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ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW GRADUATE PROGRAM

Master of Laws (LL, M) in Human Right LAW

**Respective Roles of Different Organs of the Government in the Enforcement
of Constitutional Right to Bail in Ethiopia; Partial case study in
Addis Ababa and Sebeta**

By: Eden Leulseghed

Advisor: Dr. Wondwossen Demissie (Associate Professor)

**A Thesis Submitted to College of Law and Governance Studies, School of
Law, Addis Ababa University, in Partial Fulfillment of the Requirements for
the LLM in Human Rights**

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Approval Sheet by Board of Examiners

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ACKNOWLEDGEMENT

The first of all praising and my endless indebtedness go to the ALMIGHTY GOD and HIS MOTHER, ST. MARRY who awarded me with all the hopes, talents and strengths. They have been every moment with me every time to get the fruits of my efforts.

I owe special indebtedness to the good hearts that have been beside me. From the very beginning of the concept and development of the proposal through the whole course of the research, it is the intellectual views and constructive comments including technical assistance of my advisor Wondwossen Demissie (Ass.Prof.) that gave this research sense, meaning and shape. His immediate, continuous and insightful comments were also invaluable assets for the paper.

I am sure that this work will not come out in the absence of the support and patience of my husband Tadele G/Medhin, my lovely kids Adonay Tadele, Halelluya Tadele and Noah Tadele throughout my study. Here is my heartfelt and deepest gratitude to them.

I owe a special thanks to my families who are always in the forefront of my successes since my early school time. I would also like to express my deepest gratitude to my father Leulseghed, my mother Almaz Asmelash, My Sisters Sofia Leulseged and Maedot Leulseged, my brothers Biruk Leulseged and Abiy Leulseged for their unreserved support.

I owe a very special indebtedness to my colleagues and friends Rahel, Rahwa, Eyasu, Minilik, Efreem for your continuous care and concern in the accomplishment of the research.

I finally extend my due regards to all interviewees, discussants and those who have been beside me in the completion of this thesis.

PRAISE GOD!!!

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LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
Cr.PC	Criminal Procedure Code
ECHR	Ethiopian Convention of Human Right
ECTHR	Ethiopian Court of Human Right
FDRE	Federal Democratic Republic of Ethiopia
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
PDRE	Peoples Democratic Republic of Ethiopia
UDHR	Universal Declaration of Human Rights
RACSPREP	Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation
HR	Human Right
UNGA	United Nations General Assembly

Abstract

One's right to liberty is restricted in accordance with the rules and principles of international and national laws. The law supports the release of arrested persons until guilty verdict is rendered by court. When courts deny bail right of an accused, it impacts on his/her right to a fair trial, and the accused will be detained before his/her guilt is established " beyond reasonable doubt". This article attempts to show how courts deal with issue of bail under article 63 of the Cr.Pr.C. Furthermore, it discusses instances where bail related court orders have been ignored by the police. The paper identifies that denying bail right shall be left to courts and recommended that the law making should take legitimate actions with regard to bail right procedures to avoid the ambiguity between the rights under art 19(6) of the constitution and article 63 of the Cr.pr.c. It also, suggests for an effective enforcement of bail rights of arrested persons, both legislative executive and judiciary should fully function in all situations, including where the cross checking of one over the other may cause unhappiness in some cases.

Key terms: constitutional rights of accused, bail, Presumption of innocence, fair trial

CHAPTER ONE

1. INTRODUCTION

1.1 Background of the study

In most countries constitutions a right-to-bail provision is included, mostly phrased as, every arrested person shall be released on bail except for unbailable offences, when the evidences provided by the investigator/prosecutor are evident.¹ Once a person is arrested his/her liberty should be restricted based in accordance with the rules and principles of international and national laws with the inclusion of the standard of non-discrimination.² It shall be free from any type of unlawful activities, in that the laws and the procedure of arrest shall be proper impartial, and predictable and fulfill due process of law.³ When a person is arrested his first thought is how to get out and fast.⁴ Bail is given to an accused to be released until guilty verdict is rendered.⁵ The right to bail was intended to give a chance for an arrested person to stay with his/her families instead of being imprisoned until the trial date.⁶

Bail shall be seen “discharge”, and, “denial of bail”, shall be seen as imprisonment.⁷ A person may be arrested by a police officer and released after inquiry, depending on the case, so as to appear before a trial. Usually, the first opportunity for release on bail comes only after the police have taken the suspect before the court.⁸ If the arrested person is not released the suspect shall be brought before a court.

¹Ariana Linder Mayer, *What the Right-Hand Gives: Prohibitive Interpretations of the State Constitutional Right to Bail* 2009 Pg.267 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4469&context=flr> accessed Dec 13, 2020

²UN Hi Commissioner for Human Rights; chapter 5: Human rights and arrest, pre-trial detention and administrative detention Pg.169 <https://www.ohchr.org/documents/publications/training9chapter5en.pdf> accessed Dec 13,2020

³ Ibid

⁴ Micah Schwartzbach; Bail: *Getting Out of Jail After an Arrest*, <https://www.nolo.com/legal-encyclopedia/bail-getting-out-of-jail-30225.html> accessed Dec 15,2020

⁵Shima Baradaran Baughman: *The_Bail_Book; A Comprehensive Look at Bail in America's Criminal Justice System - Introduction* September 2018 <https://www.researchgate.net/publication/326192113> Dec 3,2020

⁶ Martinez F., Why the Bail system is good; <https://mtzbail.com/why-the-bail-system-is-good/> accessed Dec 4,2020

⁷Timothy R. Schnacke; *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* September 2014 Pg. iv <https://s3.amazonaws.com/static.nicic.gov/Library/028360.pdf> accessed 18 Nov 2020

⁸Wayne R. LaFave, *Detention for Investigation by the Police: An Analysis of Current Practices*,1962 Pg.338 https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=3225&context=law_law_review accessed 20 Nov 2020

Judges are answerable in allowing bail rights, not only, because arrested persons want to be released, but also they have the duty to protect the constitutional right of the accused.

The principle is liberty, in which imprisonment shall be the exception.⁹ The UN standard minimum rules for non-custodial measures, in rule 6.1 states "Tokyo rules", "Detention before trial shall be used as a last option in criminal records with due consideration for the inquiry of the offence committed by the accused and for the public safety and the injured." Regarding bail rights of an accused, there are some relevant treaty obligations mainly under, UDHR, ICCPR, and the general comment on the above article, the United Nations High Commissioner for human rights; and the ACHPR have adopted a provision on the right to bail.

In Ethiopia, when a person is accused of bailable offence, has the right to apply for bail. The provision which provides that "accused persons are presumed innocent until proved guilty" are enshrined under article 20/3/ of the FDRE constitution. The right to bail is incorporated under article 19(6) of the FDRE constitution. Bail is a way for individuals who have been charged and arrested to be released from police custody until their trial. If the judge refuses bail right, the accused person will be held in police custody until the trial and if the judge decides to release the accused, he/she may have to pay money into court as a deposit, and there may be certain conditions attached to accused's release.

Bail right is also located under book II title II chapter 3 section 1 of art. 63(1) of the Cr.Pr.C Ethiopia.¹⁰ When the court thinks that the investigation is done, the judge, after considering variety of bail factors will grant the arrested person to be released on bail and if not convinced will deny bail right. Though a comprehensive law about bail rights of persons detained were enacted both at national and international level, courts are denying bail rights for all unbailable offences under article 63 of Cr.Pr.C without considering the nature of the evidence and the personality of the accused and the seriousness of the crime alleged due to the prohibition of bail by law, besides, court orders of bail rights are not enforcing by investigators thus most accused persons are obliged to stay in custody for extended period of time even after they furnish bail

⁹ UN Hi Commissioner for Human Rights, *supra notes 2*, at 173.

¹⁰ Criminal procedure code of Ethiopia art. 63(1) States that "persons accused shall be released in bail, if the alleged crime does not entail the death penalty or rigorous imprisonment for fifteen years or more and if the victim has no probability of dying.

money. This article is, therefore aimed to identify the challenges faced by courts inability to enforce bail rights due to the prohibition of bail under article 63 of the Cr.Pr.C and the cases where bail related court orders have been ignored by the police.

1.2 Statement of the problem

The law attempts to regulate the equilibrium between the assessments for truth and safeguard the fairness of the procedure.¹¹ The criminal justice system is predictable to preserve the right of arrested persons even if it appears to go alongside the search for the fact. Until the court rendered guilty verdict, arrested persons have the right to be presumed innocent.¹²

Presumption of innocence is provided in our constitution; however, the trend of courts is that when a charge with unbailable offences is brought by the investigator/prosecutor courts simply deny bail right of an accused because of the prohibition of law which contradicts with the presumption of innocence. The notion of presumption of innocence recommends that no accused shall be detained until guilty decision is rendered. Unless the crime committed is unbailable. Persons must be arrested if and only if there are no alternative measures available like release on bail and should not last longer than is strictly necessary.

The other impediment for the enforcement of bail right is, the defiance of court orders by police officers. when courts guaranteed bail rights, accused persons was supposed to be released by police officers immediately, however, they are being detaining in custody after bail right is allowed by court for long time. The enforcement of bail rights is being criticized by the accused, families, attorneys and other stake holders. The life of the accused and family of the arrested person awaiting trial shall be taken in to consideration and the right to liberty of an accused should be limited only for legitimate reasons.

Detaining defendants in jail while they are released on bail by court order, not only challenges the presumption of innocence but also, imposes significant adverse consequences on those

¹¹Simeneh Kiros Assefa, *The Principle of presumption of innocence and its challenges in the Ethiopian criminal process* 2018 pg.274 <https://www.researchgate.net/publication/325056920> accessed Dec 4, 2020

¹²Art. 20(3) of the FDRE constitution

detained possible loss of employment and income, separation from family's loss of self- respect or reputation and many more.

“A society in which the execution of the law is not assured, nor the separation of powers defined, has no constitution at all.”¹³ When courts grant bail rights the other branch of the government, the law enforcement, defy, executing court order and accused persons are, suffered from exercising and enjoying their constitutional right to bail. In doing so, police officers are not only violating the constitutional rights of the accused but also, they are obstructing justice.

If the constitutional rights of the accused are not respected or enforced by the concerning authorities, the justice system will be unsuccessful to realize its target of guaranteeing human rights. To protect the violation of constitutional rights of accused persons, it requires immediate response.

This research will examine the courts inability to allow bail right due to the prohibition of bail under article 63 of the Cr.Pr.C. and the challenges faced by accused persons in the enforcement of bail rights.

1.3 Specific objectives: -

Examining bail rights process in the area under study and its effectiveness in the enforcement of rights of arrested persons released on bail.

- To evaluate how courts are ruling on criminal cases under article 63 of the Cr.Pr.C.
- To evaluate the role of different organs of the government up on successful bail right enforcement
- To examine whether court orders of bail rights are enforced by the law enforcement agency?
- Propose potential suggestions for the problems that might be shown as research findings.

¹³ Tania Lipi, *Separation of Judiciary from the executive: an Evaluation and Analysis*,2013, Pg.1 <https://www.researchgate.net/publication/276849504> accessed Nov 21,2020

1.4. Research Questions

- What should be the role of courts in bail rights of accused in criminal cases under article 63 of the Cr.Pr.C?
- What are the roles of the different organs of the government in the enforcement of constitutional right to bail? Is there a system that enabled one branch of government to check and balance the power of the others in the enforcement of bail rights?
- What are the legal actions that judges, prosecutors and investigators should take for an effective enforcement of bail rights?

1.5 Significance of the Study

- I shall examine the recent practice of the enforcement of bail rights in light of the normative framework of Ethiopia.
- This research can help for arrested persons, courts, law enforcement agencies, the lawmaking and other stakeholders to take action so as to end the current challenges in the realization of bail rights of an accused in light of the constitution.

1.6 Literature Review

There are limited legal researches focusing on bail rights in Ethiopia. However, few studies have been conducted on the right to bail and related topics. For instance, "Bail right in Ethiopia: respective roles courts and legislature" by Wondwossen Demissie (Ass.Prof.), it basically is related to the role of courts and the legislature in determining cases where the right to bail is to be restricted and whether the court should weigh the evidence of the public prosecutor, during a bail hearing. Kelali Kiros (2011) has written LLM thesis titled on "the bail justice in Ethiopia; challenges of its administration". This study focuses on the impacts of administration of bail justice in Ethiopia. Frehiwot Teklu conducted a research in (2008); under the title "comparison bail right to the crimes of rape and corruption" which compares bail rights of the mentioned crimes. Bayenew Lisane work in (2011); he wrote, an assessment of the implementation of international and regional human rights duties in Ethiopia, this thesis is mainly concerned with how human rights are enforced in Ethiopia. This research, therefore, examines the respective roles of different organs of the government in the enforcement of constitutional right to bail.

