on the person. The CPCE provides that an arrested person may only be searched by person of the same sex where police reasonably suspected that he holds any article to be used as evidence on the crime he is suspected with.⁷⁴

Physical examination in the course of criminal proceeding is another ground on which the right to privacy would be restricted. The CPCE, in this regard, provides that where the investigating police officer considers it necessary she may require the registered medical practitioner to conduct physical examination of suspects which include taking of blood and such practitioner is required to hold record of the results.⁷⁵ When a person requested to undergo physical examination refused to do so, provided that it doesn't involve serious danger, the court can take presumption that the fact sought to be ascertained by the examination is established.⁷⁶

⁷² CPC (n1)Art 56

⁷³ *ibid*, Art 27/1

⁷⁴ *ibid*, Art 32/1

⁷⁵ *ibid*, Art 34

⁷⁶ The Civil Code of Empire of Ethiopia (CCE), Proc. No 165/1960, Art 20/22, and CPC (n1) Art. 34

Regarding search of premise the criminal procedure code prescribes search with warrant as a principle.⁷⁷ The exceptional circumstances whereby search without warrant is allowed are provided under article 32 of CPCE. The newly enacted Prevention and Supervision of Terrorism Crimes Proclamation (herein after TCP) empowers the police to conduct surprise search, up on getting permission from Commissioner General of Federal Police Commission or person he/she delegates.⁷⁸ The proclamation doesn't clarify the subjects on which such surprise search would be conducted. One could however plausibly argue that as the purpose of the surprise search envisaged by the proclamation is to prevent crimes the such search⁷⁹ would include all sort of its kind such as stop and frisk, search of premise and vehicles etc. as far as there is ground to believe that such searches would help in achieving the purpose conceived by the law.

Another means of restricting privacy is interception of communication. TCP provides that police can undertake special investigation techniques like interceptions or surveillance on the communication mechanisms of persons, among others, only up on, as a matter of principle, obtaining permission from the court.⁸⁰ It is only in urgent conditions that the police take such measures without court's permission.⁸¹

Regarding seizure, in case of search with warrant the police is not empowered to seize any property not specified in search warrant.⁸² In any circumstances police are required to make list of property seized and where possible make it to be checked and signed by independent persons.⁸³ The properties needed for the trial are required to be handed over to the court, and any other property not having connection with crime should be returned to the person from whom it was taken.⁸⁴ Under the TCP also the police in case of surprise search should prepare list of the properties seized and cause the suspect and neutral person, unless not available, to sign on it and provide the suspect with a copy of it.⁸⁵

⁷⁷ CPC(n1), Art 32/2

⁷⁸Prevention and Supervision of Terrorism Crimes Proclamation (TCP) Federal Negarit Gazette, 26th Year No. 20, Art 31/1

⁷⁹ Bryan A. Garner, *Black's Law Dictionary*, 7th ed., 351. The Black's Law Dictionary defines search as 'an examination of persons body, property and other areas that the person would reasonably be expected to consider as private'. So it could be argued that the search envisaged by the proclamation covers the areas listed here.

⁸⁰ TCP (n78) Art 42(1) &(2)

⁸¹ *ibid*, Art 42/3

⁸² CPCE (n1), Art 33/2

⁸³ *ibid*, Art 33/3

⁸⁴ CPC (n34), Art 33/3

⁸⁵ TCP (n78), Art 31/2

IV. Remand and Detention

Detention refers to the deprivation of liberty that begins with the arrest and continues in time from apprehension until release.⁸⁶ No person, however, is allowed to be held in custody unless ordered by the court.⁸⁷ The police officer concerned therefore is duty bound to promptly bring detainees to court. If the court allows remand, the police should keep the person in custody in a conditions prescribed by the law relating to prison.⁸⁸ The police is also expected to exert due diligence, with in the allowed time interval, to perform activities for which the remand is permitted.

2.3.4. Fundamental Pre-trial Rights of Criminal Suspects

I. Presumption of Innocence

The right to presumption of innocence is a fundamental to the protection of other rights of criminal suspects⁸⁹ involved in the process of criminal proceeding. This right is guaranteed in all core human rights instruments, and it provides that the criminal suspects should be presumed innocent until proved guilty in accordance with the law.⁹⁰ It requires that state machineries should not act in a manner implying guiltiness of suspects before judicial judgement is made to that effect.⁹¹ In this regard, medias are also required not to give coverage for substances ‘undermining the presumption of innocence’ of criminal suspects.⁹² The application of this right requires the state to produce evidences and prove allegations against the suspects beyond reasonable doubt, and guarantees the suspects to enjoy the benefit of doubt.⁹³

II. The Right to Liberty and Security

The right to life, liberty and security of person is cornerstone of human rights law in all the countries ruled by rule of law.⁹⁴ International human rights instruments and national

⁸⁶ HRC ‘General Comment No 35’(2014) CCPR/C/GC/35 Para 13

⁸⁷ CPC (n1), Art 49

⁸⁸ *ibid*, Art 60

⁸⁹ HRC ‘General Comment No 32’ CCPR/C/GC/32Para 30

⁹⁰ International Covenant on Civil and Political Rights (adopted 16th December 1966, entered in to force 23 March 1976) 999UNT171(ICCPR); African Charter on Human and Peoples Rights(adopted 27 June 1981entered into force21 October 1986) (1982)21ILM58 (ACHPR0 art 7b; Constitution, (n 10)Art 20/3, Universal Declaration on Human Rights(adopted 10m December 1948)UNGARes217(UDHR) art 11/1

⁹¹ Trechsel (n 38)163

⁹² General Comment No 32 (n89), Par 30

⁹³ *ibid*, Par 30

⁹⁴ Bassiouni (n 41)255

constitution of many of the countries also recognizes this right.⁹⁵ Liberty concerns ‘freedom from confinement of the body,’ while security concerns ‘freedom from the body and the mind’.⁹⁶ As guaranteed by human rights instruments every person has the right to liberty and security, and this right can be restricted only on the grounds and in accordance with the procedure provided by the law and that arbitrary arrest and detention is also prohibited.⁹⁷ The statement ‘on the ground of the law and in accordance with the procedure provided by law’ refers to the need for fulfilment of the principle of legality.⁹⁸ The Human Rights Committee emphasized that the notion of arbitrarily arrest or detention must be ‘interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity, and proportionality.’⁹⁹

The constitution and criminal code also provides for the principles prohibiting double jeopardy and non-retroactive application of criminal laws, the principle which respectively prescribe that it is not lawful to criminally charge a person for same crime which he/she has been already convicted for or acquitted from in accordance with the law, and to retroactively apply criminal law, except when it benefits the accused.¹⁰⁰ Therefore the arrest of persons on the grounds defeating these principles would not constitute lawful arrest.

Once arrested a person has such rights like the right to promptly be informed the reason for his/her arrest, the right to remain silent, and the right to be told that any statement he/she made shall be used as evidence against him in a language he/she understands.¹⁰¹

The condition following arrest is detention. The detained persons have also plethora of rights. These rights include the right to be promptly brought before a court, in Ethiopia within in 48 hours, the right to have assistance of legal counsel which contains, according to Human Rights Committee, the right to communicate with her in private, the right to be told by the court the reason for their arrest in a language they understand, the right to be released on bail, and the right to apply for habeas corpus in case of unlawful detention, the right to be treated

⁹⁵ *ibid*, 244-255

⁹⁶ General Comment No. 35(n63) Par 3

⁹⁷ UDHR (n 90), Art 3 &9;ICCPR(n90), Art9/1;ACHR(n90), Art 6;Constitution(n10), Arts 14 &17

⁹⁸ Training Manual on Human Rights and Arrest, Pre-trial Detention and Administrative Detention <<https://www.asef.org/images/docs/9thHRSeminarReport.pdf>> accessed 10 April 2020

⁹⁹ General Comment No 35(n86),Par 12

¹⁰⁰ Constitution (n 33), Arts 22&23;Criminal Code (n 31), Art 2/5 & 5

¹⁰¹ Cumulative reading of ICCPR, (n90), Art 9/2-3, 10/1, Constitution, (n 33), Art 19 (1) & (2), 21/1

with humanity and respect for their human dignity, the right to have adequate communication with outside world which includes the right to be visited by his family and relative.¹⁰²

There are a number of rights provided to be enjoyed by the suspected persons in the course of interrogation too. These rights include the right not to be compelled to answer and to testify against oneself, the right to be informed by the interrogating police officer, in a language she/he understands, that he/she has the right not to answer and remain silent, and if willing to answer any statement she may make may be used as evidence in court.¹⁰³

III. The Right to be Free From Torture, Cruel, and Degrading Treatment

The protection of torture and similar practice are particularly important during the pre-trial stage of criminal proceeding.¹⁰⁴ Torture includes ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession’¹⁰⁵ No exceptional circumstance is allowed be raised as justification for torture¹⁰⁶, and the criminal suspects are entitled to the non-derogated right not to be subjected to torture, or cruel, inhuman and degrading treatment.¹⁰⁷

IV. The Right to Equality

The right to equality guarantees every person to be equal before the law, and to obtain protection of the law without legally unjustified discrimination.¹⁰⁸ In criminal proceeding the principle of equality of arms requires that same procedural rights and opportunities are need to be provided for the contesting parties alike. Exceptions base on lawful grounds justified by objective and reasonable causes could, however, be imposed on the principle of equality provided that it would not entail actual disadvantage or other unfairness to the defendant.¹⁰⁹

¹⁰² Such rights are listed in different terms under ICCPR(n67), Art 9, Constitution(n10), Art 19; CPC (34), Art 29/1, 61, Art 19/4, Federal Courts Proclamation Proc. No 25/1996, Art 14, Civil Procedure Code of Ethiopia, Art 177

¹⁰³ For example see CPC (n 1), Art27

¹⁰⁴ Bassiouni (n 41)264

¹⁰⁵ Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment(adopted 10 December 1984, entered into force 26 June 1987UNGA Res 39/46(CAT) art 1

¹⁰⁶ *ibid*, Art2/2

¹⁰⁷ ICCPR (n 90)Art 4&7; Constitution (n33), Art 17 and 93/ 4/c; CAT (n105), Art2

¹⁰⁸ ICCPR (n 90)Art 26; Constitution(n33)Art 25, ACHPR, (n90) Art 3

¹⁰⁹ General Comment No.32 (n 89), Par 32,13

V. The Right to Privacy

The FDRE constitution allows restriction of the right to privacy only in compelling circumstances and in accordance with specific laws having the purpose to safeguard national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others'.¹¹⁰ No one shall be subject to arbitrary and unlawful violation of privacy.¹¹¹

2.4. Human Rights Compliance of Criminal Investigation in Ethiopia

As discussed above national laws and international human rights instruments provides for the rights needs to be observed in criminal proceeding. The laws also impose collateral obligation on the state to respect and ensure the observance of such rights. The FDRE Constitution provides that every organs of government at all level are duty bound to respect and enforce the constitution, and ensure its observance.¹¹² It also provides that public officials are accountable for failure in their duties.¹¹³ Different human rights covenants also provide, albeit in different expressions, that states have the obligations to respect and ensure protection of human rights enshrined therein.¹¹⁴ The Vienna Convention on the Law of Treaties obliges the states to implement its obligations in good faith and not to raise national laws as a defence to justify their failures.¹¹⁵ The effect of such laws on the suspects' rights in pre-trial stage of criminal proceeding is pretty clear as they guarantees them from unlawful intrusion by justice machineries, *inter alia*, to his/her rights.