1.7 Research Methodology

The study is descriptive and analytical; the analysis is made using qualitative technique. It tried to analyze the constitution and criminal procedure code and the practical problems on the enforcement of bail rights.

1.8 Data Sources

Both primary and secondary data are used. Different published and unpublished sources available regarding the problem under study are used. The secondary source of data is from different thesis which are focused on the topic, such as the UDHR, ICCPR, ACHPR, and from National instruments, FDRE constitution, Criminal Procedure code, police establishment proclamations and all other related legal instruments are used. Additional secondary data include scholarly articles, books, journals, electronic materials and other publications are used.

The primary data used are interviews gathered from research participants and personal observation. Interviews are made with Judges, prosecutors, arrested person and from Ethiopian human rights commission. Personal observations were conducted into those selected prisons of Addis Ababa police commission, Addis Ababa Federal police, bole sub city police station, Kaliti prison center from Addis Ababa, Sebeta furi police station from Oromia region.

1.9 Scope and limitation of the study

The study is all about bail rights of an accused focused in Addis Ababa and its surroundings. Even though it was good to assess the practical problem on the enforcement of bail rights practiced in all courts and police stations, because of time constraints and resource the study is limited to selected courts and prison centers in Addis Ababa and Sebeta Furi police station. Those prison centers are purposely selected by the researcher because they have prisoners for the intended research. The study has focused at making legal analysis on how constitutional right to bail is enforced by courts. On the other hand, it tries to discuss the challenges relating to the prosecution's/police 'unwarranted' objection to release on bail.

1.10. Organization of the dissertation

The paper has 5 chapters; Chapter 1; introduces the reader the general framework of the research Chapter 2 deals with the right to bail of an accused person. In this part the definition of bail, its historical development, philosophy and general policy of bail, justifications of bail, and

presumption of innocence are discussed. Under chapter three the writer importantly explores the legal and institutional framework of bail under international instruments, such as UDHR, ICCPR, ACHPR, and from National instruments the FDRE constitution, Cr, Pr. C. Chapter four covered separation of power; in this chapter separation of powers, checks and balances, and the function of the three different organs of the governments has discussed. Chapter 5 discusses, the roles of different organs of the government in the enforcement of constitutional right to bail from the Study obtained through interview and written documents, particularly from the facts mentioned in the third and fourth chapter. It focuses on the challenges in the enforcement of bail; finally, the research will be finalized with a conclusion and recommendation.

CHAPTER TWO

2. BAIL RIGHT OF AN ACCUSED

2.1 Definition of Bail

Bail is given to an accused person to be released until the court decides on the alleged crime.¹⁴ The word 'bail' in its origin has been traced to the old French word 'Baillier' which means to give and deliver as a whole.¹⁵ In criminal cases, bail refers to the temporary release of an arrested person, until judgment is rendered.¹⁶ The term bail is the guarantee left by the defendant to secure the release of the defendant.¹⁷ Bail, is defined in Black's law dictionary, as "the securities who obtain the release of an accused in custody, by taking the accountability for his presence at the time and place of the trial." Persons who are willing to be the guarantees of the defendant in court up on those agreement of insurance for the presence of the accused as a security to perform an obligation declared by courts, and recognized as undertakings or recognizances, the guarantees are called "bail."¹⁸ In Oxford dictionary, "Bail" is well-defined as "the provisional release of a defendant until the trial date, depending on the condition, money is blocked to secure their presence in court." On the basis of these definitions given in these dictionaries, bail right refers to set free or liberate a person arrested or imprisoned on taking security for his appearance in the court. In connection with the point previously mentioned scholar Anthony Highmore defined bail as 'the means of bestowing freedom to a detainee, and "Professor Arthur Beeley defined bail as "the release of an individual from detention."¹⁹

Timothy R. Schnacke's, a criminal justice system analyst gives a definition for bail so as courts and other officers to use the term without confusion as "Bail is the process of release."²⁰ His definition based on the confusion comes from courts and legislatures define bail only by money.

¹⁴ Shima Baughman, *supra note 5* at 1.

¹⁵ Ramveer, *The law of bail in India an analysis of legislative and judicial perspective* pg.1 http://shodhganga.inflibnet.ac.in:8080/jspui/bitstream/10603/236039/8/08_chapter%201.pdf accessed Dec, 11, 2020

¹⁶ Adv. Shubham Mongia, *Types of Bail in India and Conditions for Grant for Bail*; <http://www.legalserviceindia.com/legal/article-1804-types-of-bail-in-india-and-conditions-for-grant-for-bail.html> accessed Jan, 2 2021

¹⁷ Ibid.

¹⁸ Black's Law Dictionary, second edition, 1910 <https://openjurist.org/law-dictionary/bail> accessed Jan, 22 2021

¹⁹ Timothy R. Schnacke; "Model" *Bail Laws: Re-Drawing the Line Between Pretrial Release and Detention* 2017 Pg. 16 http://www.clebp.org/images/04-18-2017_Model_Bail_Laws_CLEPB_.pdf accessed Mar 22, 2021

²⁰ Ibid, at 17.

Money was the only means to release an accused and to persuade him for court appearance almost for 1,500 years, bail is not money.²¹

The concept of bail has been a backbone of the law and it was a process by which arrested person can be released from detention before trial.²² Typically, bail was considered as asset like money lodged to court to release the defendant on the belief that the accused will reappear for trial or pay the blocked money for penalty.²³ After a security has been deposited by the defendant for his future court appearance, he will be released on bail.²⁴ Bail represents a form of pre-trial release. A person is arrested or detained primarily to secure his appearance in the court during the trial so as to ensure that, if found guilty, to get available sentence given by the court.²⁵ In the pretrial hearing, courts may hold individuals in custody, release them on their own recognizance, or require them to post bail to ensure that they will return for their court dates. If the accused fail to appear, the court can collect the full amount of the bail from the company.²⁶ The notion of bail derives from the presumption of innocence, which bases in constitutional rights of liberty and legal proceeding which states that accused persons has the right to be presumed until proven guilty at trial. In Ethiopia an accused person can be released on bail by securing some amount of money to persuade him that he will appear before the court at trial date. If he can't return to court, the bail is forfeited and the suspect may probably be accused of the charges of the offence alleged. When police officers and judicial officers determine bail, the right of an accused and the interest of justice must be balanced, and should be allowed to preserve employment, connect with his families' and allows him to prepare for his defense.²⁷ At the same time, the state has an obligation to institute a charge for those who commit offences and it has the responsibility to safeguard public security between the time of arrest and the time of hearing and is obliged to safeguard the reliability of the criminal justice system.²⁸

²¹ Ibid.

²² Shima Baradaran Baughman, *supra note 5* at 2-3.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Victoria Piehowski and Joe Soss, *A Debt of Care: Commercial Bail and the Gendered Logic of Criminal Justice Predation* Feb 2019, Vol. 5, No. 1, pp. 150-172 <https://www.jstor.org/stable/10.7758/rsf.2019.5.1.07> accessed Dec,31,2020

²⁷ National Council on the Administration of Justice, *Bail and Bond Policy Guidelines*, March, 2015 Pg.9 http://kenyalaw.org/kl/fileadmin/pdfdownloads/Bail_and_Bond_Policy_Guidelines.pdf accessed Mar 22,2021

²⁸ Ibid, at 10.

By the same talk, if the accused person is found to endanger an individual or the public, and when it is evident that he committed serious crime, is better to detain the accused till the trial.²⁹ The justice system is involving the preservation of the investigation and the practice of prosecution compared to possible interference by the defendant.³⁰ The needs of the interest of the rights of a defendant to balance with the interest of justice are respected. Most countries constitutions including Ethiopian states that bail can only be denied by courts when they found convincing evidences. This is to mean that even if in our constitution, every accused person is entitled to bail, if the hearing shows convincing evidences; it is also allowed to deny bail. Therefore, when bail is denied, it must be proved that if the accused person released whether he will become a risk, and that risk cannot be controlled.

Bail acts as a settling device to provide accommodations both to the defendants and interests in pretrial liberty and society's interests in assuring the defendant's presence at trial.³¹ If a person can appear before the court of law without arrest, it will be unjust and partial to deny the defendant of his liberty while at the time of the trial. Generally, the word bail connotes to release from detention, either on personal bond or with sureties. Once a person is arrested, it will not only be difficult for the defendant to return his reputation, and to miss his work but also will be difficult to prepare efficiently for his defense and it would amount him to different psychological and physical damages.³² Similarly, when he is detaining, the burden will extend to his families, they will equally suffer with the detainee. However, if a person is suspected of grave crime, he is likely to abscond to prevent his punishment and if the court proved this, it would proper to deny bail right. However, if there is no risk of flight it would be cruel and unjust to deny him bail.

2.2 Historical development of bail

Bail is considered one of “the most ancient of Anglo-American criminal justice traditions.”³³ Though the evolution of bail is not known, many scholars accept that its roots are in the

²⁹ Ibid.

³⁰ Ibid.

³¹ Donald B. Verrilli, Jr. *The Eighth Amendment and the Right to Bail: Historical Perspectives* Vol. 82, No. 2 (Mar., 1982), pp. 327 <https://doi.org/10.2307/1122277> accessed on Dec,31,2020

³² Ibid.

³³ Russell A.L., Morris R.G, History of Bail. In: Bruinsma G., Weisburd D. (eds) *Encyclopedia of Criminology and Criminal Justice*. Springer, New York, NY.2014, https://doi.org/10.1007/978-1-4614-5690-2_280 accessed Mar 24,2021

medieval England.³⁴ Some have traced it after the fall of Rome in the 8th century at the time of Charlemagne, king of the Franks and emperor of the Holy Roman Empire.³⁵ At that time hostage ship was used as method of war in which a person is arrested until the principal appeared. If the accused does not appear, the hostage was the one who was punished on behalf of the suspect. Bail stems from Anglo-Saxon laws at the time of King Hlothaer's reign and Eadric in the 7th century. In primitive England, understanding the system of criminal laws and penalties were an obligation so as to understand the bail system.³⁶

When a dispute arises, which can often lead to wars, the Anglo-Saxon legal process was created as an alternative to provide in order to penalize the wrongdoings.³⁷ The purpose of bail at that time was different.³⁸ As Anglo-Saxon law advanced, crimes once established by anarchy or "hue and cry" were getting stable by a method of fees so as to pay the grievances. In the former times, crimes were considered as private affairs and wanted remuneration as a criminal penalty when a person brought a suit against another person.³⁹ Persons who were expected to endanger the society, with bad reputations and reoffenders who caught with their friends in a similar crime or those who were planning in absconding were either mutilated or immediately killed without the benefit of a fair trial.⁴⁰ The rest were thought to be "safe", hence they were not worried even if the defendant is released.⁴¹ However, Anglo-Saxons were suspicious that defendants will abscond not to pay the penalty, to the victim or to the king. Thus, for the defendant's appearance in court and payment of money upon conviction a system was created called bail.⁴² If the accused is found innocent the money was returned. This form of pretrial release was created from the understanding that detention was challenging and costly. Others thought that, bail started in the ninth and tenth century because of the problems practiced in England's criminal court. During that time the authorized officer expected initial duty for the custody of the suspect after the person's arrest. In medieval England, to handle cases judges were traveling from province to

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Timothy R. Schnacke, Michael R. Jones, Claire M. B. Brooker, *The History of Bail and Pretrial Release*; Pg.1 Sept 24, 2010 https://b.3cdn.net/crjustice/2b990da76de40361b6_rzm6ii4zp.pdf accessed Dec 29, 2020

³⁸ Firehiwot Teklu; *Comparing Bail Right to The Crimes of Rape and Corruption* July 2008, pg.3 <https://core.ac.uk/download/pdf/43538744.pdf> accessed on Dec.31,2020

³⁹ Ibid, at 37.

⁴⁰ Ibid, at 3.

⁴¹ Ibid.

⁴² Shima Baradaran Baughman, *supra* note at 22.

province.⁴³ Until the judge reached, the sheriffs having administrative and judicial functions were holding criminals.⁴⁴ So the suspect had to stay in jail for reasonable periods of time, it may take those years for reasons of geographical issues and traveling judges.⁴⁵

At that time, the officer allows the accused to pay cash bail so as to release the accused and to promise to return on the trial date, in other times, they would release the defendant on his own recognizance.⁴⁶ Thus, if the defendant would escape, the security is going to pay the total money to the victim, and the matter was done. A surety was used before the Norman conquest of 1066, and was put through a form of payment. All punishments paid by prisoners were bondable by money.⁴⁷

Following the Norman invasion, the state shows progress on criminal justice.⁴⁸ Except for serious offences, death penalty and other physical punishment was replaced by money.⁴⁹ Physical punishment increasing through time, giving many offenders a greater temptation to flee but summary mutilations and death penalties were gradually stopping.⁵⁰ Possibly, the statute of Westminster in 1275 makes a significant change for the modern-day bail.⁵¹

Bail law developed after thirteenth centuries, any communications between Sheriffs and accused were not restricted by the law.⁵² They had a highest power either to release or detain an accused person. The Westminster, strived to establish a uniform practice of bail. After extensive exploitation of bail, the parliament approved the first law of Westminster which constructed and codified 51 current laws like bail rights and many of the statute were taken from Magna-Carta.⁵³ Three principals were recognized to administer bailability and the law departed from Anglo-Saxon civilizations; (1) the type of the offense (2) the possibility of penalized and (3) the past criminal history of the suspect.⁵⁴ Sometimes the congress approved laws which are

⁴³ Timothy R. Schnacke, Michael R. Jones, Claire M. B. Brooker, *supra note 37* at 3.

⁴⁴ *Ibid.*

⁴⁵ Russell A.L., Morris R.G. (2014) History of Bail. In: Bruinsma G., Weisburd D. (eds) *Supra note at 33*.

⁴⁶ *Ibid.*

⁴⁷ Timothy R. Schnacke, Michael R. Jones, Claire M. B. Brooker, *supra note 37* at 2.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ Russell A.L., Morris R.G, History of Bail. In: Bruinsma G., Weisburd D, *supra note 33*.

⁵² *Ibid.*

⁵³ Timothy R. Schnacke, Michael R. Jones, Claire M. B. Brooker, *supra note 37* at 3.

⁵⁴ *Ibid.*

essential on baillability of offenses which are not mentioned in the Statute of Westminster.⁵⁵ To protect persons from political abuse and corruption, the parliament devoted on adding shields to the bail process. Over time additional abuses led to additional reforms.

In Ethiopia, bail right has a longstanding story. It starts from the time of pre written constitution. In 13th c there thought to be a written document which has a constitutional importance called “ser’atemengest”.⁵⁶ It has 21 articles which contains about traditional occurrences, they use it when they appoint managerial and court officers, moreover it was helping them as a guidelines o courts.⁵⁷ At that time there was also another written document called “Kibre Nagast.” This document was also considered as constitution and they were using it for political and religious needs during Solomon kingdom. However, the right to bail was not included in these documents.

In ancient Ethiopia, reports from the year 1852-3 shows that before the pleading start both sides should give guarantee as a form of bail, which is approved by “af-a-negus.”⁵⁸ So if the principal escaped the securities were used as a form of penalty.⁵⁹ This is how more it’s similar with the present situation of depositing money to be released on bail and this is applicable in distant areas of the country in civil cases up to now. Even if there was the above-mentioned practice of releasing a suspect, it is not known whether releasing the accused person by security at that period was as a right or as a freedom by the "afe-a-negus."⁶⁰ Practically prisons were not known in primitive Ethiopia they use remote "Burg" as a preemptive detention for “Politically hazardous “persons.”⁶¹ Relatives of royal members, who were challenging to take the power of the throne, were treated accordingly.⁶² When the accused is under the control of judicial process, two types of restrictions were undertook to persuade his appearance at litigations; “Koragna” and releasing accused persons by securities called ‘wahs’.⁶³They were the ones who were in legal process answerable for the behavior of the accused, for their presence in court and for the

⁵⁵ Ibid.

⁵⁶ Kelali Kiros; The Bail Justice in Ethiopia A: Challenges of its Administration 2011 pg.16 <https://chilot.files.wordpress.com/2013/01/the-bail-justice-in-ethiopia-challenges-of-its-administration.pdf>, accessed Mar 24, 2021

⁵⁷ Ibid.

⁵⁸ Ibid, at 17.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

accomplishment of civil decrees.⁶⁴ For grave crimes like persons suspected of homicide, persons who tried to take the power of the throne by coercion and other related crimes were not allowed to be released by securing sureties.⁶⁵ After ‘Koragna’ is abolished, the present prison begins.

Accused persons charged with grave offences such as murder were kept in custody. Following ‘Koragna’ the 1931 Constitution came into existence with 55 provisions, chapter three which has 11 provisions which deal with rights and duties of peoples.⁶⁶ Under the provisions which provide about rights and duties it states that “Except as required by law, an Ethiopian citizen may not be detained, punished or imprisoned.”⁶⁷ “This article implies the protection of the right to bail. So, bail right was included in this constitution and it was practiced.”⁶⁸

After Emperor Haile Selassie I came into power the 1955 constitution was publicized, under this constitution human rights protection like presumption of innocence, legal proceeding, right to liberty, and other human rights that have rank for the shield of the right to bail, which were not mentioned in the 1931 constitution came with a newly amended provision.⁶⁹ The 1955 constitution is a landmark for the protection of right to bail. Following to the 1955 constitution, the 1961 modern criminal procedure code of Ethiopia was publicized.⁷⁰ Under this code the right to bail was clearly stipulated. During the reign of Emperor Haile Selassie I in, 1987, many chaos and disturbances were inspired from the desire for the respect of human and political rights and stopping.⁷¹ However, the right to bail has got full grown protection during this time some offences were not bailable as is stipulated under the CPC. The last and successful attempt to take over the Imperial Administration by force was made by a group of military officials called the Derg in 1974. The coming into power of the Derg government pronounced another history on the protection of the right to bail in Ethiopia and it remained in force.⁷² Because of this, many laws that restrict the right to bail were constitutionally recognized by the standards and principles provided in the 1955 revised constitution and after the fall of the Derg regime, the EPRDF came

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Kelali Kiros, *supra note* 56 at 20.

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ Kelali Kiros, *supra note* 56 at 21.

⁷⁰ Ibid.

⁷¹ Ibid, at 22.

⁷² Ibid.

to rule Ethiopia. Thus, human and democratic rights including the right to bail are recognized at this time.⁷³ Bail right of an accused are enshrined under the 1995 FDRE constitution.

2.3 Philosophy and General Policy of Bail:

The philosophy of bail is, to exhaust the possibilities of release, to persuade the accused person to appear court at the trial date and to protect the public safety.⁷⁴ Operative pretrial justice systems utilize risk-based decision-making to help accused peoples to discharge or detain defendants by protecting the communal safety and persuade accused persons to court at the trial date.⁷⁵ All other important elements derive from this definition.

The law of bail is like other division of law.⁷⁶ It has a great value in the judiciary and is appreciated in the area of law.⁷⁷ The right has evolved after a conflict has been happened, the police detain the accused, who is allegedly have committed an offence and the presumption of innocence in his favor.

The state has the duty to shield the right of the suspects, the police have been authorized to arrest suspects and to apply the criminal courts with the intention of detaining the accused in custody.⁷⁸ The police apply to the criminal courts with the intent of putting the accused in custody on the assumption that the defendant is guilty. Precautions should be made when taking defendant's liberty. Because it is wrong and unjust to detain a person, if found innocent finally.

The general policy of the rule is to Grant Bail rather than to refuse, this is to say that the basic rule is set as bail, not jail.⁷⁹ However, where it is suggested that the accused is to escape from court or trying to impair justice or threatening witnesses bail right of an accused will be

⁷³ Ibid.

⁷⁴ Lisa Pilnik; *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency* Pg.4 2017
<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c8bd044e-0215-9ab6-c22e-b1a4de912044> accessed Mar 26,2021

⁷⁵ Ibid.

⁷⁶ Sangu Amar Shankarrao, *Bail is fundamental and constitutional right a critical examination of the deprivation of liberty of a citizen by refusing a bail and the torturous exploitative mode of that deprivation by the criminal justice system*,2015 Chapter 2 Pg.15 <http://hdl.handle.net/10603/70509> accessed Mar 11,2021

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid, at.16.

refused.⁸⁰ If the alleged crime is serious, in which the accused might disappear from the trial, courts shall question the severity and brutality of the crime. An accused person has the right to every freedom and ability to defend himself efficiently. Bail Provisions, which restrict the liberty of a person, must be interpreted in favor of the person, and the protections of an individual's liberty must be construed and practiced accordingly.⁸¹

2.4 Scope and Application of Bail

Bail implies a process of getting an order of release of an accused suspected of a crime to make sure of his appearance in the court at the trial date.⁸² If the accused is charged with bailable crime, he shall be admitted for bail right without creating any obstacles on his liberty. However, the court may deny bail right until the defendant meets the necessary conditions.⁸³

The core principle of any justice system is that, no one shall be deprived of his personal liberty unless he is a threat to the society.⁸⁴ Except there is a possibility that the defendant may escape from the trial, bail right should be allowed. The defendant must not be kept in custody because of the delay in criminal proceedings for longer time than was intended. Except in grave cases, bail right must be allowed and the accused must be released from a custody. If the defendant appears before court voluntarily or submit himself to the police, bail right should not be refused.⁸⁵ When courts allow bail right for the accused, he shall be released immediately.⁸⁶ In case of delay because of the institution or other technical formalities it should be clarified to the defendant.⁸⁷

2.5 The Right to Bail

Every day hundreds of suspects are arrested by police for different charges, but, if a person has been arrested without warrant and if the offence is bailable, convincingly, the person is arrested himself.⁸⁸ As a principle every accused is entitled to be released on bail.⁸⁹ If the defendant can pay the bail bond every courts and officers of police stations are obliged to follow the provisions

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Sangu Amar Shankarrao, *supra note 76* Chapter 6 at. 4. <http://hdl.handle.net/10603/70509> accessed Feb 24, 2021

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Sangu Amar Shankarrao, *supra note 76* Chapter 5 at 27.

⁸⁹ Ibid.

so the defendant should be released on bail.⁹⁰ Every police officer has the duty to follow the rules and principles which are mentioned according to their countries law.⁹¹ When a police officer arrests a person without court warrant, the officer is duty bound to give the necessary information that the suspect can be released up on furnishing bail bond.⁹² If the accused don't know what to do in order to be released on bail the officer shall assist him. The discretion to bail is given to the police and to the court so if the accused furnish securities, they can release him.⁹³ Bail is not a gift or a favor by those officers, so they do not have the power to refuse bail if the offence committed by the defendant is bailable.⁹⁴ Whether the type of the offence which is committed is minor or serious the question to be raised is only, when the offence committed is bailable or not. If the police officer while having the power to grant bail is not willing to release the arrested person on bail, the detention shall be illegal and the officer will be liable for illegal detention.

2.6 Justifications of Bail

2.6.1. Presumption of Innocence

Presumption of innocence has achieved the status of human right and recognized as a major procedural guarantee.⁹⁵ Black stone comment that “to abscond ten criminals is better than hurting one innocent”.⁹⁶ Presumption of innocence could be perceived as the effect of this point of view.⁹⁷ His statement is interpreted the objective of the official judicial process is to decrease unwarranted distress while trying to make the offender accountable.⁹⁸

The United Nations incorporated the axiom “Innocent until proven guilty” in its Declaration of Human Rights in 1948 under article 11, section 1, and was incorporated into the United Nations

⁹⁰ Ibid.

⁹¹ National Council on the Administration of Justice, *supra note*. at 28.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Shrestha, Pradesh --- "*Two Steps Back: The Presumption of Innocence and Changes to the Bail Act 2013 (NSW)*" [2015] Syd Law Rw 7; (2015) 37(1) Sydney Law Review

<http://classic.austlii.edu.au/au/journals/SydLawRw/2015/7.html#> accessed Feb 25, 2021

⁹⁶ Michael L. Dekay; *the Difference between Blackstone like error Ratios and Probabilistic standard proof* Pg.95 <https://www.jstor.org/stable/828926?seq=1> accessed Mar 28, 2021

⁹⁷ Tracey Meares; *the "Radical" Notion of Presumption of innocence* Pg.15 <https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/05/CJLJ8161-Square-One-Presumption-of-Innocence-Paper-200519-WEB.pdf> accessed Mar 28, 2021

⁹⁸ Ibid.