In case of violations, the laws provide that, victims are entitled to have an effective remedy to be determined by competent authority.¹¹⁶ The redress for human rights violations provided by the Ethiopian laws have the forms of civil, criminal and disciplinary remedies and nullifying the evidences obtained by unlawful acts.¹¹⁷ Civil remedy provides compensation, to be paid by fault doers, for the victim of human rights violation for the damages she/he sustained on the course of criminal investigation.¹¹⁸ Furthermore, those who commit criminal acts stipulated under the Ethiopian Criminal Code such as abusing one's power and committing

¹¹⁰ Constitution (n 33), Art 26

¹¹¹ ICCPR, (n 90) Art17/1

¹¹² Constitution (n 33), Arts 9/2 & 13/1

¹¹³ *ibid*, Art 12/2

¹¹⁴ See for example ICCPR (n 90), Art 2; ACHPR (n 67) Art2; CAT (n 105), Art 2/1

¹¹⁵ Vienna Conventions on the Law of Treaties(adopted on 23 May 1969, entered into force January 27 1980 Vienna) Art 26 &27

¹¹⁶ See for example UDHR, (n 90) Art 8; CAT, (n 105) Arts 13 &14; ICCPR (n 90) Arts 2/3 & 9/5

¹¹⁷ Simeneh (n2), 193-194

¹¹⁸ ICCPR(n 90), Art 9/5, CCE (n76), Arts 2040, 2053, 2064 and 2035

unlawful act of search and seizure, conducting arrest and detention contrary to or in disregard of substantive and procedural laws, employing improper methods during interrogation are criminal responsible and need to undergo criminal punishment.¹¹⁹ Regarding disciplinary measure the Federal Police Commission Regulation provides that ‘any police officer shall be liable for damages caused as a result of his decisions or actions in violation of the law’, and pursuant to this regulation acts of police officers that violates human right are categorized as grave disciplinary fault and could entails, as disciplinary measure, his/her dismissal from job.¹²⁰ Some human rights instruments also set the mechanism by which individual complaint would be lodged and entertained in case of violation of the rights specified under treaties.¹²¹ Another type of remedy is nullifying the evidences obtained through illegal means. The FDRE Constitution provides that any evidence obtained through coercion is not admissible.¹²² CAT also obliges the state parties to ensure that any statement found to have been obtained through torture shall not be used as evidence against the victim.¹²³

The interpretation by Human Rights Committee reveals that all organ of the government at all level are ‘in position to engage the responsibility of the state party’ to respect and ensure protection of human rights.¹²⁴ The government, therefore, has the responsibility to respect and ensure the protection of pre-trial rights of criminal suspects and provide effective remedy in cases of violations. As such, the compliance of each and every measure of criminal investigation to human rights standards as provided in applicable national and international human rights instruments, the FDRE Constitution, the procedural and substantive criminal laws, and other relevant laws is imperatively requirement

¹¹⁹ Criminal Code (n29), Arts 422, 423 and 424

¹²⁰ Federal Police Commission Council of Ministers Regulation No. 268/12, Art 51, 54/20, 54/26, 56/3/b

¹²¹ For example see CAT (n 105), Art 22; ACHPR (n 90) Art 55; The First Optional Protocol to ICCPR, Res No 2200A(XXI) Art1

¹²² Constitution (n 33) Art 19/5

¹²³ CAT (n 105) Art 15

¹²⁴ HRC ‘General Comment No 31’(CCPR/C/21/Rev.1/Add.1326 May 2004) Par 4

Chapter Three

The Prosecutorial Role in Ensuring Protection of Pre-trial Rights of Criminal Suspects

3.1. Introduction

Despite the existence of plethora of laws meant to guarantee procedural justice in pre-trial stage of criminal proceeding, the police abuse the rights of criminal suspects. Such abuses by the police can occur for many reasons such as the difficulty to strike a balance between protecting the human rights of victims and observing the rights of the suspect, a mistaken assessment of the particular situation, and the climate of impunity within a specific context.¹²⁵ Consequently ‘an intricate and interrelated system of checks and balances that guarantee fairness, and will, as far as is humanly possible, prevent mistakes’ is assumed to be contained in criminal justice administration.¹²⁶ One of such approach is empowering public prosecutors to supervise criminal investigation.

Different jurisdictions take different approaches regarding the roles of public prosecutors in pre-trial stage of criminal proceeding some of which will be discussed under this section. The research conducted by the Ministry of Justice of Ethiopia shows that the experience of four countries has been considered for the establishment of FAG.¹²⁷ Under this section the approach taken by two of them regarding the prosecutorial role during the pre-trial stage of criminal proceeding will be highlighted.

3.2. The Approach by UN Congress on Prevention of Crimes and Treatment of Offenders

The United Nations Congress on the Preventions of Crime and Treatment of Offenders adopted guideline on the role of prosecutors on 7th of September 1990. Though it is not binding law it plays indispensable role in setting minimum standards member states are expected to set in their domestic laws.¹²⁸ Regarding the role of public prosecutors in criminal proceeding the guideline followed two approaches. The stipulations under both approaches

¹²⁵Ralf Alleweldt, Guido Fickenscher(Eds.),*The Police and International Human Rights Laws*, (Springer International Publishing AG 2018) 22-23

¹²⁶Brants & Franken, (n 10)8

¹²⁷MoJ, የጠቅላይ ዓቃቤ ህግ መስርያ ቤት መቋቋም አስፈላጊነት (Unpublished, 2016)12-28. The countries are Kenya, England and Wales, South Africa and France.

¹²⁸United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *The Guidelines on the Role of Prosecutors* (Havana, Cuba, 27 August to 7 September 1990) Preamble

have indispensable role in ensuring the protection of suspects' rights during the pre-trial stage of criminal proceeding.

The first approach envisages the situation where the states empower the office of prosecutors to participate on criminal investigation, or when such functioning is consistent with local practice. In this case, the guideline stipulates that, 'public prosecutors shall have an active role in supervising legality of criminal investigation.'¹²⁹

The second approach envisages a situation where authorization by the states to participate on criminal investigation lacks, and where such functioning is not consistent with local practice. In such and all other situations, the guideline provides that, the prosecutors are duty bound to perform their duties in accordance with the law, fairly, consistently and expeditiously, to respect and protect human dignity and uphold human rights,¹³⁰ and to perform their functions with impartiality.¹³¹ Another obligation the prosecutors are envisaged to have is that when the impartial investigation showed the charge against the criminal suspect is unfounded the prosecutors are empowered to stay proceeding or not to initiate or continue proceeding.¹³² In addition, when they know or believe on reasonable ground that the evidence against suspects was obtained through unlawful method constituting grave violations of suspects rights they are obliged to reject such evidence, except using it against violators, and take necessary steps to make those used such unlawful methods accountable.¹³³

3.3. Regional Approaches

3.3.1. The Approach by Committee of Ministers of Council of Europe

Regarding the role of public prosecution in criminal proceeding the recommendation adopted by the Committee of Ministers of Council of Europe also followed two approaches. The first approach envisages the situation where the countries authorize the public prosecutors to supervise or conduct criminal investigation, or where countries put the police under the authority of public prosecution.¹³⁴ In this situation the countries are required to guarantee that

¹²⁹ *ibid*, Par 11

¹³⁰ *ibid*, Par 12

¹³¹ *ibid*, Par 13

¹³² *ibid*, Par 14

¹³³ *ibid*, Par 16

¹³⁴ Committee of Ministers of Council of Europe, *The Role of Public Prosecution in the Criminal Justice System Recommendation* (Rec2000) Art 22

the public prosecutors give instructions to the police with respect, *inter alia*, to means used to gather evidence and duration of investigation.

The second approach describes the situations where states make the police independent of public prosecution.¹³⁵ In such situation, it provides that, states are required to take effective measure in guaranteeing functional cooperation between police and prosecution office. In any situation prosecutors have the duty to scrutinize legality of criminal investigation and monitor the observance of human rights by the police at latest in time of deciding to prosecute or discontinue the case.¹³⁶ The recommendation also envisages that prosecutors should be in a position to prosecute public officials for, *inter alia*, unlawful use of power and grave violation of human rights.¹³⁷ It, therefore, in both cases envisages a situation where by the prosecutors work towards ensuring the protection of the right of criminal suspects during the pre-trial stage of criminal proceeding.

3.3.2. The Approach by the African Commission on Human and Peoples Rights

The approach and roles of prosecutors envisaged by the AComHPR is virtually similar to the one stipulated by the guideline of UN Congress on Prevention of Crimes and Treatment of Offenders. When authorized by laws or found consistence with local practice it requires the public prosecutors to perform active role in the investigation process including supervising the legality of criminal investigation.¹³⁸ It further stipulates that in all other circumstances the public prosecutors are required to play active role in the prosecution process guided, among others, by the principles of fairness and consistency.¹³⁹

3.4. The Approaches Taken by Some Countries

3.4.1. France

France is one of the countries having legal framework authorizing the public prosecutor to oversee and ensure protection of suspects' rights during the pre-trial stage of criminal

¹³⁵ Ibid, Par 23

¹³⁶ Ibid, Par 21

¹³⁷ Ibid, Par 16

¹³⁸ The African Commission on Human and Peoples' Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* f(g)

¹³⁹ Ibid, Art f/g, f(h) and f(i)

proceeding. The corps of France judiciary (*magistrature*) consist of public prosecutor (the *procureur*), trial judge and *juge d’instruction*, whereby the prosecutor in normal course of things is vested with the power to supervise criminal investigation, and *juge d’instruction* is authorized to do so only in most serious cases and when the prosecutor choose to refer to it cases of complex nature.¹⁴⁰

The prosecutors, however, do not enjoy independence to the extent judges do as their function is partly judicial and partly executive.¹⁴¹ Though the Code of Criminal Procedure empowers the investigative judge (*juge d’instruction*) to undertake any necessary and legitimate investigative steps deemed to find out the truth, in practice it is the police who conducts vast majority of criminal investigation under the supervision of public prosecutor.¹⁴²In conducting such supervisory function the *procureur*, as a judicial officer, acts neutrally and directs police investigation as well as oversees the protection of due process rights of criminal suspects under detention.¹⁴³

3.4.2. Kenya

Regarding criminal investigative the police in Kenya are conferred with the powers such as arresting criminal suspects, conducting search and seizures, and making use of firearms.¹⁴⁴ They even play active roles in prosecutions too. The Police Force Standing Orders provides that ‘all police officers of or above the rank of inspector are public prosecutors’ owing to which most prosecution are conducted by the police officers, which in turn lead criminal justice system in Kenya to have many flaws.¹⁴⁵ It is only in special circumstances involving serious crimes that prior consent of the Office of Attorney General is require to prosecute.¹⁴⁶