International Covenant on Civil and Political Rights [as article 14, section 2]. The rules of ICTY, ECHR, ICTR, and ICC declare the principle of presumption of innocence.⁹⁹

A well-known international criminal researcher, presumption of innocence has three main inferences:¹⁰⁰

- i. An accused person must be presumed innocent until proved guilty.
- ii. The prosecutor has the obligation to prove whether the crime is committed or not by the defendant; the defendant can disprove the allegation produced by the prosecutor, but he is relieved of proving his innocence.
- iii. Before the court found the accused of guilty of the crimes charged, it must be convinced that the accused has committed the offence according to the standard of proof.

Conditional release decisions possibly involve all the above three implications.¹⁰¹

- i. Concerning the first implication-** an accused charged with certain offence must be presumed innocent until the court decided that the accused is guilty of the crime alleged. The importance of conditional release is that, in the absence of conclusive evidence or justification innocent people should not be detained.

The ECtHR stated that the severity of the accusation cannot oblige the accused to stay in detention for longer periods.¹⁰²

- ii. Concerning the second presumption of innocence;** - the allocation of burden of proof, the necessity for provisional release is not apparent. On the other hand, the judgment rendered is either to keep an accused in custody or not is not a final decision on the truth of the guiltiness or innocence of the suspect. However, even if there is a probability that it sounds like the accused has committed the offence, questionably presumption of innocence obliges not to prove their innocence in order to get released.

In other words, an accused person is not obliged of proving of any kind. The burden of proving is the duty of the prosecutor, not the defendant, to found reasons for detention.

⁹⁹ Davidson, Caroline L. "No Shortcuts on Human Rights: Bail and the International Criminal Trial," (2010) *American University Law Review*: Vol. 60: Iss. 1, Article 1. Pg.14
<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1601&context=aulr>
accessed Mar 27, 2021

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

iii. **Lastly, the third implication of presumption of innocence**, the degree of the evidence requests the demand on how much the level of evidence on release elements, especially if one element has the probability of verdict, can differ from the beyond any doubt or the intention of the judge measurement eventually used to evaluate guiltiness or innocence.

Presumption of innocence is totally associated with bail.¹⁰³ The principle of presumption of innocence emphasizes that, the prosecutor is obliged to prove every single element of the offense beyond reasonable doubt and the accused doesn't have to prove anything.¹⁰⁴ Bail right is mainly interrelated the concept of release and liberty on the inception of presumption of innocence.¹⁰⁵ The rights of an accused are recognized through time in slowly but in an effective way.¹⁰⁶ So denying bail is denying presumption of innocence.¹⁰⁷ Even if it is disputable when an accused is charged with a crime, presumption of innocence should be the starting point, and his/her liberty should be restricted in very rare cases.¹⁰⁸

2.6.2 Bail is a security for appearance

An accused may ask the court for bail at any stage of the trial at this time the court should not examine in to the facts of alleged crime.¹⁰⁹ In non-bailable offences before the court denying bail right, the seriousness and severity of the offence should be the primary consideration of the court. While considering the bail application the court shall deliberately see the necessary materials such as the report of the police, charge sheet the reasons which are stated in the petition.¹¹⁰ The accused will still be considered to be in the detention of the court through the bail bond or surety, so if the accused miss specified trial dates in court the bail bond will be deposited to the government or the surety will bring the accused to the court. The court restricts his personal liberty this way. Therefore, the court grant bail does not mean that the arrested person is

¹⁰⁴ What is the burden of proof? <https://www.futurelearn.com/info/courses/logical-and-critical-thinking/0/steps/9170> accessed Feb 15,2021

¹⁰⁵ Michael L. Dekay, *supra note* 96.

¹⁰⁶ Sangu Amar Shankarrao, *supra note* 76 Chapter 5 at 12.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Prateek Dhir, Abhishek Chauhan, *Bail: Considerations and Imposition of Conditions* 2018 <https://www.mondaq.com/india/court-procedure/722828/bail-considerations-and-imposition-of-conditions> accessed Feb 24, 2021

¹¹⁰ Sangu Amar Shankarrao, *supra note* at 76 Chapter 6 at 5.

free of any charges. Even if he is released on bail physically from the custody of the court, he continues to be a prisoner of the court in paper.¹¹¹

2.6.3 Purpose of bail

An arrested person shall not lose his right to protection of life and liberty solely on the ground that he has been charged with some offence.¹¹² He has the same right as the other citizen does. The main purpose of bail is to guarantee defendant's appearance at the trial date and to enable the defendants to stay out of prison till guilty decision is rendered.¹¹³ To allow bail right for an accused is to show the importance of the proper enforcement of basic rights of human rights like presumption of innocence and liberty.

The inception of bail is to assure that an arrested person who is under the control of legal authority will be judged if he secure bail and come at the trial date.¹¹⁴ If a police officer is convinced that someone is involved in the commission of an offence with sufficient evidences it is reasonable for him to restrict the liberty of the suspected person.¹¹⁵ However, unless it is proved that the defendant commits the offence, the police cannot detain a person. Except for severe breach of law, no one shall be deprived of his liberty. In nonailable offences if an accused is released on bail, he can escape and will not come back to attend trial, he can also hide or destroy all the evidences or change the witness testimony which are going to be presented against him.¹¹⁶ So bail right should be recognized with exceptions on some cases to protect the interest of the public. If bail right is recognized as an absolute right, most offenders will escape, have a high probability to commit another offence, and destroying the evidences all of that would have the potential to disable the criminal justice system.¹¹⁷ Therefore, it is proper to deny bail if it is proved that it does not protect the interest of the public. In order to deny bail, it should be justified by any of the above-mentioned grounds.¹¹⁸ The accused should not stay in custody until his trial date, unless there is a substantial risk of the accused escaping from the court.

¹¹¹ Ibid.

¹¹² Sangu Amar Shankarrao, *supra note 76* Chapter 2 at 12.

¹¹³ John E. MacDonald, *Bail Guidelines, Hearings and Revocation* <https://www.aggressivelegalservices.com/rhode-island-criminal-defense-law/bail-guidelines-hearings-revocation/primary-purpose-bail/> accessed on Feb 6, 2021

¹¹⁴ What is the purpose of bail? <https://exploringyourmind.com/whats-the-purpose-of-bail/> Jan 20, 2021

¹¹⁵ Wondwossen Demissie; *The Right to Bail in Ethiopia: Respective Roles of the Court and the Legislature* pg. 19 https://journals.co.za/doi/pdf/10.10520/AJA00220914_154 accessed Mar 6, 2021

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Releasing an accused on bail helps him to prepare for his defense properly and unnecessary delay can inhibit the arrested person to defend himself. It also prevents punishment before conviction. If bail is denied while the offence committed is bailable it would be an arbitrary arrest which is prohibited under international and national instruments.¹¹⁹

2.7 The Right to a fair trial

Fair trial is recognized in the UDHR in 1948, and it's a foundation of the international human rights system.¹²⁰ It serves as a procedural means to safeguard the rule of law or the administration of justice.¹²¹ Everyone has the right to a fair trial, and human rights protection are influenced by the availability of access to skilled and independent court of law which are able to administer justice impartially.¹²² Besides the professions of prosecutor and lawyers, everyone should contribute in the building of the right to fair trial. However, the importance of the right to fair trial proceeding is not only to rights, securities and wellbeing of a human beings, but is similarly necessary for other legal entities which depends on courts to resolve disputes of different types.¹²³

The provisions regarding to the right to fair trial are found in the international instruments. In the FDRE constitution the right to fair trial including the right to release on bail of an accused person is included. However, when a person is accused, he will face the legal system i.e., with the court system, police, prison system, and judiciary. Once they are arrested and loss their liberty the way the authorities treat the accused severely on the enjoyment of their rights.¹²⁴ Criminals are supposed to come in to justice, and this is the responsibility of the government.¹²⁵ However, if accused persons are mistreated by law enforcement, if innocents are arrested and imprisoned, if there is no fair trial for accused persons, the justice itself fails its reliability. Thus, to protect human rights the international community has developed fair trial principles.¹²⁶

¹¹⁹ Ibid.

¹²⁰ Elke Jansen, *Legal Safeguards of the Right to a Fair Trial, is there a right to a fair trial for the detainees held at Guantanamo Bay?* 2012 Pg. 11 <http://arno.uvt.nl/show.cgi?fid=122920> accessed Apr, 11 2021

¹²¹ UN HRC, General Comment No. 32, Article 14: *Right to Equality before Courts and Tribunals and to a Fair Trial*, Ninetieth Session, August 2007 <https://www.refworld.org/docid/478b2b2f2.html> accessed Apr 18,2021

¹²² UN Hi Commissioner for Human Rights, Chapter 6, *The Right to a fair trial: Part I-From Investigation to Trial*<https://www.ohchr.org/Documents/Publications/training9chapter6en.pdf> accessed Feb 24,2021

¹²³ Ibid.

¹²⁴ Amnesty International, International Secretariat, *The right to a fair trial*<https://www.amnesty.org/download/Documents/120000/pol300012002en.pdf> accessed Apr 11,2021

¹²⁵ Ibid.

¹²⁶ Ibid.

CHAPTER THREE

3. LEGAL AND INSTITUTIONAL FRAMEWORK FOR BAIL

3.1 International Instruments

3.1.1 Universal Declaration of Human Rights

The right to bail is a constitutional right which is related with the fundamental rights. Different treaties and declarations have been passed by the General Assembly, soon as the United Nations established in 1945, which deals with HR and bail rights in particular.¹²⁷ The (UDHR) is an international document adopted by the UNGA in Paris on 10 December 1948, article 3 of the declaration guarantees ‘everyone has the right to life, liberty and security of person. It also provides the presumption of innocence of every accused person.¹²⁸ Ethiopia is one of those countries, who adopted UDHR under its constitution. Regardless of nationality, residence, gender, religion, race, language or any other status the UDHR recognizes all peoples as being “born free and equal in dignity and rights.” The importance of the right to liberty which is realized by bail is recognized by the UDHR.¹²⁹

3.1.2 The International Covenant on Civil and Political Rights

In 1966, the ICCPR was adopted by the G.A and entered in to force on 23rd March 1976.¹³⁰ The ICCPR preserves civil and political rights.¹³¹ Article 2 of the covenant assures to all individuals, the rights included in this article will be respected and ensured without any discrimination.¹³² In addition to this, article 2/2 of the covenant calls up on every state party to take the necessary steps according to their constitution or national law to give effect to the rights that have been

¹²⁷ Melron C Nicol-Wilson; *The realization of the right to bail in the Special Court for Sierra Leone: Problems and prospects* 2001 <https://www.ahrlj.up.ac.za/nicol-wilson-m-c> accessed Jan 22,2021

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Health and Human Rights, International Covenant on Civil and Political Rights https://www.who.int/hhr/Civil_political_rights.pdf accessed Jan 25,2021

¹³¹ Ibid.

¹³² Karanjamy Mbaire; *Realization of the right to liberty; An appraisal of the bail regime in Kenya* 2019 pg.38. http://erepository.uonbi.ac.ke/bitstream/handle/11295/104554/Karanja_Realization%20Of%20The%20Right%20To%20Liberty.pdf?sequence=1 accessed Jan 23,2020

recognized in the covenant.¹³³ Under article 9 of the ICCPR the right to liberty and security of person are provided.¹³⁴

The ICCPR human right committee in its General comment no.35 states that, article 9 of the ICCPR is the first substantive right which is also stipulated under article 3 of the UDHR, which indicates the intense importance, both for individuals and for society as a whole. Liberty is concerned with freedom from detention, it does not mean it is a general freedom of action. Paragraph 3 of article 9 entail that arrested persons shall be released on bail and detention should be the exception rather than the rule.¹³⁵ This right applies to persons charged of criminal charges who are detained in custody. Pretrial detention should not be mandatory for all arrested persons of a certain crime, without taking individual circumstances in to consideration.¹³⁶

The guidelines help to improve the situations that accused persons shall not be detained unless bail right denied.¹³⁷

3.1.3 The African Charter on Human and Peoples Right

The ACHPR also known as the Banjul Charter was adopted on June 27, 1981, and entered in to force on 21 October 1986.¹³⁸

The African charter is profoundly in the direction of promotional rather than the protection aspect.¹³⁹ Article 1 of the charter orders signatories to the OAU shall recognize all the rights, duties and freedoms enshrined in the charter of periodic reports.¹⁴⁰ States are obliged not only States are obliged to preserve the rights enshrined and to encourage their continuous developing acknowledgment.¹⁴¹

¹³³ Ibid.