The 2010 constitution of Kenya established Office of Attorney General with the power, among others, to promote, ‘protect and uphold the rule of law and defend the public

¹⁴⁰ Jacqueline Hodgson, *French Criminal Justice A Comparative Account of the Investigation and Prosecution of Crime in France*, (Hart Publishing 2005)65&69

¹⁴¹Jacqueline Hodgson & Laurène Soubise, *Prosecution in France*, <https://www.researchgate.net/publication/317037650_Prosecution_in_France> accessed 8 April 2020

¹⁴²ibid

¹⁴³ Hodgson, (n140)75

¹⁴⁴AfriMAP and the Open Society Initiative for Eastern Africa, Kenya: *Justice Sector and the Rule of Law*,(2011) <<https://www.opensocietyfoundations.org/uploads/38762285-51db-4bac-b8f9-285cf0ef2efc/kenya-justice-law-20110315.pdf>> accessed 5 April 2020

¹⁴⁵ ibid

¹⁴⁶ Jonathan John Mwalili, *The Role and Functions of Prosecutions in Criminal Justice*, <https://www.unafei.or.jp/publications/pdf/RS_No53/No53_23PA_Mwalili.pdf> accessed 8 April 2020

interest,¹⁴⁷ and the Director of Public Prosecution with the powers like giving binding order to Inspector General of the National Police Service to investigate any information or allegation of the crime, and instituting and undertaking ‘criminal proceedings against any person before any court.’¹⁴⁸ The Constitution failed to empower the prosecution office to have participation on pre-trial criminal proceeding. The second Prosecution Strategy of the Office of Public Prosecution however stipulates that functions of the Office of Director of Public Prosecution also includes directing investigation and supervise the conduct of criminal investigations.¹⁴⁹

3.5. The Role of Prosecutorial Office in Ethiopia

3.5.1. An Overview of the Historical Background

The marking point for the detachment of Ethiopian prosecution culture from its traditional feature characterized by private prosecution was the adoption of proclamation No. 29 in 1942.¹⁵⁰ Since then the prosecution history of the country has been passed through different developmental stages under different regimes.¹⁵¹ To look at recent developments under the incumbent regime the Transitional Government of Ethiopia established the Office of Central Attorney General (OCAG) in 1993. One of the objectives held by OCAG of TGE is to protect the rights and freedoms of individuals and peoples guaranteed by the transitional charter and international instruments.¹⁵² The OCAG was expressly vested with the power to supervise and ensure the legality of criminal investigation and detention of persons.¹⁵³ Under the TGE Special Public Prosecutors Office was also established and mandated to investigate and prosecute persons responsible for the crimes committed during the Dergue regime by abusing their position under the party, government, or mass organizations channels of the ousted

¹⁴⁷ The 2010 Constitution of Kenya, Art 156

<<http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>> accessed 7 April 2020

¹⁴⁸ *ibid*, Art 157

¹⁴⁹ Office of the Director of Public Prosecutions, ‘Strategic Plan 2016- 2021, February’ (2017)

<<http://www.odpp.go.ke/wp-content/uploads/2017/03/STRATEGIC-PLAN-2016-2021.pdf>> accessed 16 April 2020

¹⁵⁰ Aberra Jembere, *An Introduction to the Legal History of Ethiopia (1434-1974) as cited in Kiros(n26) p33*

¹⁵¹ Leaka Mekonen, *Towards a Comprehensive Prosecution Service in Ethiopia: Noting the New Developments* p240-242, available at

<<http://www.mpce.mp.br/wp-content/uploads/2018/05/13-Towards-a-Comprehensive-Prosecution-Service-in-Ethiopia-Noting-the-New-Developments.pdf>> accessed 17 April 2020

¹⁵² OCAG of TGE, Establishment Proclamation No. 39/1993, *Negarit Gazette*, 11th January 1993, Article 5/2 and Preamble Paragraph 3

¹⁵³ *ibid*, Art 11 and 12

regime.¹⁵⁴ The OCAJ was later merged with the Ministry of Justice under proclamation No 74 of 1993.¹⁵⁵ Other laws subsequently adopted to define the power and functions of the executive organs similarly authorize the Ministry of Justice, though with different wordings, to supervise the criminal investigation.¹⁵⁶ The criminal justice policy also empowers the MoJ to supervise and follow up criminal investigation.¹⁵⁷

Despite the existence of these laws there had been permanent lack of supervision of criminal investigation by the public prosecutors in practice.¹⁵⁸ The BPR research conducted by the justice sector institutions also approved the lack, in practice, of supervising role of criminal investigation by the public prosecutors.¹⁵⁹ One of the factors cited by the MoJ for the absence of strong prosecution office that would effectively discharge the duties and responsibilities entrusted to it by the criminal justice policy is the dissemination of prosecution powers to different institutions.¹⁶⁰ Before the establishment of FAG institutions like Revenue and Custom Authority, the Federal Ethics and Anticorruption Commission, and Trade Competition and Consumers Protection Authority¹⁶¹ have had their own prosecution office.

3.5.2. Normative Frameworks under the Federal Attorney General

The Federal Attorney General was established in 2016 and its establishment proclamation vests it with extensive power that would enable it, if properly exercised, to ensure protection of the rights of criminal suspects during the pre-trial stage of criminal proceeding. The objectives held by the FAG include respecting and enforcing the constitution, ensuring the rule of law, and enforcing criminal law.¹⁶² It can logically be inferred, therefore, that the FAG is at the forefront of institutions having prior responsibility to discharge the obligations imposed on the government by the FDRE Constitution and human rights instruments, to ensure the protection of fundamental rights and freedom of individuals.

¹⁵⁴ Special Public Prosecutors Office Establishment Proclamation No.22/1992, Art 6

¹⁵⁵ MoJ (n 127)10

¹⁵⁶ Proclamation No. 4/1995, Federal Negarit Gazette, 1st Year No. 4, Arts 9/12 & 23; See also Proclamation No. 471/2005, Art 23/3, and Proclamation No 691/2010 Art 16/5

¹⁵⁷ MoJ, የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትህ ፖሊስ. (February 2011, Addis Ababa)10

¹⁵⁸ Base Line Study (n 22)101

¹⁵⁹ FGJSAO (n 14) 28-40

¹⁶⁰ MoJ (n 127)30-33

¹⁶¹ See Proclamations No. 587/2008, No 433/2005 and No.813/2013

¹⁶² See Proc 943/2016, Art 5

The FAG is provided with extensive power and function to be exercised during the pre-trial stage of criminal proceeding. Accordingly, it is empowered to cause the commencement of criminal investigations on the crimes under its jurisdiction; to undertake follow up measures in order to ensure that the criminal investigation is conducted and completed appropriately; to decide on the discontinuation of criminal investigation on the ground that there would not be liability, and to give necessary instruction.¹⁶³ It has also the power to close the investigation files on the ground that there is no sufficient evidence substantiating prosecution,¹⁶⁴ and to conduct plea bargaining.¹⁶⁵ The police is also expected to submit to it reports on the newly started and ongoing criminal investigations following which the FAG is required to make necessary follow up on the investigation.¹⁶⁶ It is also provided with express power to ensure legality of criminal investigation, and to give necessary instructions.¹⁶⁷ The caption of article 6 reads ‘power and duties.’ Conducting the activities enumerated above in the form of power, therefore, are not something to be exercised at its discretion, rather the FAG is duty bound for the effective and efficient performance of such activities. One of the objectives held by the five years strategic plan of FAG was also ensuring the protection of the rights of criminal suspects.¹⁶⁸ The draft criminal procedure code also provides that the public prosecutor has the responsibility to lead and supervise the criminal investigation, and where necessary to conduct its own investigation.¹⁶⁹ It also confers the public prosecutors with the power to ensure that the criminal justice operates fairly and accurately, to remove and replace ineffective investigative police officer.¹⁷⁰ According to the draft criminal procedure code the police is duty bound to report to the public prosecutor regarding commencement of criminal investigation where it is came to know about commission of an offence.¹⁷¹

The power of FAG to make follow up on the criminal investigation so as to ensure that it is conducted and completed appropriately, and to ensure the legality of criminal investigation have direct relevance to the protection of the rights of criminal suspects. Legality can be defined as strict adherence to the prescription of laws.¹⁷² Ensuring legality of criminal

¹⁶³ Establishment Proclamation (n 12), Arts 6/3/b and 6/3/a

¹⁶⁴ *ibid*, Art 3/b, and CPCE, Art 38/c

¹⁶⁵ *ibid*, Art 6/3/d

¹⁶⁶ *ibid*, Art 3/b

¹⁶⁷ *ibid*, 6/3/a

¹⁶⁸ FAG, የፌዴራል ጠቅላይ ኃላፊ ህግ ስትራቴጂክ ዕቅድ (2015/16- 2019/20)(Addis Ababa April 2015)95

¹⁶⁹ The Draft Criminal Procure Code of Federal Democratic Republic of Ethiopia(2019), Article 53/1

¹⁷⁰ *ibid*

¹⁷¹ *ibid*, Article 53/2

¹⁷² Garner (n 79) 905

investigation, therefore, requires ascertaining the adherence of criminal investigation activities, starting from its early stage, to the pertinent legal prescriptions. The duty of government to ensure protection of individual rights encompasses taking negative and positive actions, and such obligations are required to be engaged by all organs of government at all levels.¹⁷³ The negative action refers refraining itself from infringing individual rights, while the positive actions, among others, include providing remedies for the victims in case of violation of his/her rights.¹⁷⁴ In lights of ensuring the protection of the pre-trial rights of criminal suspects the FAG, therefore, has to play different preventive and reactive measures as will be discussed below.

I. Preventive Measures

Accusation and complaint are, as discussed above, methods by which information as to the commission of crime would be communicated to the concerned authority. Such communications set the grounds to be used as stepping stone in proceeding to other investigative steps like conducting arrest and taking measures restricting privacy. Accusation or complaint, in their content, could have different flaws. For instance, in case of complaint, it may be brought by person having no right to do so. There may also be instances whereby false accusation or complaint may be lodged owing to the different reasons like malicious intention of a person lodging it, or his/her failure to correctly appreciate the surrounding facts. On the other hand, the facts disclosed by accusation or complaint may not constitute criminal act, or a person against which it is brought may not be the right person to be made criminally responsible. Therefore, ensuring legality of investigation requires asserting that the complaint or accusation is free from such flaws before taking measures restricting the rights of individuals.

In case of arrest and restriction of property there are subjective criteria set by law as a prerequisite to undertake such investigative measures. Such criteria, as discussed above, are mentioned by phrases like ‘reason to believe’- to issue police summon, ‘reasonably suspect’- to undertake arrest without warrant and search of a person, ‘consider it necessary’- to undertake physical examination of the suspects and etc. Such powers are given to the police and the preconditions set to exercise such powers are quite subjective. The public prosecutors, therefore, need to take close scrutiny on the measures to be or has been taken

¹⁷³ General Comment No.31, Par 4&6

¹⁷⁴ *ibid*, Par 6&8

under such discretionary power so as to effectively discharge their duty of ensuring legality of criminal investigation.