¹³⁴ International Covenant on Civil and Political Rights

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> accessed Jan 28,2021

¹³⁵ Article 9(3) of the ICCPR.

¹³⁶ Ibid.

¹³⁷ Human Rights and Pre-trial Detention, Pg.3 1994 <http://hrlibrary.umn.edu/Human%20Rights%20and%20Pre-trial%20Detention.pdf> accessed Mar 28, 2021

¹³⁸ African (Banjul) Charter on Human and Peoples' Rights

https://www.achpr.org/public/Document/file/English/banjul_charter.pdf accessed Jan 26,2021

¹³⁹ N. S. Rembe, *The System of Protection of Human Rights under the African Charter on Human and Peoples' Rights, Problems and Prospects*,1991, pg.6

https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/6177/ISAS_HPRMS6.pdf;sequence=1 accessed on Jan 30,2021

¹⁴⁰ Ibid.

¹⁴¹ Karanjamary Mbaire, supra 132 at 7.

The African Charter is not like the ICCPR in terms actual remedies and its enforcements when settled.¹⁴² Art. 6 of the charter states that the right to liberty and security is bestowed to everybody. This article further stipulates that unless previously prescribed by law, no one may be deprived of his freedom, arbitrarily arrested or detained. This article is the right which is mostly abused by African states.¹⁴³ When a person is detained, he is prevented from all types of shields and fundamental rights.¹⁴⁴

The ACHPR proclaims guidelines and principles on the right to fair trial and legal service.¹⁴⁵ The principles and guide lines urges civil society organization, judges, lawyers, prosecutors, academics and their professional associations to promote and protect the efforts made, so that they become well known for everyone who lives in Africa and incorporated them into their municipal legislations.¹⁴⁶

The principles and guidelines provide, persons arrested on a criminal charge should not be kept in custody awaiting their trial, unless there is a proof that they will escape, intimidating witnesses or causing damages to others and States are under obligation to ensure that.¹⁴⁷ Nevertheless, arrested persons may be released by guarantees as well as by payment of bail.¹⁴⁸

3.2 Domestic Laws

3.2.1 The FDRE Constitution

The FDRE Constitution incorporates several human rights. The FDRE constitution under article 19 (3) provides, “accused persons has the right to be brought before a court within 48 hours of their arrest.”¹⁴⁹ The provision which states about bail right is art. 19/6/ of the constitution, which declares that “Everyone has the right to be released on bail. In exceptional situations set by law the court may refuse or request security for the provisional release of the

¹⁴² Ibid, at.6.

¹⁴³ Ibid, at.9.

¹⁴⁴ Ibid.

¹⁴⁵ African Union, *to a fair Principles and Guidelines on the right Trial and Legal Assistance in Africa* http://hrlibrary.umn.edu/research/ZIM%20Principles_And_G.pdf accessed Feb 4.2021

¹⁴⁶ Ibid.

¹⁴⁷ Ariana Linder Mayer, *supra note 1* at 10

¹⁴⁸ Ibid.

¹⁴⁹ Art. 19(3) of the FDRE Constitution, 1995

accused.¹⁵⁰This shows that to release an arrested person is constitutional principle but under exceptional cases bail may possibly be denied.

3.2.2 Bail Rights under the Criminal Procedure Code

The Criminal Procedure code of Ethiopia has classified offences in two categories: -

3.2.2.1 Bailable offence: - In addition to the FDRE constitution, bail right is provided under criminal procedure code of Ethiopia.¹⁵¹ Bail right can be given in police station or in court. It is a right of an accused, because the type of the crime committed is regarded as less and grave. Except in cases where the alleged offence does not entail death punishment or rigorous sentence for fifteen years or more and where there is no probability of dying of the victim, an arrested person can be released on bail.¹⁵² An accused can be released on bail if he is charged with corruption offence which is punishable not more than ten years.¹⁵³

Thus, an accused person suspected of a crime has the right to be released on bail, provided he has the capacity to secure bail bond. Besides article 63 of the Cr.Pr.C and art 4(2) of the Revised Anti-Corruption proclamation, courts can deny bail right by article 67 of the Cr.Pr.C also.¹⁵⁴ Courts do not have the discretionary power to deny bail while the offence is bailable and the accused has full filled the requirements for bail right. Even if the offence is bailable, there are situations where, the court might deny bail right after it has granted to the accused, where the court is of opinion with conclusive evidence that the accused, cannot appear to court, trying to interfere with witnesses, and trying to flee, might refuse his bail right and has the power to detain him to custody.¹⁵⁵

¹⁵⁰ Ibid, Art.19(6)

¹⁵¹ Criminal procedure code of Ethiopia art.63(1)

¹⁵² Ibid.

¹⁵³ Art 3(1), of the Revised Anti-corruption special procedure and rules of evidence (Amendment) proclamation No.882/2015 Neg.Gaz, year 21 no.37

¹⁵⁴ The Criminal procedure code of Ethiopia, Art.67, An application for bail shall not be allowed where: the applicant is of such nature that it is unlikely, that he will comply with the conditions laid down in the bail bond; the applicant, if set at liberty, is likely to commit other offences; the applicant is likely to interfere with witnesses or tamper with the evidence.

¹⁵⁵ Tinjan, Ashu Sanjeev, *Statutory provisions relating to bail: judicial trends* Chapter 2, 2011 Pg.3
<http://hdl.handle.net/10603/7790> accessed Apr 3,2021

3.2.2.2. Non-Bailable offences: -those are offences which are not bailable, of which the accused can't be released on bail like in bailable offences, the accused can't also claim it as a right. These offences are grave offences, which can carry death imprisonment or penalties for fifteen years or more and where there is a probability of dying of the victim.¹⁵⁶

An arrested person who is suspected with corruption offence cannot be released on bail, if the type of offence is punishable more than 10 years.¹⁵⁷ A person shall not be released on bail if he is accused of being vagrant.¹⁵⁸ The type of offence in these cases is unbailable, the court will deny bail even if an application for bail right is applied by the accused. However, if the court is convinced that the charge against the accused is not possibly to succeed, the court may release the accused on bail. In unbailable offences the power of courts is limited. Thus, like in bailable offences accused persons in unbailable offence shall not be released on bail as a rule.¹⁵⁹

¹⁵⁶ Criminal procedure code of Ethiopia art.63(1)

¹⁵⁷ Ibid, at 67.

¹⁵⁸ Vagrancy Proclamation no.384 Art,6(3)

¹⁵⁹ Ramveer; *The law of bail in India an analysis of legislative and judicial perspective* Chapter 2, 2018 Pg. 3-4 <http://hdl.handle.net/10603/236039> accessed Apr 3,2021

CHAPTER FOUR

4. SEPARATION OF POWERS

4.1 Theory of Separation of power

The central *principle* of the current *liberal democracy* and the *rule of law* are constituted in the doctrine of separation of powers.¹⁶⁰ In principle, for separate institutions, separate individuals shall allocate the governmental authority.¹⁶¹ Each branch of the government may work as a check on the accomplishments of the other government organs. Yet, the connotation of separation of power is vague and, due to the consequence of different hypothetical and assertive attitudes, can possibly be assumed in different methods.¹⁶² Besides the word ‘separation of power’ is used in the perspective of separation of ability among central government and the federal government.¹⁶³

The doctrine of separation of power was initially began by ancient Greece and Roman states.¹⁶⁴ The current doctrine of separation of power has developed by, a French jurist, Montesquieu.¹⁶⁵ He comes with the principle of the separation of power after the efforts done by Aristotle and Locks.¹⁶⁶ He also described that, to abolish mistreatments by government, the power of the government should be separated, and it should not be given to one institution or individual.¹⁶⁷ According to the Black’s Law Dictionary, separation of powers is the division of governmental authority into three branches of government – legislature, executive, and judiciary each with its own duties. The rationale behind the idea of separation of power is that, each branch of the

¹⁶⁰ Piotr Mikuli Separation of Powers, 2018, <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e466> accessed Apr 4, 2021

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Nikhil Sharma, *Dilution of Doctrine of Separation of Power: A Comparative Study between US and India*, Jul 2011 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1893886 accessed Apr 1, 2021

¹⁶⁵ All Answers ltd, 'Why a Separation of Powers is Important, 2019 <https://www.lawteacher.net/free-law-essays/constitutional-law/why-a-separation-of-powers-is-important-constitutional-law-essay.php> accessed Apr 4, 2021

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

government shall act separately.¹⁶⁸ If three of them are mixed in to one or two branches, will be destructive for the person's freedom. For an effective liberty, separation of power of the three organs is critical.¹⁶⁹

The principle is necessary for the competence and peoples 'liberty. When the three organs are working separately, the government can work their specific tasks competently and professionally.¹⁷⁰ Montesquieu classified the power of government in to three. These were: the legislature is to make laws, that of the judiciary to settle disputes and of the executive to implement laws.¹⁷¹ Each branch of government should not exercise the other government's power, example legislature should not settle disputes. If the three organs of the government cannot be separated everything can be crumbling, if an individual or one branch of the government were to exercise those powers.¹⁷² However, complete separation of power could possibly be impractical as a system of government. Thus, the principle of separation of power involves each of the organs, besides to their main task, carry out another minor task that belongs to the other division, as long as that minor task is powerfully related to the major task.¹⁷³

For instance, if the parliament takes corrective measures or takes away the protection of its member's tasks, it looks like judgment than legislature, it is not considered as violation of the concept of separation of power. The same is true when the executive resolve professional cases associated to the civil service, labor, etc. So is for the judiciary while the court gives decisions, they give precedents on some cases to fill the gaps in the law, which has some influence on the legislature.

Separation of power indicates that each government organ performs its task according to their specific understanding of its authorities and without any interference from other branches.¹⁷⁴ Each organ of the government regulates the scope of its power. However, this power will stay

¹⁶⁸ K. KGhai; *Separation of Powers: What is the Theory of Separation of Powers?*
<https://www.yourarticlelibrary.com/constitution/separation-of-powers-what-is-the-theory-of-separation-of-powers/40336> accessed Apr 4,2021

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ All Answers ltd, *supra note* at 165.

¹⁷² Martha Susana Berruecos Garcia Travesi, *Separation of Powers in New Democracies; Federalism and the Judicial Power in Mexico* 2009 Pg.31 <http://etheses.lse.ac.uk/2767/1/U615716.pdf> accessed Apr 4,2021

¹⁷³ Assefa Fiseha, *Separation of powers and its implications for the judiciary in Ethiopia* Pg. 705

<https://www.tandfonline.com/doi/abs/10.1080/17531055.2011.649576> accessed Apr 5,2021

¹⁷⁴ Ibid.

enforce only so long as the organ performs inside the restrictions of its authority. If it surpasses its borders or manage it illegally, there should be a devise to cross check and correct it.¹⁷⁵

When the three organs of the governments are separate, doesn't mean all are equally identical but with dominancy of the legislatives according to Montesquieu.¹⁷⁶ Madison debated for better equivalence between the different branch of the government and for better and active roles for judges in their connections with the other branch of the government.¹⁷⁷ Hence if the law making and the executive are working coordinately the judiciary is expected to have positive attitude for them, so will not have any intentions in involving in policy making.¹⁷⁸ The notion of separation of power is an idea with the separation of job between the different organs of the government.¹⁷⁹ Thus, it has several limitations.¹⁸⁰ Scholars approved that a complete and rigid separation of power is not imaginable as well as not necessary.¹⁸¹

4.2 Separation of Powers and Checks and Balances

Before coming in to practice of separation of power, the philosophy of “Check and Balance” should be adopted. This theory would let one organ of the government restrict the other branch of government and to avert the supremacy of the other organ, but neither of them must not exercise the entire power of another, nor control over another organ of the government.¹⁸²

This is the only way to avert the abuse of power and to keep the equilibrium by any of the governmental organs. For instance, legislative powers should be exercised by the legislature and to prevent any abuse, the other two organs should check its activities in order fight any abuse by the legislative.¹⁸³ Same goes with the other two governmental organs.

¹⁷⁵ Ibid.

¹⁷⁶ All Answers, *supra note* at 165.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Piotr Mikuli, *supra note* at 160.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Kwess Oluu; Why a Separation of Power is important 2013/2014, <https://www.studocu.com/en-au/document/university-of-ghana/constitutional-law-of-ghana-and-its-history/essays/separation-of-powers-grade-a/3543158/view> accessed Apr 6,2021

¹⁸³ Ibid.

To put differently, each branch of governmental organ should have certain power to check and balance the power of the other two branches of governmental organs and there should be a balance between the three branches of the government.¹⁸⁴

4.3 The Legislature function

Legislatures are one organ of the government, where individual's wellbeing and preferences are voiced and changed into policy.¹⁸⁵ The role of legislature is representing peoples showing their desires, troubles and concerns and the importance to the policy making and policy amending process, they enact new law, assuring that laws are performed legally, effectively and according to the intent of the law making and or revoking or repealing a law.¹⁸⁶ It discusses different policies and also checks the government.¹⁸⁷

Legislatures must show its duties in practice, not just in theory, furthermore, if the voices of the peoples are not considered in the policy making process policies can't be successful.¹⁸⁸ There can be a number of reasons for a legislature to be ineffective. However, an efficient law making requires specialized expertise so that laws can be equally well written as well as truly thoughtful of their future substance.¹⁸⁹ It has a power of checking and controlling the executive, whether it is abiding by constitution in its action, besides, it makes an effort to preserve the human rights execution in accordance with the law.¹⁹⁰

4.4 The Executive function:

The executive is the second and the highest branch of the government. It is mandated on the enforcement and implementation of the law.¹⁹¹ It may be defined as that branch of the state which

¹⁸⁴ Piotr Mikuli, *supra note* at 160.

¹⁸⁵ Center for democracy and governance...Promoting the transition to and consolidation of democratic regimes throughout the world. Feb 2000 Pg.1 <https://www.usaid.gov/sites/default/files/documents/2496/200sbb.pdf> accessed Apr 19, 2021

¹⁸⁶ Ibid.

¹⁸⁷ The constitution and the roles of the parliament, [https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-01-constitution-and-roles-of-parliament/\\$file/Sheet%201%20-%20Constitution%20and%20Roles%20of%20Parliament.pdf](https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/resources/file-01-constitution-and-roles-of-parliament/$file/Sheet%201%20-%20Constitution%20and%20Roles%20of%20Parliament.pdf) accessed Apr 19, 2021

¹⁸⁸ Center for democracy and governance, *supra note* 185.

¹⁸⁹ Ibid.

¹⁹⁰ Alene Agegnehu Worku Dibu; *Ethiopian Human Rights System: an overview Department of Civic and Ethical Studies*, Vol.9, 2015, Pg.29 file:///F:/bail%20docs/Legislature%20executive%20judiciary.pdf accessed Apr 18, 2021

¹⁹¹ Ibid, Pg.30

formulates public policy should act inside the boundaries with the domestic legislature.¹⁹² Majority of the governmental organs are under this branch of government. The Prime Minister and Council of Ministers are also under this organ.¹⁹³ Preparing and implementing governmental policies in all governmental activities is the role of the executive. However in some countries, the executive exercises substantial impact over the judiciary, which can bring the independence of the judiciary and the independence of judges in to question.¹⁹⁴ The executive's main function is to follow whether the law is followed and respected.¹⁹⁵ Law enforcement officials are those police officers who have the duty of accusing, without maltreating the offender and who protect the victims' right and legal proceedings of the suspects, in general they are guardians of the law.¹⁹⁶ At the time of prevention of crime, police officers are those who brought the offender to justice with proper care and in similar way binding obligation that in so doing they will protect his rights because they are responsible for their act.¹⁹⁷

4.5 The Judiciary function

Judiciaries are responsible to respect, to protect and to fulfill an effective enjoyment protection of human rights.¹⁹⁸ Its role creates a difference in human rights.¹⁹⁹ Occasionally, they are the watch dogs for the violations made by the government."²⁰⁰ They are the main institutions in which victims of human rights violations compensation took place. The reason for this, could be it frequently said that "undoubtedly," the object of courts is to protect constitutional rights and freedoms.²⁰¹ Judiciaries are institutions, which are deemed to protect everyone without any discrimination and entertaining cases with the laws only.²⁰² Its purpose is to provide an effective

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Opinion no. 18 *consultative council of European judges* (ccje) Pg.2 <https://rm.coe.int/16807481a1> accessed Apr 11, 2021

¹⁹⁵ Frank C. Haymond; *Public Relations between Courts and Law Enforcement Officers and the Public* 1948 <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=3506&context=jclc> accessed Apr 21, 2021

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¹⁹⁸ Tsegaye Regassa, *Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*, Vol.3No.2, September 2009 Pg.323 <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/8716/Tsegaye%20Regassa.pdf?sequence=1> accessed Apr 16, 2021

¹⁹⁹ Ibid, at.322

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Tsegaye, *supra note* 196, at 324.

implementation of justice for the society, with the exclusion of terror, kindness or bias.²⁰³ This is the main reason that courts should be independent. At the time the courts want to be impartial, unbiased, and unemotional considerably, in all cases it must base its decision on truth and the reliability of the law.²⁰⁴

In the principle of separation of power, courts are known with the signs of scales, which show the institution is free from any biasedness.²⁰⁵ Sometimes courts, compared to the legislature, and the executive, it is the weakest organ of the government and because of its weakness it is given the duty of watchdog (regulator) over the highest powers of the country.²⁰⁶

In respect of this Alexander Hamilton said, that the judiciary, from the nature of its role, is not dangerous when compared to the legislative and the executive to the political rights of constitution.²⁰⁷

Courts should have the awareness of human rights and has to deliver justice.²⁰⁸ Thus courts are expected for the hearing of fundamental rights. In doing so, the courts protect human rights from themselves.²⁰⁹ Moreover, they have the duty to protect human rights from governmental bodies who administer rights like police, the prosecution, prison centers or executive interventions, etc. It is hard to protect individuals from governmental bodies because courts are depended on coequal executive organs for the enforcement of their judgments be it orders or decrees.²¹⁰

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Tsegaye, *supra note* 196, at 325.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Rohit Bokil; *Protection of Human Rights and the Role of Judiciary* 2018

<https://www.linkedin.com/pulse/protection-human-rights-role-judiciary-rohit-bokil/> accessed Apr 19, 2021

²⁰⁹ Tsegaye Regassa, *supra note* 198 at 327

²¹⁰ Ibid.

CHAPTER FIVE

5. THE ROLES OF DIFFERENT ORGANS OF THE GOVERNMENT IN THE ENFORCEMENT OF CONSTITUTIONAL RIGHT TO BAIL

5.1 Introduction

A fundamental right gives a significant and different incident for all human right to existence.²¹¹ Existence, besides security and liberty, “basic right” is essential to the enjoyment of all other rights.²¹² Henry Shue, precisely argues that “it’s only when peoples are allowed to enjoy their right that a right has been assured. For an effective enjoyment of human rights protection, the measures to be taken by the concerned authorities should go far beyond supporting the legal documents the rights to real enforcement methods.²¹³ The governing body should also recognize the implementation of any constitutional or legal provisions. The lawmaking, for instance, when it legislate laws, it must make sure that the law is implementable and is in line with the international human rights standards. Legislative protection is a means not an end by itself, the law, shall be complemented by courts, if violated, by redressing the victim by way of penalizing the offender.

This chapter, therefore, examines the respective roles of different organs of the government in the enforcement of constitutional right to bail. In this research, I tried to address the practical challenges of prohibition of bail by law and the court's inability to play its role due to such law, and challenges relating to the prosecution's/police 'unwarranted' objection to release on bail based on International and National documents and will examine the practice in light of normative framework.

The result in this chapter is acquired from combined analysis of information collected from interviews conducted with judges, prosecutors, lawyers, arrested persons and officials from

²¹¹ Henry Shue *Basic Rights* Vol. 69, No. 5 (Sep., 1981) Pg. 1569, <https://www.jstor.org/stable/3480253?seq=1> accessed Apr 9, 2021

²¹² Ibid.

²¹³ Bayenew Lisanework,

An appraisal of the enforcement of international and Regional human rights obligations in Ethiopia, may,2011 Pg.68

<http://etd.aau.edu.et/bitstream/handle/123456789/4151/Bayenew%20Lisanework.pdf?sequence=1&isAllowed=y> accessed Feb 24,2021

Ethiopian human rights commission. In addition, for better understanding for the subject matter, the researcher considered different reports made by the international and regional human rights institutions. In the data collection some informants wanted to remain anonymous and because of that I use their designation as judge A, Prosecutor A and Attorney General vice director B.

5.2 The constitutional safeguards for the protection of bail rights of an accused

Ethiopian history in the protection of human rights was not reputable.²¹⁴ It has been discussed in chapter 3 that, the international instruments i.e. art, 3 of the UDHR art, 9(3) of the ICCPR, art, 6 of the ACHPR, in domestic law, art, 19(6) of the FDRE constitution, art,63(1), of the Cr.pr.c of Ethiopia, includes clear provisions and commitments to ensure the liberty of a person and bail right of an accused. What necessitates for the inclusion of the right to be released on bail in our constitution is derived from the experience of international law. i.e., the right of accused person to be presumed innocent, which is provided under article 11 of the UDHR, article 14(2) of the ICCPR, and article 20(3) of the FDRE constitution. When allowing the accused to release on bail, courts must keep public safety, make sure whether the defendant will appear for trial, when releasing and detaining decisions is made it shall be based on the danger that will be inflicted by the defendant on the societal standards for liberty, and shall advice investigators/prosecutors with clear, lawful decisions for appropriate pretrial release and detention orders.²¹⁵

5.3 Role of the law-making Body

Most countries constitutions specify that law making is an absolute skill of the legislature and in this way delegate the body representing the autonomous through appointments to lay down the comprehensive legal standards which give effect to constitutional rights.²¹⁶

²¹⁴ Muhammad Habib, *the Ethiopian Federal System. The Formative Stage*. 2010 Pg.17 <https://library.fes.de/pdf-files/bueros/aethiopen/07945.pdf> accessed Apr 24,2021

²¹⁵ Lisa Pilnik; *A Framework for Pretrial Justice; Essential Elements of an Effective Pretrial System and Agency*; 2017 Pg. iv <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=c8bd044e-0215-9ab6-c22e-b1a4de912044> accessed Mar 10 ,2021

²¹⁶ Michael Clegg, Katherine Ellena, David Ennis, Chad Vickery, *The Hierarchy of Laws Understanding and Implementing the Legal Frameworks that Govern Elections* 2016, Pg.10 https://www.ifes.org/sites/default/files/2016_ifes_hierarchy_of_laws.pdf accessed Apr 28, 2021

The international human rights laws provide, States parties are required to accept and implement legislative measures for effective human rights that are provided in the covenants and when there are victims complains on violations of rights shall effectively provide remedies.²¹⁷

Ethiopia has agreed to a number of international and regional human rights conventions. The role of the law-making is to ensure the rights of peoples in conformity to the international standards. This branch of government stands to represent the people, and struggle to maintain the rights of peoples' implementation in conformity with the domestic law. For instance, from article 10(1), article 13(1), article 13(2), of the FDRE constitution and from the international instruments such as the UDHR, ICCPR it is understood that, Ethiopia has acknowledged and proclaim its readiness on the outcome of international human rights through the law making. The law making has the power to legislate in all matters assigned by the constitution to Federal jurisdiction.²¹⁸

5.4 Role of the Law Enforcement agency

The roles of law enforcement agency for protection of human rights are substantial. They are delegated by the government to ensure the law, order peace and security, bound to promote, protect and respect the rights of all peoples.²¹⁹

Every policy or decisions of governmental rules should be interrelated with the aim of the legislations that authorizes them. Even when legislated by another body they should keep on following to certain measurements of justice.²²⁰ Maintaining law, peace and security of the society by observing to and enforcing, the constitution and other laws of the nation to avert crime through participation of the people is the role of the law enforcement agency.²²¹ The law requires police officers to safeguard and upkeep the rights of the public at large, not to limit or confine freedom and make sure the power for the government.²²²

Ethiopian law enforcement officials' primary function is provided under their proclamation. No. 313/2003 article 7(8) and article 7(9) states "... has the duty to execute and to enforce court

²¹⁷ Ibid.