There are also plethoras of rights, as discussed above, meant to be guaranteed for the criminal suspects in undertaking arrest, during detention and interrogation, and up on or after taking measures restricting his/her privacy. The duty of public prosecutors to ensure legality of criminal investigation and to follow up same so as to ensure that it is conducted and completed appropriately, requires to closely follow up investigative measures like arrest, interrogation, detention, and restriction of privacy. The Prosecution Manual of Federal Attorney General¹⁷⁵ and the Justice Sectors' Manual for the Implementation of Investigation, Prosecution, and Justice delivery Work Process¹⁷⁶ list the specific and routine tasks to be undertaken by FAG throughout the investigative process discussed above.

II. Reactive Measures

Reactive measure refers here to the action that would be taken by the FAG, under its power, in case the rights of criminal suspects are already violated. The reactive measure includes giving necessary instructions to the police so that the violations be abated immediately and would not be repeated again. The other reactive measures include taking remedial measures such as rejecting evidences illegally obtained, ensuring that the person responsible of violating the rights of criminal suspects would face criminal, civic, and/or disciplinary measures as the case may require.

¹⁷⁵ The Prosecution Manual of Federal Attorney General (2016), Arts 9-20

¹⁷⁶ FGJAO, የማስተግበሪያ ማኑዋል (n 18) 77-86

Chapter Four

The Practical Aspects of the Role of Federal Attorney General in Ensuring Protection of Pretrial Rights of Criminal Suspects in Addis Ababa

4.1. Introduction

This chapter discusses the practical aspects of the role of FAG in ensuring the protection of suspects' rights in the pretrial stage of criminal proceeding in Addis Ababa. To this end it analyzes the data to assess the practice in lights of the laws. The underlying causes for the discrepancies between the law and practice will also be discussed to the possible detail the space allows. The effect of such discrepancies on the trial proceeding will slightly be considered.

4.2. Data Presentation

4.2.1. The Institutional Structure and Power Division of the Federal Attorney General

The Federal Attorney General is organized in to different structures. It currently has, as top leaders, an Attorney General appointed by House of Peoples Representatives and three Deputy Attorney Generals appointed by PM.¹⁷⁷ There are different line division lead by the AG and DAG. These line divisions in Amharic *Zerf* are namely the Attorney General Line Division Lead by AG, the Law Enforcement Line Division lead by DAG for Law Enforcement, Legal Affairs Line Division lead by DAG on Legal Affairs, and Corporate Affairs Line Division Lead by DAG on Corporate Affairs.¹⁷⁸ The prosecution powers listed under Article 6 sub article 3 and 4 of the establishment proclamation of FAG fall under the Law Enforcement Line Division.

And hence the prosecution power of FAG is executed by different business process departments organized under the LELD. Accordingly the prosecution work process organized under the LELD are four directorates namely Corruption Crimes Directorate, Economy Crimes Directorate, Organized and Cross Border Crimes Directorate, Miscellaneous Crimes

¹⁷⁷ Establishment proclamation (n 12), art 7/1; FAG, በፌዴራል ጠቅላይ ዐቃቤ ህግ የዘርፎች፣ የስራ ሂደቶችና ፅ/ቤቶች አደረጃጀት፣ አሰራር፣ ተግባርና ሃላፊነት ለመወሰን የወጣ ማኅ-ዋል (የአደረጃጀትና አሰራር ማኅ-ዋል) (September 2018, Addis Ababa) arts 11, 13 & 14

¹⁷⁸ *ibid*, Article 4

Directorate, and ten branch offices in each sub cities of Addis Ababa and one branch office at Dire Dawa City Administration.¹⁷⁹

Regarding the allocation of power to the listed departments under the LELD the four crime directorates have the power to handle serious offenses and crimes of complex nature while the branch offices of sub cities are assigned to handle crimes with relatively less serious gravity.¹⁸⁰

4.2.2. Assignment of Public Prosecutors

The BPR manual provides that the public prosecutors should be assigned to police departments/stations so that they would participate on all steps of criminal investigation. Regarding the assignment of public prosecutors to the police stations the practice at the directorates and FAG branch office of sub cites, however, was not similar for long times..

The power to investigate crimes falling under the jurisdiction Corruption Crimes Directorate, Economy Crimes Directorates and Organized Crimes Directorates are given to the Bureau of Investigation of the Federal Police. The Addis Ababa Police Commission is provided with the power to investigate crimes delegated to it by the FBI and the crimes falling under the material jurisdiction of Miscellaneous Crimes Directorate. Therefore the Corruption Crimes Directorate, the Economy Crimes Directorate and the Organized Crimes Directorate are required to assign prosecutor to both FBI and Addis Ababa Police Commission. Miscellaneous Crimes Directorate is expected to assign prosecutors to Addis Ababa Police Commission Investigation Department.

Accordingly the Miscellaneous Crimes Directorate assigns 14 up to 17 public prosecutors to Addis Ababa police commission investigation department.¹⁸¹ The Economy Crimes Directorate assigned 2 public prosecutors at the FBI and one at Addis Ababa police commission only starting from December 2019.¹⁸² The Corruption Crimes Directorate also assigned two prosecutors at FBI starting from December 2019.¹⁸³ They were not assigning prosecutors to investigation bureaus before the time mentioned. The Organized Crimes Directorate is not assigning prosecutors to police commission due to the facts that the federal

¹⁷⁹ *ibid*, Article 6

¹⁸⁰ *ibid*, Article 12

¹⁸¹ Interview with Getachew Asefa, V/Director, Miscellaneous Crimes Directorate of FAG (April 9, 2020)

¹⁸² Interview with Anteneh Ayalew, Director, Economy Crimes Directorate of FAG (April 13, 2020)

¹⁸³ Interview with Habtamu Chekole, V/Director, Corruption Crimes Directorate of FAG (April 13, 2020)

police commission didn't prepare the office for them.¹⁸⁴The Heads at FBI¹⁸⁵ and prosecutors assigned there¹⁸⁶ also confirms lack of office for public prosecutors there. In branch offices at sub cities 2 up to 3 public prosecutors, in average, are assigned to each police station.¹⁸⁷ .

4.2.3. Prosecutorial Jurisdiction of FAG in Addis Ababa

The prosecution power of FAG follows the power of Federal Courts. The Addis Ababa City Charter provides the power to exercise prosecutorial power on the cases of petty offences committed in the city to its own prosecutorial office.¹⁸⁸Therefore, the non-petty offenses committed in Addis Ababa in violation of the federal laws fall under the jurisdiction of FAG

4.2.4. The Participation of Public Prosecutors on the Investigation Process

A set of different questions have been raised to the persons participated on interview, FGD and filling of questionnaires regarding the participation of public prosecutors on different steps of criminal investigation. Some relevant data from secondary sources are also presented here.

The first question forwarded to the public prosecutors in the questionnaire is whether they believe that the FAG has the responsibility to ensure the protection of the rights of criminal suspects during the pre-trial stage of criminal proceeding. 85.9% (61) of them answered to this question affirmatively, and the remaining responded that they don't believe so.

The other question forwarded to both the public prosecutors and investigating police officers is whether they think that the public prosecutors participate on the process of receiving and recording complaints and accusations. From the respondents 43.6% (31) of the public prosecutor, and 46.6% (35) of investigative police officers answered that the public prosecutors participate only sometimes. The remaining number of prosecutors and investigating police officers answered the public prosecutors do not participate in such process. The supervision report of 2011 E.C was also revealed that one of the problems on the coordination work of the police and public prosecutors is that the criminal investigation

¹⁸⁴ Interview with Temesgen Laphiso, Deputy Director at Organized and Cross Border Crimes Directorate (April 14, 2020)

¹⁸⁵ Interview with Solomon Dachew (Commandor), Director, Federal Police Commission Office of Crime Investigation Head (April 2020)

¹⁸⁶ Interview with Tekalign Kassa, Team Leader, Public Prosecutor at FBI (April 2020)

¹⁸⁷ I personally observed this in police station covered by data collection, and assured from leaders of the branch offices.

¹⁸⁸ Proclamation No. 361/2003. Federal Negarit Gazette, Art 28 and 41/1

started by the police is not made to be known by the public prosecutors.¹⁸⁹The other document expresses that in conducting empirical research the question whether they think that the front line officer¹⁹⁰ consult the public prosecutors in handling accusation or complaint of cases in which it is difficult to identify whether it constitute crime or not was presented to respondents working on criminal investigation. Among the respondents 50.78% of them responded that front line officers consult the public prosecutors in such cases. The document stated that the observation conducted by the research committee however verified that in the investigation centers organized under the AAPC there is even no person assigned as front line officers.¹⁹¹

The other question presented by the questionnaire to the public prosecutors and investigating police officers is whether they think that the public prosecutors participate on the process of rendering decision to arrest criminal suspects. 59.1% (42) of the public prosecutors and 2.6% (17) of investigating police officers answered that the prosecutors do not participate in rendering such decisions. 28% (21) of the investigative police officers answered that the prosecutors participate on such decisions. The others answered that the prosecutors participate only sometimes.

The public prosecutors may not be expected to go with police in case of conducting arrest. There are rights required immediately to be protected for the persons subjected to arrest. The prosecutors could ensure the protection of such rights only if they make visit of detainees, without delay, following the arrest. In this regard the question presented to the police and public prosecutors is whether they think that there is a practice whereby the public prosecutors contact the detainees after their arrest without due delay. 60.5% (43) of the public prosecutors and 49.3% (37) of investigative police officers responded that there is no normal practice whereby the public prosecutors immediately contact the detainees following their arrest. 14.08% (10) of public prosecutors did not respond to this question. The others responded positively. 86.8% (53) of the detained and convicted persons participated on the interview also answered that they did not speak to public prosecutors immediately following their arrest.

¹⁸⁹Melaku Erjamo et al (n 23)16

¹⁹⁰ Front line officer refers to the personnel assigned by the BPR implementation manual to handle accusation and complaint

¹⁹¹ Melaku Erjamo et al (n 23)14

Most of the prosecutors and investigators participated on FGD also mentioned that in normal course of things, besides the visits, it is when the prosecutors needs to talk to the detainee after making a look at the files that they call up on and speak to them. In some other cases, especially in cases where the public prosecutors share office with investigative police officers, the suspect may be directly brought to office up on which the prosecutors could talk to them.

The other means by which the public prosecutors could ensure the legality of arrest and condition of detention is by making visit to detention centers. They can do so by hearing the problems from the detainees and taking appropriate corrective measures. In this regard the question presented to prosecutors and investigative police officers is whether they think that there is program, at their work place, by which the public prosecutors make visit to the detainees. The response revealed that the practice at the directorates and branch offices of sub cities is different on this matter. All the responding prosecutors and police officers at the sub cities responded that there is program for visit of detainees in their work place. Accordingly the time interval for the visit, according to the program, is once or twice a week. At the directorate level, though they do have plan for visit, currently there is no practice where by the public prosecutors make such visits.¹⁹²

The other issue raised to the public prosecutors is whether they specifically ask the suspects as to their specific right on arrest or during the detention. 54.9% (39) of the public prosecutors responded that they don't specifically ask as such. The remaining answered yes. 78.6% (48) of the detainees and convicted persons interviewed also revealed that the public prosecutors do not specifically ask them raising their rights and quest whether or not such rights of them are respected. Most of them responded that the question asked by the public prosecutors is whether they have problems in general terms. The other issue related to arrest and detention and addressed by the respondents is regarding the remedial measures that would be taken in case of human rights violations. The question forwarded to the public prosecutors in this regard is whether they make the responsible persons face civil, criminal or disciplinary liability, as the case may be, in case they get to know that the arrest or detention was undertaken in violations of human rights standards. 78.8% (56) of them answered saying yes we do, 11.2% (8) of them did not respond and the remaining responded no we don't.

¹⁹² Interview (n181-184)

The other question forwarded to the public prosecutors and investigating police officers is whether they think that the public prosecutors participate on the process of interrogating and taking statement of the criminal suspects. The answer provided to this question is similar to the one provided for the question regarding participation of public prosecutors on the process of rendering decision as to arrest of criminal suspects. The other question raised to the prosecutors in this regard reads ‘in case you have not participated on the process of interrogating and recording the statement of criminal suspects, and you find from the file presented to you that the suspect has confessed, do you think there is practice whereby you check the legality of process through which confession is obtained?’ 81.6% (58) of them answered this question saying no while the remained said yes.

The other question raised to the public prosecutors and investigative police officers concerns restriction of privacy and reads ‘do you think the public prosecutors participate on the process of searching of the persons, house, vehicle etc. or interception of communication of suspects, as the case may be, and seizure of properties. 46.4% (33) of the public prosecutors and 44% (33) of the police investigators answered saying they participate only sometimes. The others answered they don’t participate.

Regarding the questions raised to them whether they think that the public prosecutors participate on remand the number of prosecutors and investigators answered saying they participate sometimes and they don’t participate is similar to the response provided for the question raised regarding restriction of privacy.

It is understandable from the responses that the respondents provided different answers almost for all question. Before considering the probable causes underlying such differences in response let us see the occasions whereby the public prosecutors participate on the crime investigation process. Some of the respondents who selected the options ‘public prosecutors sometimes participate on investigation process’ from the alternatives listed on questionnaire provides what such occasions constitute. Inputs on this are also obtained by the data collected through interview, FGD and personal observations, and presented as follows.

The first situation in which the public prosecutors occasionally participation on investigation process is when, owing to the complexity of the case, the investigating police officers get difficulty to decide whether the case constitutes crimes or not. They may also approach the public prosecutors and express interest to conduct investigation jointly when they found difficult to handle it alone, or due to any other inconveniences they conceive necessitating

joint investigations. For instance it is after the establishment of FAG that the police departments of sub cities in Addis Ababa started to investigate crimes of corruption and economic crimes related to customs and tax. Many of the participants of FGD stated that due to the lack of experience to conduct investigation on such crimes the police are willing to involve public prosecutors on most of such cases. The problem however is if they participate on some step the police may undertake the other steps alone. For example the prosecutors may participate on the process of arrest, but may not on interrogation or measures restricting privacy etc.

The other situation is when direction is given from the leaders of public prosecutors or investigating police officers to undertake investigation jointly due to reasons like seasonality, sensitivity or complexity of the cases to be investigated. Cases having media attention, due to the magnitude of interest they concern or popularity of persons involved etc. would fall in the domain of such sensitive cases. For instances, the cases of grand corruption investigated and prosecuted after the coming in to power of PM Abiy Ahmed were initiated and investigated under the supervision of FAG.¹⁹³ The cases related to inter-ethnic clashes and political chaos occurred in places like Hawassa, Jidjiga, Bahir Dar, Burayu, Mizan Teppi, and Oromia Special Zone of Amhara Regional State were investigated under the supervision of FAG.¹⁹⁴ Most of these cases had got wide media coverage and the investigation is done as operational work. The public prosecutors on such cases have active role in almost all steps of criminal process.¹⁹⁵

The other case is when the public prosecutors get to know the investigation of some cases and wanted to follow up by their own initiative. In most of the police stations the public prosecutors share office with investigating police officers. In such cases they may get to know the commencement of investigation on certain criminal cases and decide to participate if they interested to do so. Participation on each step of investigation process may not be made in such cases too due to different reasons like unavailability of prosecutors at police stations or departments, or unwillingness of the police to pursue investigation such way.

In other cases the working condition almost looks like the one existed before the introduction of BPR. Under the directorates assigning public prosecutors to police departments, and branch office of sub cities the public prosecutors sit in police stations but limited to

¹⁹³ Interview with Habtamu Chekole (n 183)

¹⁹⁴ Interview with Temesgen Laphiso (n 184)

¹⁹⁵ Interview with Habtamu and Temesgen (n183 &184)

considering files presented to them and rendering appropriate decisions accordingly. In other cases like the Cross Border Crimes Directorate the public prosecutors are not even assigned to police departments. They work on the files sent to them after investigation is completed. Almost all interviewed heads of the police and public prosecutors also did not deny this fact. They however attach different reasons to be discussed to it. If further investigation is required the public prosecutors send back the file to the police officers. One supervision report also expressed the existence of this problem.¹⁹⁶The data collected reveals that the situations whereby the public prosecutors do not participate on investigation process constitute majority of the cases handled by the FAG.

The cause for the difference in response by the informants also lay on absence of uniformity of the prosecutorial role in the course of criminal investigations. At the sub city level serious crimes are handled at police departments in Amharic *Memreya*. There is only one police *memreya* in each sub cities. The assignment of public prosecutors to police stations or department is done through rotation. As such some prosecutors and investigating police officers may not have had the experience of handling serious crimes on which investigation is done jointly. Under the criminal directorates too there may be some public prosecutors and investigative police officers who had not got the chance to participate on sensitive cases on which the investigations are conducted jointly. It would therefore be assume that respondents address the question from their own personal experience.

4.3. Data Analysis

4.3.1. The Practice in Lights of the Laws and Its Implications on the Rights of Suspects

In order to ensure the legality of criminal investigation, which includes protection of suspects' rights at the pre-trial stage of criminal proceeding, the public prosecutors need to have active involvement in each step of criminal proceeding as envisaged by BPR and Prosecution Manuals. The following discussion analyses whether the level of practical involvement the public prosecutors are currently having on the pre-trial stage of criminal proceeding could enable them to discharge their legal obligation of ensuring protection of suspects' rights.

In case of receiving and recording complaint and accusation the data gathered indicates that there is no regular practice whereby the prosecutors participate in that process. It is only in

¹⁹⁶ Melaku Erjamo et al (n23)14

special circumstances that the public prosecutors do so. This stage of criminal investigation requires crucial steps like analyzing, *inter alia*, the fact in lights of the laws and decide whether it establishes crimes, and whether the suspect against whom the accusation or complaint is targeted is the right person to be responsible for the acts alleged to have been committed. The police are mostly not legal experts as the public prosecutors and would presumably face difficulties in correctly appreciating such situation and take the rightful decision without participations of the public prosecutors. If they prefer not to consult prosecutors on the matter and proceed to other steps of investigation like taking measures restricting the liberty or privacy of the suspects there could be probability whereby the suspects' rights would be violated. The role FAG is having on investigation does not enable to curb these and the like problems in majority of the cases under its jurisdiction.

In cases of arrest and restriction of privacy too the FAG does not have regular involvement required by the law to be made in normal course of business of criminal investigation. The data gathered shows that it is only in special cases mentioned above that the public prosecutors make active involvement in the process of restricting the liberty and privacy of criminal suspects. Public prosecutors may not be expected to physically appear and participate on conducting arrest as they don't have military background needed for such kind of business like the police. However they, as persons whose mainstream role involves ensuring legality of criminal investigation, ought to have active involvement in the situations preceding the arrest and come subsequent to it. As it has been discussed in chapter two the law requires fulfillment of subjective criteria like 'having reason to believe', 'reasonably suspect', 'the arrest is absolutely necessary', as the case may be, to conduct the arrest and restriction of privacy. Such situations giving discretionary power to the police would be susceptible to abuse. Except in circumstances where exigency of the matter requires otherwise, the fulfillment of sort of reasons provided by law require prior gathering of evidences before taking measures restricting the liberty or privacy of persons. As the public prosecutors do not have regular involvement in investigation step under discussion, they are not in a position to supervise that power violations of suspects' rights by the police would not be happened in such circumstances.

There are a lot of pending cases which shows that the suspects arrested by the police without the involvement of public prosecutors undergoing difficulties in detention centers. For instance, a person named Yohannes Melesse was arrested for the alleged crime of homicide

committed in 2005 E.C.¹⁹⁷ After remanding for some times the court closed the file on the ground that the police produced no evidence warranting further remand and that the offence is not bailable. The file was later brought to the prosecutors. They found that there is no sufficient evidence supporting the charge, and were giving a decision to close the case on the absence of evidence at the time this data is gathered. At the time, the named suspect has been in detention for more two months after closing of the file by the court. A person named Nebeyou Leul also arrested same way and released on habeas corpus after staying for two months in detention following closure of file by the court.¹⁹⁸ Such problems might not happen had the public prosecutors participate on the process of arrest.

As discussed above there are rights required to be guaranteed for the criminal suspects up on their arrest. The public prosecutors could ensure whether such rights have been respected and take proper corrective measures only if they have the chance to contact the detainees as quick as possible following their arrest. The data gathered indicate however that there is no such regular practice in majority of the cases in all departments under the LELD. The other condition requiring participation of public prosecutors is making visit to the detainees at the detention centers. This is the viable way by which the public prosecutors could ensure that arrest and detention is conducted in compliance with human rights standards. As discussed above there is no such practice of visit in all criminal directorates under LELD. It is, on the other hand, serious crimes that are handled by them. The suspects however would presumably susceptible to human rights violation in situations where their case involves such serious crimes. Incommunicado detentions, if any, would also be discovered and appropriate measures be taken by the effective application of visits to detention centers.

In sub cities, the data gathered indicates that the public prosecutors, in most of the cases, undertake visit to the detainees alongside the investigative police officers. The human rights violation suspects would face during arrest or in course of detention mostly comes from the police itself. It would therefore be difficult to expect that the detainees freely express their concern related to the condition of their rights in presence of the police. Even in such cases the prosecutors, in majority of the cases, do not specifically ask them in direct and express terms whether their rights are respected on arrest, during interrogation, or in the course of detention or not. It would not be assumed that all the detainees know their rights specific to such circumstances, and hence it is difficult to expect that the detainees would raise and

¹⁹⁷ AAPC vs. Yohannes Melese (Police file No. 276/05)

¹⁹⁸ AAPC vs. Nebiyu Liul (Police File No. 1599/11)

communicate the rights they might have sacrificed in such process by their own initiative unless the public prosecutors lead them to that effect. The visit made such way, therefore, would not be effective in enabling the FAG to discharge its duty of ensuring legality of criminal investigation.