²¹⁸ Art. 19(3) of The FDRE Constitution, *supra* 149 Article 55(1)

²¹⁹ International Human Rights Standards for Law Enforcement Pg.18

<https://www.ohchr.org/Documents/Publications/training5Add1en.pdf> accessed Apr 15,2021

²²⁰ Bayenew Lisanework, *supra note* 213 at 72.

²²¹ Article 6 of the Federal Police Commission Proclamation No. 313/2003

²²² Ibid.

orders and decisions", equally investigating officers has also the duty to enforce orders issued by the Federal Public Prosecutor in regard to investigation of crimes, decisions.

5.5 Role of Courts

The bases for judiciaries independence is from the idea of separation of power which are formed by the different organs of the government, particularly, involves a system of check and balance so as to prevent abuse of power by the authorities.²²³ When courts decide cases, it shall depend on the constitution; the evidences brought before it in accordance with the law of the country, and shall act its duties without any interference from any for whatever reason.²²⁴ Such independence as to decision-making is essential for upholding the rule of law and human rights. In addition to this, shall take in to consideration that, its independence requires, all cases to have exclusive jurisdictions in all cases so as to decide whether the cases before it, are of judicial nature.²²⁵

Thus, except for cases of mitigations and pardons, decisions of courts can't be reversed by administrative authorities.²²⁶ Thus, in order to protect the rights of accused and to prevent constitutional violations, the law making and the law enforcement are under obligation to follow the decision of courts.

The role of courts is, to maintain equal protection of constitutional rights and legal proceeding under the law.²²⁷ The independence of the judiciary is recognized in our constitution.²²⁸ I.e., to interpret laws. Courts are institutions which are assigned with the accountability of ensuring constitutional human rights and are obliged to enforce the protection of citizens.

²²³ UN Hi Commissioner for Human Rights, *chapter 4 independence and impartiality of judges, prosecutors and lawyers* Pg.115, <https://www.ohchr.org/documents/publications/training9chapter4en.pdf> accessed May 1,2020

²²⁴ United Nations Human Rights Office of the Commissioner, *Basic Principles on the Independence of the Judiciary*, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> accessed Apr 30,2021

²²⁵ OVC Archive, the Criminal Justice System Continuum: https://www.ncjrs.gov/ovc_archives/nvaa99/chap2-2.htm accessed Apr 30,2021

²²⁶ ABA, how courts work: September 09, 2019
https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/court_role/ accessed May 1, 2021

²²⁷ The open university; *Why have courts*,

<https://www.open.edu/openlearn/ocw/mod/oucontent/view.php?id=68089§ion=2> May 1, 2021

²²⁸ Art. 78(1) of the FDRE constitution

5.6 The practical challenges on the enforcement of bail rights

5.6.1 Court's inability to release on bail due to Prohibition of bail by law

This part is focused on how courts deal with issue of bail under article 63 of the cr.pr. c. Furthermore, it discusses instances where bail related court orders have been ignored by the police

Article 19(6) of the constitution, provides:

Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.

Article 63 of the Cr.Pr.C provides:

Except in cases where the alleged offence does not entail death punishment or rigorous sentence for fifteen years or more and where there is no probability of dying of the victim, an arrested person can be released on bail.

Case

In the case between, Attorney General Prosecutor vs. Tewodros Kidane and Biniam Asmelash, the prosecutor accused them, with aggravated robbery under article 671/2/ of the Cr.C.²²⁹ The defense lawyers of the 2nd defendant objected alleging that the 2nd defendant should be charged with article 682/1/ of the cr. c/ Receiving. /. But the court rejected their objection, and denies his bail rights, so the defendant stay in custody until guilty verdict is rendered. Finally, the court found the 2nd defendant free of the charge instituted by the prosecutor, pass a judgment to Biniam by changing the type of offence to art. 682/1/ of the Cr.C., with three years and three months of rigorous imprisonment. Biniam was arrested for 3 years and 9 months, his detention exceeds from the years he sentenced.

The researcher has interviewed, judges from FHC, on how courts are dealing on bail rights which are prohibited by law under art 63 of the Cr.Pr.C.²³⁰ They said, it's clear when judges deny bail right, the liberty of the person is also deprived based on unproven charges of

²²⁹ *Federal attorney general prosecutor vs. Tewodros Kidane and BiniyamAsmelash* (Federal High court criminal file no. 200805) (Addis Ababa) (Mar 20,2021)

²³⁰ Dememewu Shiferawu, Hilewuna Naseru, Yordanos Abera (Judges) (Federal High Court) (Addis Ababa May 19, 2021)

investigators or prosecutors but the defendant cannot lose his presumption of innocence until guilty proven guilty. In connection with the relation of art.19 (6) of the constitution and article 63 of the Cr.Pr.C., they think both articles are well-matched, because article 19(6) is a principle with an exception by law, and one of those exceptions of laws which prohibit bail right is article 63 of the Cr.Pr.C. The law is clear, it puts Cr.Pr.C for courts to proceed with the criminal cases, and they are working with the Cr.Pr.C.²³¹

The reasons for defendants who are accused of unbailable offences should be arrested are, not only for the protection of the victim, but also, for the defendants' benefit, because, the victim might inflict harm on the defendant, besides, since there is no mechanism of getting any available evidence from the defendant, which shows its innocence, its proper to arrest such a suspect until guilty decision is rendered.²³²

Courts are facing challenges in dealing with bail rights due to the prohibition of bail by law, taking the above case they said, the intention of the law is not to detain defendants for longtime before conviction rather it's to punish criminals, thus, detaining an accused for long time, while the court can release on bail before trial is inhuman and not justifiable, likewise, the total denial of bail rights for all accused persons without considering the type and commission of the crime is open for abuse, there are a lot of mischiefs in it, thus, detaining an accused who can be found innocent finally or a defendant who was to be released by bail, is not proper, however, since the law put a restriction on the procedure judges can't pass that limit, a question of remedy can be raised for such case, but not allowed in our country.²³³ The judges added that courts are not independent on deciding bail rights of an accused, because there are times where prosecutor and police officers release accused persons.²³⁴ Therefore, they recommended that, denying the right to bail under art. 63 of the Cr.pr.c needs careful investigation by the judge, however, even if judges understand that the defendant shall be released on bail on some cases, since the law puts the criminal procedure code, courts do not allow accused persons to be released on bail. They added that, the judge is the one who can justify whether bail rights should be denying, they said that, when the law making enact laws, they shall not make it ambiguous, which can violate

²³¹ Ibid

²³² Ibid

²³³ Ibid

²³⁴ Ibid.

human rights in general and shall make sure that it can be appropriate for future time, not for certain time, for one institution or individual, finally they said that denying bail right shall be left to the court. Emphasis added.

Courts deny bail rights if the person is accused of unbailable offence like aggravated homicide on remand. When investigators issue repeated remand days, courts allow the requested remand on each 14 days even for long period of time, since the case is a murder cases though the investigator come in the next appointment without good reason, the court allow the requested remand. Courts don't release the accused, even if, the investigator cannot get evidence rather they close the file until sufficient evidence is established by the prosecutor and the suspect will stay in prison. Thus, until the investigator gets evidences the suspect spent in detention without appearing to court for longer period of time, the officers can forget the suspect in prison for more than one year, which is a total violation of constitutional right of an accused.²³⁵

The system helps more to the investigators rather than the accused, in bailable offences, investigating officers request the court for remand to detain the accused in custody for additional 14 days continuously. Though, the remand days cannot go beyond 14 days in accordance with the cr.pr. c., since it does not have a limit on the number of legally permitted remands, the courts allow the requested days. Mostly investigators try to convince courts without sufficient evidence as if the accused has committed the offence. In the absence of evidence, after repeated remand days the court close the case and the accused will stay in detention for longer days, which is not the intention of the law.²³⁶

5.6.2 Constitutional violations of the right to bail of an accused on bailable offences

There is a proverb saying that a "right without remedy is no right at all". Though courts give decision on certain cases, if it can't be enforced it is not actually a right. Any arrested person has the right to be released on bail, when the court thinks is adequate, where he can deposit bail bond and appear at the trial date.²³⁷

²³⁵ Judge A (judge, Federal first instance court, Arada bench) (May 21,2021)

²³⁶ Ibid.

²³⁷ Art. 63(2) of the Criminal procedure code.

Case I

In the case of *Ato Yayesewu Shimeles VS Addis Ababa police commission*, Federal first instance court file no.254978 and federal high court file no.213101 the researcher interviewed, Ato Yayesewu Shimeles an independent journalist in Ethiopia and has a program called Ethio Forum. He has also you tube channel subscription under "Ethio forum" where he releases his interview programs, has been arrested on March 27, 2020 by Addis Ababa police commission and Federal Police for more than 3 weeks without any charges.²³⁸ The Federal first instance court judge, whom the case was hearing has passed an order the accused to be released because of lack of evidence by investigators to proceed with the investigation on April14, 2020 and was expected to be released on April 16, 2020. The investigator disobeys court order to release him and took the case to federal high court, appealing the court's decision. The appellate court also grant bail right for the accused. However, the investigator still disobeying court order and detain him in Addis Ababa police commission then brought a new charge against him, which states that he has committed anti-terrorism offences. The court whom the case was dealing allowed his bail right, however, the investigator refused to release the accused, on the application of the court by his lawyer, released on April 23, 2020.²³⁹ The investigators had, in breach of court order, refused to release the defendant on bail denying appeals.²⁴⁰

Despite, court order, the investigator detained the accused, alleging that he will take the case to appellate court without the knowledge of the court. On such cases, unless an application for release brought to the court they don't release, even cassation courts do not order the officers to release the accused.²⁴¹

Case II

The researcher has interviewed Mr. Lucas Mukom and Mr. Ngueffe Tenefosso, who were arrested on remand by Sebeta furi police station on Feb 11, 2021, suspecting of each committing

²³⁸ Interview with Ato Yayesewu Shimeles, an independent journalist, (Addis Ababa, Apr 27,2021)

²³⁹ Interview with, Ato Tadele G/Medhin (consultant and attorney @law) (Addis Ababa, Apr 27,2021)

²⁴⁰ Interview with Ato Misganawu Mulugeta, (From Ethiopian Human Rights Commission) states that, he has discussed with the Attorney general and with different investigators to release those detainees in different police stations whom, the court has guaranteed bail right from custody, however, no improvements have shown yet thus, similar information's and complains are coming in to their office until this interview is made and he concludes that, defying court orders by police officers is a total violation of human rights and the law of the land. (May 1,2021)

²⁴¹ Judge A, *supra note* at 235.

on the charge of fraudulent misrepresentation.²⁴² Sebeta woreda court, allowing them to be released on bail after each secure 20,000.00 /twenty thousand birr/. Though, Mr.Lucas secured the bail money on Mar 9, 2021, they detained him with his friend more than 40 days without any charge. The investigator didn't appeal on the court order. The first reason for his illegal detention of the accused was that, the court shouldn't have to release them because they need them for another crimes, if released, they will escape his second reason is, the suspects are foreigners, they don't have the jurisdiction to see the case, so, they send their file to Oromia federal prosecutor, which contradicts with his first reason.²⁴³

If the woreda court, don't have the power to see the case, he was supposed to send the case from the beginning to the Oromia federal prosecutor. However, after all those days, the reason they provide do not hold water and is a total violation of their rights by abusing his power.

Once a court has ordered the accused to be released on bail and if the arrested person has also secured bail in any ongoing criminal case, the investigating officers is required to release him or her. In practice, there *are* many cases that detainees are regularly released straight back into the hands of police.