In cases of interrogation and remand too the situation regarding the involvement of public prosecutors is similar to the one discussed above. The data gathered shows that in circumstances where the files presented to the public prosecutors contain the confessional statement of suspects given pursuant to article 27 of CPCE there is no practice, in majority of the cases, whereby the public prosecutors check whether such statement is provided in accordance with the law or not. Even more, as to my observations, the statement given pursuant to article 27 sub article 2 of the CPCE is important evidence produced to the courts. In case of remand too the practice is the same. The public prosecutors in majority of the cases do not have necessary involvement in the remand process. In such circumstances, the suspects would be made to undergo multiple time of remand though without sufficient causes warranting that. In one case for example the public prosecutor closed file, though after the suspects undergo multiple time of remand for months, on the ground that evidences produced do not warrant that the act they alleged to have committed establishes criminal act.¹⁹⁹

To sum up, the laws impose on the Federal Attorney General the duty to ensure protection of the pretrial rights of criminal suspects. To discharge this obligation the FAG need to participate on each step of criminal investigation. The practice however shows that the FAG doesn't participate on criminal investigation on majority of cases. Even in some cases whereby it makes such participation, it participates on some steps of criminal investigation and may not pursue it on other steps. This sort of participation of FAG on criminal investigation doesn't enable it to discharge its legal duty of ensuring protection of pretrial rights of criminal suspects. Therefore, there is discrepancy between the law and practice in this regard.

4.3.2. The Causes for the Discrepancies Between the Law and Practice

There are different underlying causes for the discrepancy between the law and practice. public prosecutors and investigating police officers selected different alternatives from those brought forward to them in questionnaire as to why the public prosecutors do not always participate on the activities of criminal investigation. Accordingly the causes selected by the

¹⁹⁹ Berihun Adane et al, Public Prosecutors File No. 071/12

investigative police officers in descending order of number of selection are unavailability of public prosecutors at the police stations; the absence of willingness or commitment on parts of public prosecutors to participate on the investigation; the imbalanced nature of workload and number of prosecutors assigned on investigation; absence of developed practice enabling the public prosecutors to participate on the criminal investigation; lack of willingness or commitment on the art of the police to let the prosecutors participate in such process; the absence of binding law enabling the prosecutors to participate on investigation process; and participation of prosecutors on such process is not necessary.

The reasons selected by the public prosecutors in similar order of descending on the other hand are the lack of willingness or commitment on the part of the police to let the prosecutors participate on investigation process; the imbalanced nature of the workload and number of prosecutors assigned on investigation; the absence of binding law enabling the public prosecutors to participate on such process; unavailability of public prosecutors at the police stations; the absence of developed practice enabling the public prosecutors to participate on the investigation process; and the lack of commitment or willingness on part of public prosecutors to that effect.

These specific problems are attributable to other larger problems. The first is lack of commitments by both prosecution and police institutions to strengthen the system by which the public prosecutors would effectively supervise criminal investigation. The BPR works which intended to introduce fundamental reforms to the criminal justice administration are passing over 10 years since launched. The fully fledged implementation of the system it envisages however is not meet yet. Installing working institutional setup for the implementation of such system above all requires institutional commitment.

Most of the specific problems listed above in the area can be tacked had there been institutional commitments. For instance as indicated in one report members of the public contacted raised the issue that enough work is not done by the respective institutions to capacitate the police and prosecutors.²⁰⁰ The report added that the workers also claimed there is no strong interest to provide training and those training provided may not relate to their day to day functions.²⁰¹ The problem related to the imbalanced nature of the number prosecutors

²⁰⁰FAG, በልደታ፣ ኮልፌ ቀራንዮ፣ ንፋስ ስልክ ላፍቶ፣ አራዳና ጉላሌ ምድብ ጽ/ቤቶች ላይ የጠከናወነ ስፕርቪዥን ሪፖርት (Addis Ababa, Unpublished March 2018) 22

²⁰¹ ibid, 20

assigned in the police stations in lights of workloads and number of investigative police officers was not denied by all the leaders of prosecution and police departments participated on interviews. Different internal researches and supervision reports also indicate that supervision of criminal investigation have not been conducted as intended by BPR research. Therefore solving such problems so long ago could be possible had there been commitment to that effect. Failing to tackle them demonstrates lack of institutional commitment on the area.

The other instances indicating the lack of institutional commitment on the area is the situations where activities affecting the rights of criminal suspects are committed by the government itself. For instance the documentary film prepared and aired by the government affiliated media houses regarding the cases under investigation would have the effect of restricting the rights to presumptions of innocence and fair trial rights of the criminal suspects. A couple of such documentaries, after the current reform is introduced, were prepared and broadcasted on such media houses. This includes the documentary film regarding the crimes alleged to have been committed in Metal and Engineering Corporation (METEC), and in *Meakelawi* detention center. The information used in such films most probably was obtained from the police or prosecutorial institutions as the films narrate the findings of investigations conducted by these institutions. Another case that can be cited as a litmus test of the commitment of the institutions have on the area is the one on which they moved to implement a repealed provision of the criminal law. The story goes like this. Proclamation No. 909/2015 repealed article 598 of the criminal code.²⁰² Cases concerning human trafficking however are continued to have been prosecuted under article 598 of the FDRE Criminal Code.²⁰³ This was allegedly done due to the fact that the proclamation was found having gaps. The other problem attached to application of this proclamation is that there was the act of charging the suspects under the new proclamations in branch offices.²⁰⁴ As the punishment these laws entail vary the act of charging individuals for the same acts under different laws affects the right to equality of persons.

The other causes may be attributable to the problems related to professional independence of the prosecutors. Some public prosecutors participated on the FGD claimed that there

²⁰² Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation No. 909/2015, Article 48/1

²⁰³ For instance the cases pending this way include FAG vs Mohammed Hassen (FHC Lideta Division Bench File No. 240548) and FAG vs Hana Fisseha (FHC Lideta Division Bench File No. 233872)

²⁰⁴ The writer personally observed the case brought to Federal First Instance Court Arada Division Bench

sometimes exists unfair intervention of the leaders in the decision of the public prosecutors. Such interventions would affect the independence of the professionals and may create vice in the decision which in turn would have the tendency of affecting the right of criminal suspects. For instance in one case claimed to had involvement of such kind 10 individuals were charged in single file with serious crime of corruption.²⁰⁵ The case was seen in absentia as the defendants were not present in the proceeding. The court after hearing the evidences produced only by one side, the prosecutor, ruled that no case against the accused had been made and acquitted them all. Here one may, as legal argument, raise the point that the court might not have evaluated the evidences properly. But it is difficult to conclude that way owing to the fact that had the prosecutors case was based on strong evidence the court would not get grounds to reject evidences which had even not been cross examined and against which no contrary evidence had been produced. Close analysis of the case also shows that the investigation had not been done properly. As the provision under which they were charged is not bailable, one would assume the difficulties they would have undergone had the defendants been appeared and arrested. In other case in which the interference of the leader of prosecution office claimed to have been existed though the criminal code under article 34 sub article 1 provides that the juridical persons are criminally responsible only where it is expressly provided by the law, the criminal investigation was made to have been conducted against a trade organization which later charged under provision of criminal code that doesn't contain express declaration to that effect as provided under article 34 sub article 1.

Lack of willingness on the part of the police is also raised as one of the larger problems. There are circumstances indicating the fact that police consider conducting criminal investigation as its own inherent business. For instance in one case²⁰⁶ a suspected person was arrested by the police in front of the prosecution office. The head of the branch office of the sub city approached them²⁰⁷ and ordered release of a person on the understanding that there is no cause warranting his arrest. The police later made arrest warrant to be issued on a leader of prosecution office on the ground that he helped the criminal suspect to escape.

The other cause relates to the dissimilarity in the working day and hour of the public prosecutors and investigating police officers. The police work 24 hours per day throughout the week. The public prosecutors on the other hand work 8 hours a day and five days per

²⁰⁵ FAG vs Abreham Fante (FHC Lideta Division Bench Court's File No. 232118)

²⁰⁶ AAPC vs Lemi Taye (Police File No. 1419/12)

²⁰⁷ Interview with Chacka Debele, Head,FAG Nifas Silk Lafto Branch Office(March 2020)

week. As such crimes may occur at nights and in weekends where the public prosecutors are not at work place.

4.4. The Effect Disparities Between the Law and Practice on the Trial Proceeding

The pre-trial procedural injustice would have immense effect on trial justice. In Ethiopia the evidences to be produced on trial against the accused have to be collected at the pre-trial stage of criminal proceeding. The evidences gathered unfairly would have the effect of negatively affecting fairness of the trial.

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

Under the CPC of Ethiopia police is given with extensive power to be exercised in the pretrial stage of criminal proceeding. There have been persistent criticisms by the human rights advocates against the successive governments of Ethiopia for bad human rights records, *inter alia*, in the course of criminal investigation. The Ethiopian government on its part was known for persistently dismissing such allegation until PM Abiy Ahmed publicly admit that the government has been committing the acts of state terrorism on person under detentions centres throughout the country. His administration pledged to undertake a lot of reforms which include enhancing the situations of human rights handling in the country. One important mechanism through which the protection scheme of the rights of criminal suspect during the pretrial stage of criminal proceeding would be enhanced is empowering the FAG to effectively supervise criminal investigation and ensure its legality.

The existing laws are so clear regarding the roles of FAG in course of criminal investigation. Its establishment proclamation empowers it, among others, to follow up criminal investigation and ensure its legality. The criminal justice policy and prosecution manual also expressly empower the prosecutorial institution to lead the criminal investigation. Supervising criminal investigation and ensuring its legality encompasses the duty to ensure the protection of the rights of criminal suspects during the pretrial stage of criminal proceeding. Effectively discharging such responsibility requires having active participation on each steps of criminal investigation.

Coming to the practice the FAG do not participate on steps of criminal investigation on majority of the cases falling under its jurisdiction in Addis Ababa. The public prosecutors make participation on the investigation process only in special occasions. Those special occasions on which the public prosecutors make participation on criminal investigation are when the order to that effect is made by the leaders of investigative police or prosecutors due to the seasonality, sensitivity and complexity of cases; when the police officers on their own initiatives wanted to participate the public prosecutors on the investigation process due to seriousness or complexity of the cases involved, or due to any other inconvenience they perceived to make unilateral handling of the criminal investigation difficult; and when the public prosecutors get to know the commencement of investigation by their own initiative

and wanted to make follow up thereon. Such situation constitute small portion of the cases handled by the FAG. Even in such circumstances too the prosecutors may participate on some steps and may not continue to pursue it on other steps. Consequently, in normal course of the prosecutorial business of the FAG, the public prosecutors are not participating on and supervising criminal investigation to the extent required by the laws. And hence there is discrepancy between the law and practice regarding the role of public prosecutors to ensure protection of the pretrial rights of criminal suspects.

There are different contributing factors for the disparity between the law and practice. The problems are attributable to lack of institutional commitment and willingness, problems in professional independence and absence of binding laws applicable on both organs regarding the routine activities of criminal investigation. The difference in working time and day of police and public prosecutors is also one of the underlying causes contributing to the problem mentioned.

This state of fact has also negative effect on the rights of criminal suspects on the trial proceeding. Under the Ethiopian criminal proceeding the evidences to be presented during trial against the defendants have to be gathered on pretrial stage. In such cases, the evidences gathered in violations of pretrial procedural justice would have the effect of negatively affecting trial fairness.

5.2. Recommendations

To avert the problems pertained to the existing system of criminal investigation and enhance the protection scheme of the right of criminal suspects during the pretrial stage of criminal proceeding, it is important to take decisive measures resulting in institutional and attitudinal changes on the area. In absence of genuine reform in this regard there would continue vicious circle of governmental criminality against the individuals on course of criminal investigation. Therefore:-

1. The BPR Manual should be upgraded to the status of binding legal instrument though with certain amendments. The amendment should be made in a way that expressly state following points :-
 - The FAG leads and supervises criminal investigation. The investigative police officers have the duty to report to the prosecutors, and that in case there is disagreement between them the order of public prosecutors shall prevail.

- Accusation and complaint should be heard and recorded only in presence of public prosecutors. If the prosecutors are not available in police stations or departments the police should communicate and consult them on phone, and should immediately report them, in any case, on the presence prosecutors.
 - Investigative steps like arrest, restriction of privacy and request of remand should be made only with prior written approval by, on form to be prepared for this purpose, the public prosecutors save in case of exigent circumstances;
 - Public prosecutors are duty bound to participate on interrogation, and to examine legality of confession made to the police in their absence;
 - Public prosecutors should contact detainees immediately after their arrest, and make visit to them in detention centres at least once a week. In such cases they should ask the detainees in direct and specific terms touching every right of them involved in arrest and detention. There should also be written check list according to which the protection of their fundamental rights could be asked and recorded by the public prosecutors;
2. The Attorney General should be appointed on the clear criteria which should be set by the law. The criteria to be set should require high standard of professional integrity and legal expertise for the position of AG. The individuals leading criminal directorates and branch offices should be recruited on the base of competitive competence requiring high level of integrity and professional expertise.
 3. Enough number of prosecutors, in lights of case load, from every directorates and branch offices of sub cities, should be assigned to appropriate police stations or departments. The public prosecutors should also be assigned in weekends too, in shift, to police departments handling serious crimes;
 4. Sufficient training should be made to new investigative police officers and public prosecutors on laws governing criminal investigations.

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FGCJAO, በፌዴራል መንግስት የወንጀል ፍትህ አስተዳደር አካላት ወንጀልን የመመርመር፣ መከራከርና ውሳኔ መስጠት ዋና የስራ ሂደት የማስተግበሪያ ማኑዋል (Unpublished, Addis Ababa 2010)

Melaku Erjamo et al, በፌዴራል መንግስት የወንጀል ፍትህ አስተዳደር ወንጀልን መመርመር፣ መከራከር፣ ውሳኔ መስጠት ማረምና ማነጻ ዋና የሥራ ሂደት መሰረታዊ የሥራ ሂደት ለውጥ አፈጻጸም ዳሰሳ ጥናት (Unpublished, Addis Ababa 2015)

VII. Interview

Adnan Kedir, Head, FAG Kolfe Keraniyo Branch Office (April 2020)

Anteneh Ayalew, Director, FAG Economy Crimes Directorate (April 2020)

Chaka Debele, Head, FAG Nifas Silk Lafto Sub City Branch Office (April 2020)

Getachew Asefa, Vice Director, FAG Miscellaneous Crimes Directorate (April 2020)

Getachew Moreda, Head, FAG Lideta Sub City Branch Office (April 2020)

Habtamu Checkole, Vice Director, FAG Corruption Crimes Directorate (April 2020)

Kasahun Wale, (Inspector), Addis Ababa PILICE Commission (May 2020)

Seife Mulgeta, (Commander), Head, Investigation Division, Lideta Sub City Police Department (May 2020)

Solomon Dachew, (Commandor), Director, Federal Police Commission Office of Crime Investigation Head (April 2020)

Tekalign Kassa, Team Leader, Public Prosecutor at FBI (April 2020)

Temesgen Laphiso, Vice Director, FAG, Organized and Cross-Boundary Crimes Directorate (April 2020)

Yirgalem Gebretsadik (Ass. Inspector), Addis Ababa Police Commission, (May 2020)

Questionnaire for Investigative Police Officers

English Version

Your place of work:- Police Station Sub city's Police Department A.A Police Commission Federal Police Commission

For those questions alternative answers are provided you can choose one or more, or provide your own answer.

Regarding Complaint and Accusation

- At your work place do you think that the public prosecutors participate on the process of receiving and recording complaints and accusations?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above

- If your answer is they participate only sometimes would you please explain the situations where they participate

Regarding Arrest and Detention

- At your work place do you think that the public prosecutors participate on the process of arresting and detaining the criminal suspects?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If your answer is they participate only sometimes (b), would you please explain the situations where they participate
- In your work place do you think that there is program by which the public prosecutors make visit to the detainees? Yes No
- If there is program in what time interval do they make a visit? -----days per week, -----days per month. Please specify if there is any other -----

- Regardless of the programmed visit, do you think there a practice where by the public prosecutors contact the detainees after their arrest without delay? Yes No

Regarding Interrogation and Recording Statement of Suspects

- At your work place do you think that the public prosecutors participate on the process of interrogating and recording the statement of the criminal suspects?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

Regarding Remand

- At your work place do you think that the public prosecutors participate on the process of remand?

Yes, they do

They do only sometime

No, they don't

- If your answer is they do only sometimes what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If you answer is they participate only sometimes would you please explain the situations where they participate

Amharic Version

በመርማሪ ፖሊስ የሚሞላ መጠይቅ

የሚሰሩበት የስራ ክፍል፡- ፖሊስ ጣብያ ፖሊስ መመሪያ አ/አ ፖሊስ ኮሚሽን
ፌዴራል ፖሊስ ኮሚሽን

አማራጭ ምላሽ ለተሰጣቸው ጥያቄዎች ከአማራጮቹ መምረጥ ወይም የአራስዎትን ምላሽ መስጠት ይችላሉ

የወንጀል አቤቱታ እና ጥቆማን መቀበል እና መመዘገብን በተመለከተ

- በሚሰሩበት የስራ ክፍል የወንጀል አቤቱታ/ጥቆማ መቀበል እና መመዘገብ ሂደት ላይ ዐቃብያነ ህግ ይሳተፋሉ ብለው ያስባሉ?

አዎ ይሳተፉሉ

አልፈዉ. አልፈዉ. ብቻ ይሳተፉሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፉሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያቱ ምንድን ነዉ. ብለዉ ያስባሉ? (ከአንድበላይምክንያትካለሁሉንምመምረጥይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራዉ ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራዉ ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈዉ. አልፈዉ. ብቻ ይሳተፉሉ (ሐ) ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

ተጠርጣሪን ማሰር እና ማቆየትጋር በተያያዘ

- በሚሰሩበት የስራ ክፍል ተጠርጣሪን የማሰርና የማቆየት ሂደት ላይ ዐቃብያነ ህግ ይሳተፉሉ ብለዉ ያስባሉ?

አዎ ይሳተፉሉ

አልፈዉ. አልፈዉ. ብቻ ይሳተፉሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፉሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፉሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ
- በሚሰሩበት የስራ ቦታ ዐ/ህግ የሚሳተፉበት የእስረኛ ጉብኝት ፕሮግራም ያለ ይመስልዎታል? አዎ አለ የለም
- የእስረኛ ጉብኝት ፕሮግራሙ ካለ ዐቃብያነ ህግ ጉብኝቱን በምን ያህል ጊዜ ያደርጋሉ? በሳምንት -----ቀናት፤ በወር -----ቀናት፤ ሌላ ካለ ቢገልጹ-----
- በፕሮግራም ከሚደረግ ጉብኝት ወጭ ተጠርጣሪ ከተያዘ በኋላ ዐቃብያነ ህግ ወድያው ተጠርጣሪን አግኝቶ የሚያነጋግሩበት መደመኛ አሰራር ያለ ይመስልዎታል? አዎ አለ የለም

ተጠርጣሪን መጠየቅ/መመርመር እና ቃል መቀበል ጋር በተያያዘ

- በሚሰሩበት የስራ ክፍል ተጠርጣሪን የመመርመር እና ቃል መቀበል ሂደት ላይ ዐቃብያነ ህግ ይሳተፉሉ ብለው ያስባሉ?

አዎ ይሳተፉሉ

አልፈው አልፈው ብቻ ይሳተፋሉ

አይሳተፉም

- መልሰዎ አልፎ አልፎ ብቻ ይሳተፋሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልሰዎ አልፈው አልፈው ብቻ ይሳተፋሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

ብርበራ እና መያዝን በተመለከተ

- በሚሰሩበት የስራ ክፍል ብርበራ የማድረግና ንብረት የመያዝ ሂደት ላይ ዐቃብያነ ህግ ይሳተፋሉ ብለው ያስባሉ?

አዎ ይሳተፋሉ

አልፈው አልፈው ብቻ ይሳተፋሉ

አይሳተፉም

- መልሰዎ አልፎ አልፎ ብቻ ይሳተፋሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፋሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

ጊዜ ቀጠሮ መጠየቅን በተመለከተ

- በሚሰሩበት የስራ ክፍል ጊዜ ቀጠሮ የመጠየቅ ሂደት ላይ ዐቃብያነ ህግ ይሳተፋሉ ብለው ያስባሉ?

አዎ ይሳተፋሉ

አልፈው አልፈው ብቻ ይሳተፋሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፋሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃብያኝ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያን ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያን ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ

መልስዎ አልፈው አልፈው ብቻ ይሳተፉሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

Questionnaire for Public Prosecutors

English Version

- Where is your place of work? Crime Directorate Branch Office
- Do you believe that the Federal Attorney General have the responsibility to work for the protection of the rights of criminal suspects during criminal investigation? Yes, I do No, I don't

Regarding Complaint and Accusation

- At your work place do you think that the public prosecutors participate on te process of receiving and recording complaints and accusations?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If you answer is they participate only sometimes would you please explain the situations where they participate

Regarding Arrest and Detention

- At your work place do you think that the public prosecutors participate on the process of arresting and detaining the criminal suspects?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If you answer is they participate only sometimes (b), would you please explain the situations where they participate
- In your work place do you think that there is program by which the public prosecutors make visit to the detainees? Yes No
- If there is program in what time interval do they make a visit? -----days per week, -----days per month. Please specify if there is any other -----
- Regardless of the programmed visit, do you think there a practice where by the public prosecutors contact the detainees after their arrest without delay? Yes No

- Do you think the public prosecutors, on the visit, specifically ask the suspects whether the arrest or detention is conducted on the grounds and in accordance with the procedure provided by the law? Yes No
- If the handling of the criminal suspects is not in compliance with human rights standards, and violator is member of the police do you make him/her to face civil, criminal or disciplinary liability, as the case may be? Yes, I do No, I don't Sometime
- Would you please mention hindrances, if there is any, to make the police officer responsible for human rights violations?