Case III

The researcher interviewed Mr. Mayala Plenda and Mr. Pokem Tangepna, who were arrested on remand for the crime of money laundering by 400 Ethiopian birr, by Addis Ababa police commission their case was seen in Arada first instance court, with file no.218514. The investigator was issuing court remand on each 14th day court appointment and detains them in prison for over 30 days. After these all days again, praying for the detention of both defendants, the investigator keeps on issuing the court for additional 14 days on fabricated cases by alleging that, they already get 967,000.00/Nine hundred sixty-seven thousand/ illegal money from both defendants which is in the NBE to approve its legality. The court orders the investigator to come with his report for the next appointment.²⁴⁴

²⁴² Interview with Mr, Lucas Mukom and Mr. Ngueffe Tenefosso (Accused in Sebata furi police station) (Mar 28, 2021)

²⁴³ Interview with Ato Birhanu Dejene (Consultant and attorney @law) (Sebata, Mar 28,2021)

²⁴⁴ Interview with Mr. Mayala Plenda, and Mr. PokemTangepna (Accused in A. Ababa police commission) knowing the court will release the defendants on bail, before the next appointment, they transfer them to bole sub city police station and brought them to bole city court with similar offence, file no 35059, the court released them after 3 days, when having evidence from Arada first instance court) (Addis Ababa, Jan 28,2021)

The researcher interviewed, prosecutor A, in relation to the defiance of court order by the investigators, he replied that, when courts allow bail, the investigator shall release arrested persons. Even if it is difficult to get a tangible evidence, there are rumors that investigator has a problem of discipline, they receive money from the accused. If the suspect can't pay, they repeatedly issue remand, besides, they intimidate or prosecute persons on fabricated grounds and start investigations for the crime they didn't commit even.

While his stay in police station, on those cases which shall not be proceeded by art 42/1/a/ of the cr.pr.c, instead of releasing, they detain on the reason that, they need them for another crime, in such cases, prosecutors may investigate and solve the problem, and sometimes they abstain from intervening, not to create other inconveniences with the investigators.²⁴⁵

He added that if investigators arrested an accused without evidence, he is abusing his power and the arrest is illegal, which is a crime of corruption, the investigator's power to arrest an accused is only until the court release the accused on bail.²⁴⁶ Actually, it is difficult to find an evidence whether they are violating the accused's right or not, since, they cooperate with their superiors, it's difficult to control and to punish particularly for those who violate the constitutional rights of bail of accused persons.²⁴⁷ Federal Attorney General Establishment Proclamation No. 943/2016 provides that criminal investigation which has been started by the police needs to be notified to prosecutors so as to make the necessary follow up in the course of investigation and gives the necessary instruction, however, in practice it is different, for instance, if we take bole branch, there are 11 police stations and more than 10,000 criminal charges are investigated every year, however, even if it is difficult to investigate on each case, prosecutors try to communicate with the investigators to solve the problem in certain cases, which is not satisfactory. Investigators don't have legal ground to detain suspects illegally, until now there are no such prosecutions on investigating officers, even if the prosecutor try to control the investigator, are not willing in most cases, practically, there is gross negligence, thus lots of persons are arrested and remanded illegally, this problem can't

²⁴⁵ Prosecutor Mr. A (Federal Attorney General office, Bole branch) (Addis Ababa) (May 17,2021)

²⁴⁶ Ibid

²⁴⁷ Ibid

be resolved by individuals, thus, for an effective enforcement of bail rights of an accused, courts, law enforcement agencies and prosecutors shall work together.²⁴⁸

In this respect, Attorney General v/president B said, investigators and their superiors are not equally aware of the cases, do not investigate the cases genuinely, besides they kept accused in detention instead of releasing them on bail by art. 28 of the Cr.pr.c. When investigators violate the right of an accused, they not only harm the accused without legal justification, but they are also threatening both accused lives and their constitutional rights and worsening their health and family conditions.²⁴⁹ The increasing detention of individuals by the investigating officers requires careful management by law enforcement agency.²⁵⁰ Though accused persons have the right to be presumed innocents, the violation starts by the investigating officials, from the time the person is suspected of the crime, the accused remains in custody for long time, even months, in the absence of new evidences and on fabricated grounds by investigators, and if the accused do not have a lawyer it worsens. Despite the training they take on accused's constitutional rights, they are not disciplined, they intimidate the accused.²⁵¹

He recommended that, good governance requires that the police investigators shall be aware of their power in carrying out their activities, while performing their duties they should respect the international and national rights of accused persons of all to liberty, equality, and justice. So, the law enforcement should ensure the proper abilities and techniques on how to enforce court orders and protecting constitutional rights of an accused. These law enforcement officials are obliged to fulfill the duty imposed on them by law, and to apply, international standards for human rights, mostly investigators are arresting individuals with a suspicion that he/she may commit a certain crime, they have to know that detention shall not be mandatory in all cases, shall not commit any act of corruption, shall avoid intimidations and using undesirable words without any justifications and after the court released the accused, shall not infringe court orders for release.²⁵²

²⁴⁸ Ibid.

²⁴⁹ Vice director Mr. B (Federal Attorney General office, Arada branch) (Addis Ababa May 20,2021) (He shares all the ideas prosecutor A has mentioned)

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

Conclusion

Different types of cases have shown in this paper, mainly it examined with two significant challenges associated with bail rights of accused, firstly courts denial of bail rights due to the prohibition of bail rights by the provisions of article 63 of the Cr.Pr.C and secondly, where bail related court orders have been ignored by the police, which is a violation of constitutional bail right of an accused.

The significance of right to bail is internationally accepted and many countries including our country have adopted and enshrined under its constitution, with some restrictions, however, since the restriction are not clearly stipulated, courts are dealing the issue of bail rights by article 63 of the Cr.Pr.C. Presumption of innocence is totally associated with bail; thus, defendants have the right to be protected from imprisonment before it is proved that they have committed the alleged offence. Detaining an accused whom, finally will be found free of the charge instituted against him not only restricts accused's ability to defend his/her case it also deprives their families' conditions.

Courts are denying bail rights of accused, based on the prosecution brought by the police/prosecutor without any prior proof of guilt. Before denying bail rights, judges shall weigh the evidence of both parties in the same manner, and shall be convinced that the police/prosecutor has provided concrete evidence against the accused. Allowing bail right does not necessarily mean that the accused person is innocent or not involved in the offence of which he has been arrested. Even if he is released on bail physically from the custody of the court, he continues to be a prisoner of the charge in court. This is the only way that courts can balance the presumption of guilt, however, courts are limited to allow bail rights due to the prohibition of bail under article 63 of the Cr.Pr.C,

The goal of justice requires the effectiveness of the investigation and the hearing procedure towards probable intervention by the defendant, however, the gravity of the nature of evidence and the personality of the accused are not taking in to consideration by courts due to the prohibition of bail by law, and this remain challenges to courts.

In respect of the second issue, inseparable linkage is there between courts and law enforcement agency. As it has been mentioned in the discussion, when courts allow bail right of an accused, investigating officers are found disobeying court orders. Presuming an accused as guilty and using that as a ground to refuse court order is a threat to the rule of law and to basic human rights. Once courts allow bail right of an accused, have limited powers on its enforcement, thus accused persons are suffered to exercise their constitutional rights of bail, and courts are depending on indirect enforcement of its orders on the law enforcement officers. Besides, police officers, threat of non-compliance does influence courts for additional works on decision making.

As far as the country adopts international human rights under its constitution, constitutional bail right of accused persons shall be ensured, and respected. Article 13(1) the constitution requires that different government organs should be in place to implement human rights laws and imposes an obligation on all the three branches of the government not to pass the limits set by the provision of the constitution, so, unless, the executive, legislature and judiciary protect the essence of the constitution, bail rights of an accused will not be achieved at its best. Thus, with the prevalence power of the judiciary, each system of the government should be based on separation of power.

The interviews show that, the law enforcement does not seem to make effort for the rights of accused persons that the constitution has guaranteed, rather violating the constitutional rights of arrested persons. Although courts are more answerable on the rights of the accused, the decision of the courts would be lifeless, if court orders cannot be enforced, and the judiciary will be subject to control of the executive, thus, the legislature, the executive and the judiciary should be organized to safeguard and regulate the violations and gross breaches of bail rights of accused persons.

The study concluded that, courts are limited to enforce bail rights because they are depended on the executive and by the law making. The judiciary makes a difference between what a right is, a right defended, and a right denied and its effectiveness has an influence not only for individuals to enjoy their rights and freedoms but also for the efficiency of the Legislative and Executive.

Recommendation

The study recommends the following measures need to be taken as soon as possible in order to take meaningful steps towards the effective enforcement bail right of an accused.

- ❖ The law making shall include safeguards so that court decision shall be enforced effectively and the legislature shall leave the discretion to deny bail rights to courts, so courts shall be empowered to apply the constitutional right to bail as the case may be to protect innocent accused persons.
- ❖ The law making should be ready to take legitimate actions with regard to its enactment and amendment of bail right procedures and to avoid the ambiguity between the rights of art 19(6) of the constitution and article 63 of the Cr.Pr.C, it shall also make clear about the effective enforcement of court order and its position in relation to the other organs.
- ❖ The legislature should not only make laws but it must have controlling mechanisms to check and balance on the other two different organs of the government. Additionally, it shall provide a sanction on those who refuse to implement the legislative goals.
- ❖ Before judges deny bail rights, presumption of innocence should be the starting point, only prediction of future situation on matters doesn't guarantee, thus, the court shall seek additional and tangible justification from the prosecutor/police in addition to their wording. In addition to this, courts shall hear evidences from both parties, on equal footing, if possible, shall speed up the trials, through creating new benches which hears bail rights only.
- ❖ Forailable offences, courts shall have a monitoring mechanism to cross check whether court orders are enforced. They shall also systematically check the investigator's reports and evidences on each adjournment and make sure whether they are working on thoroughly or not, and be confident.
- ❖ The executive shall hire more prosecutors for an effective investigation of criminal cases.

- ❖ Higher officials of the law enforcement agency have to made efforts to improve investigators conduct and integrity, shall take steps to critically review their own institution, shall train officers during and after employment and periodically and shall work together with national and international human rights organizations, take measures on those who transgress the law and abuse their power for an effective enforcing court orders, which increases the safety of accused person.

- ❖ For an effective enforcement of bail rights of arrested persons, both legislative executive and judiciary should fully function in all situations, including where the cross checking of one over the other may cause unhappiness in some cases.

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12. An Interview with Mr. Mayala Plenda, and Mr. Pokem Tangedna (Accused persons) Jan 28, 2021

APPENDIX

Interview Check list for key Informants

Interview guidelines for Judges, Prosecutors and Investigators of police officers and arrested persons.

This interview is prepared only for academic purpose. I am undertaking research on the "*Roles of different organs of the government in the enforcement of bail rights*". The aim of this research is to collect relevant information and opinions about the right to bail of arrested/accused persons on the prohibition of bail due to law and defiance of court order by police officers. You are kindly requested to give your responses for each of the following questions.

Educational level_____

Institution_____

Position_____

1. When an accused is prohibited his bail right, he is also prohibited his right to personal liberty and the right to be presumed innocent, so do you think this is proper? If yes why? If no, do you think there are other alternative mechanisms?
2. Do you think that article 63 of the criminal procedure code is compatible with article 19(6) of the FDRE Constitution? If yes why? If no why not?
3. Do you think it is proper to prohibit bail right for all accused persons based on the law? Do you think that there could be another mechanism for it?
4. What do you think is the role of the Court in such case? Are courts independent to freely decide on bail rights of an accused on such cases? Please explain whether your answer is yes, or no?
5. Do courts hear evidence before they allow bail rights in such cases? What kind of evidence was called at the bail hearing? If released on a bail, what were the conditions of release?
6. If released on a bail, was the amount of the bail reasonable having regard to the circumstances of the accused?
7. How do courts assess the role of the Prosecutor and Investigator in upholding the right to bail of accused person on?

8. How the courts verify the accuracy of the claims by the investigating police officers/prosecution in proceedings?
9. Whether judges have experienced any difficulties in exercising your professional duties in the defiance of court order to release accused persons on bail by police officers? And, if so, what these difficulties were and how you dealt with them?
10. If the judge finds the accused who was released on bail are detained in custody by the investigator what practical measures, the courts can take for an effective enforcement of bail right of an accused on timely basis?
11. Whether, and to what extent, courts rely on international human rights law in bail proceedings in order to protect their constitutional right to bail?
12. Do investigators train on the constitutional rights of arrested persons?
13. How much time did the accused spend in pre-trial detention in bailable offence?
14. Are law enforcement officials sufficiently trained about constitutional rights of accused persons?
15. Do prosecutors control on the defiance of court order by law enforcement/police officer? Any measures taken? If yes what kind? If not why not?
16. How do judges or prosecutors observe the role of the principle of the separation of powers as far as bail is concerned? How this principle is ensured in your work place?