Regarding Interrogation and Recording Statement of Suspects

- At your work place do you think that the public prosecutors participate on the process of interrogating and recording the statement of the criminal suspects?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If you answer is they participate only sometimes (b), would you please explain the situations where they participate
- In case the public prosecutor has not participated on the process of interrogating and recording the statement of criminal suspects, and you find from the file presented to you that the suspect has confessed, do you think that there practice whereby you check the legality of process through which the confession is obtained? Yes No
- If, at your work place, there is practice where by the public prosecutors takes measures, on receiving information that the confession was obtained through illegal method, would you please mention the kind of measures taken?

Regarding Search and Seizure

- At your work place do you think that the public prosecutors participate on the process of search and seizure?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

Would you please describe if there is other reason than listed above

- If your answer is they participate only sometimes (b), would you please explain the situations where they participate

Regarding Remand

- At your work place do you think that the public prosecutors participate on the process of remand?

Yes, they do

They do only sometime

No, they don't

- If your answer is 'they do only sometimes' what do think is the reason why they don't participate always? (you can choose one or more from the alternatives)

Participation of the public prosecutors is not necessary

There is no binding law enabling the public prosecutors to participate

There is no developed practice enabling the public prosecutors to participate

There is no willingness/commitment on the part of public prosecutors to participate

There is no willingness/commitment on the part of the police to that effect

There is no practice whereby public prosecutors are assigned to police station/departments

The workload and number of prosecutors assigned on investigation do not match

Prosecutors do not make them themselves available at police stations/departments on the working days

- Would you please describe if there is other reason than listed above
- If your answer is they participate only sometimes (b), would you please explain the situations where they participate

Amharic Version

በዐቃብያነ ህግ የሚሞላ መጠይቅ

የሚሰሩበት የስራ ቦታ የት ነው? :- የክ/ከተማ ምድብ ፅ/ቤት የክርክር ዘርፍ ዳይሬክቶሬት

በወጀል ምርመራ ወቅት የፌ/ጠ/ዐ/ህግ የተጣርጣሪዎች መብት እንዳይጣስ/እንዲከበር የመስራት ግዴታ አለባቸው ብለው ያምናሉ? አዎ አላምንም

የወንጀል አቤቱታ እና ጥቆማን መቀበል እና መመዘገብን በተመለከተ

- በሚሰሩበት የስራ ክፍል የወንጀል አቤቱታ/ጥቆማ መቀበል እና መመዘገብ ሂደት ላይ ዐቃብያነ ህግ ይሳተፋሉ ብለው ያስባሉ?

አዎ ይሳተፋሉ

አልፈው አልፈው ብቻ ይሳተፋሉ

አይሳተፉም

- መልሰዎ አልፎ አልፎ ብቻ ይሳተፋሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያቱ ምንድን ነው ብለው ያስባሉ? (ከአንድበላይምክንያትካለሁሉንም መምረጥ ይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፋሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

ተጠርጣሪን ማሰር እና ማቆየት ጋር በተያያዘ

- በሚሰሩበት የስራ ክፍል ተጠርጣሪን የማሰርና የማቆየት ሂደት ላይ ዐቃብያነ ህግ ይሳተፋሉ ብለው ያስባሉ?

አዎ ይሳተፋሉ

አልፈው አልፈው ብቻ ይሳተፋሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፋሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃብያነ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ

- መልስዎ አልፈው አልፈው ብቻ ይሳተፉሉ (ሐ) ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልፁ
- በሚሰሩበት የስራ ቦታ ዐ/ህግ የሚሳተፉበት የእስረኛ ጉብኝት ፕሮግራም ያለ ይመስለዎታል? አዎ አለ የለም
- የእስረኛ ጉብኝት ፕሮግራሙ ካለ ዐቃቢያን ህግ ጉብኝቱን በምን ያህል ጊዜ ያደርጋሉ? በሳምንት -----ቀናት፤ በወር -----ቀናት፤ ሌላ ካለ ቢገልጹ-----
- በፕሮግራም ከሚደረግ ጉብኝት ውጭ ተጠርጣሪ ከተያዘ በኋላ ዐቃቢያን ህግ ወድያው ተጠርጣሪን አግኝቶ የሚያነጋግሩበት መደመኛ አሰራር ያለ ይመስለዎታል? አዎ አለ የለም

ዐቃብን ህግ ተጠርታሪን ስጎቦች በህግ መሰረት ስለመያዙ እና ከታሰረ በኋላም ያለው አያያዝ በህግ መሰረት ስለመሆን አለመሆኑ ለይተው ይጠይቃሉ ብለው ያስባሉ? አዎ አይደለም

- የተጠርጣሪው አያያዝ ሰብዓዊ መብቱን ያላከበረ ከሆነ እና የመብት ጥሰቱን የፈፀመው ግለሰብ የፖሊስ አባል ከሆነ በወንጀል፤ ወይም በፍትሐ ብሔር ወይም በስነ-ምግባር እንደ አግባብነቱ እንዲጠየቅ ያደርጋሉ? አዎ አላደርግም አልፎ አልፎ
- በሰብዓዊ መብት ጥሰት የተጠረጠሩ የፖሊስ ስአባላት ተጠያቂ ለማድግ እንቅፋት የሚሆኑ ተግዳሮቶች ካሉ ቢገልፁ

ተጠርጣሪን መጠየቅ/መመርመር እና ቃል መቀበል ጋር በተያያዘ

- በሚሰሩበት የስራ ክፍል ተጠርጣሪን የመመርመር እና ቃል መቀበል ሂደት ላይ ዐቃብያን ህግ ይሳተፉሉ ብለው ያስባሉ?

አዎ ይሳተፉሉ

አልፈው አልፈው ብቻ ይሳተፉሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፉሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃቢያኝ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳቦረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃቢያኝ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃቢያኝ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፉሉ (ሐ) ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ
- ተጠርጣሪ በሚጠየቅበት እና ቃል በሚሰጥበት ሂደት ዐ/ህግ ሳይሳተፉ ተጠርጣሪው የእምነት ቃለ የሰጠ መሆኑ ከቀረበልዎት መዝገብ ከተገነዘቡ ቃሉን የሰጠበት የህጋዊነት አግባብ የሚያጣሩበት አሰራር ያለ ይመስልዎታል? አዎ የለም
- ተከላሽ የእምነት ቃሉን የሰጠው ከህግ አግባብ ወጭ መሆኑን መረጃ የሚደርስዎ ከሆነ በሚሰሩበት የስራ ክፍል በዐ/ህግ እርምጃ የሚወሰድበት አሰራር ካለ የሚወሰደውን የእርምጃ አይነት ቢገልጹ

ብርብራ እና መያዝን በተመለከተ

- በሚሰሩበት የስራ ክፍል ብርብራ የማድረግና ንብረት የመያዝ ሂደት ላይ ዐቃቢያኝ ህግ ይሳተፉሉ ብለው ያስባሉ?

አዎ ይሳተፉሉ

አልፈው አልፈው ብቻ ይሳተፉሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፉሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃቢያኝ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃቢያኝ ህግ በፖሊስ ጣብያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃቢያኝ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፉሉ ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

ጊዜ ቀጠሮ መጠየቅን በተመለከተ

- በሚሰሩበት የስራ ክፍል ጊዜ ቀጠሮ የመጠየቅ ሂደት ላይ ዐቃቢያኝ ህግ ይሳተፉሉ ብለው ያስባሉ?

አዎ ይሳተፉሉ

አልፈው አልፈው ብቻ ይሳተፉሉ

አይሳተፉም

- መልስዎ አልፎ አልፎ ብቻ ይሳተፉሉ ከሆነ ሁሌም የማይሳተፉበት ምክንያት ምንድን ነው ብለው ያስባሉ? (ከአንድ በላይ ምክንያት ካለ ሁሉንም መምረጥ ይችላሉ)

የዐቃቢያኝ ህግ መሳተፍ አስፋላጊ አለመሆን

በዚህ ስራ ላይ ዐ/ህግ እንዲሳተፍ የሚያስችል አስገዳጅ ህግ አለመኖር

ዐ/ህግ በዚህ ተግባር ላይ እንዲሳተፍ የሚያስችል የዳበረ አሰራር አለመኖር

በስራው ላይ ለመሳተፍ በዐ/ህግ በኩል ፍላጎት/ቁርጠኝነት አለመኖር

ዐ/ህግን ለማሳተፍ የፖሊስ ፍላጎት/ቁርጠኝነት አለመኖር

ዐቃብያነ ህግ በፖሊስ ጣቢያ/መምርያ የሚመደቡበት የተለመደ አሰራር አለመኖር

የስራ ጫና እና በምርመራ ላይ የሚመደቡ ዐቃብያነ ህግ ቁጥር አለመመጣጠን

ስራው ሲሰራ የዐ/ህግ በስራ ቦታ አለመገኘት (ከቅዳሜ እና እሁድ ወጭ ባሉት የስራ ቀናት)

- እባክዎ ካላይ ከተዘረዘሩት ወጭ ሌላ ምክንያት ካለዎት ቢገልጹ
- መልስዎ አልፈው አልፈው ብቻ ይሳተፉ (ሐ) ከሆነ በምን አይነት ሁኔታ እንደሚሳተፉ ቢገልጹ

Interview Questions for the Detained and Convicted persons

- For how long did you stay under arrest/detention during criminal investigation?
- How did you get arrested? On summon, on flagrant case, or with/without warrant?
- Did the public prosecutor contact you without delay after your apprehension?
- Was/is there regular visit by the public prosecutors at detention centre?
- Did the public prosecutor attend the process of your interrogation, or search and seizure if any?
- Did the public prosecutor ask you specifically whether your human rights were/are protected on your arrest and during your stay on detention, during interrogation, or on search and seizure, if any
- Is there any human right violation you told to the public prosecutor? If yes what kind of violation;
- Did you get solution for the violation, if any, you disclosed to public prosecutors
- In there any other condition on which you witnessed the intervention of public prosecutors on your case during the criminal investigation

Thank you.

Interview Questions for Prosecution and Investigation Heads

- Is there practice, under your office, where by public prosecutors and investigative police officers work together on criminal investigation?
- If yes, how does it work? By assigning public prosecutors to police stations, or would you please explain if there is other sort of practice?
- If not, would you please explain the reason?
- What their sitting arrangement looks like? Do public prosecutors and investigative police officers sit together sharing offices or sit separately?
- What are the specific roles of public prosecutors and investigative police officer, practically, regarding criminal investigation? what is their respective roles:-

In receiving and recording investigation?

On arrest and detention?

On interrogation?

On search and seizure?

On requesting additional time for further investigation/remand/?

- Is there problems hindering them not to perform their respective roles, as provided by the law? If yes what are the problems:-