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PRE-TRIAL DETENTION IN ETHIOPIA: THE LAW AND PRACTICE

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

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INTRODUCTION

In the process of administering justice there are various stages through which the person alleged to have committed the crime passes. The investigative process is one of these stages. Pre-trial Detention is part of the Procedure in criminal process preceding conviction and is an act of depriving a suspect/accused. Such process may be necessary under limited circumstances for the purpose of conducting effective investigation. But there are instances observed that has undermined respect and protection of rights due to indeterminate use of it in practice. The practice of pending investigation might be a good cause to use it excessively thereby jeopardizing the rights of an individual to liberty and to be presumed innocent until proven guilty. It is believed that this is the reason that triggered adoption of minimum standard rules aimed to guide and regulate the criminal process at this stage.

Pre-trial detention proceeding that is held within a reasonable time has great value. If the arrested person is innocent, he should be released with the minimum disruption to his livelihood and relationship to his family which otherwise will be depriving innocent people of their basic rights that will also affect the moral of the person. In practice even after proven innocent many are not compensated for the tribulations they have undergone.

To see into the problems of this subject the methods employed include literature reviews, interviews (with judges, public prosecutors, police officers, investigators, and attorneys at law), case analyses, observation of court proceedings, and review of some relevant documents. This paper is organized into four chapters. The first chapter discusses same general consideration relating to pre-trial detention. It examines the meaning. The purposes of the pre-trial detention and discuss about the various forms of pre-trial detention.

The second chapter tries to examine the practical implementation of the legal aspect of pre –trial detention by various law enactment machineries. In this part, the writer mainly attempts to raise the major lacuna of the criminal procedure code and the relevance of international human right provisions in solving this problem. Lastly this chapter also evaluates the role of the court, the prosecutors and the police in pre-trial detention.

The third chapter discusses the right of pre-trial detainees, right of bail, right of speedy trial, and the Right to communicate with others. Chapter four discusses the legal remedies of procedural, penal, civil, and departmental disciplinary measures. Finally, the discussion is wind up with a few conclusion and recommendation that might help to improve the adverse situations.

CHAPTER ONE

PRE-TRIAL DETENTION IN GENERAL

1.1 Definition of Pre-trial Detention

Several writers have attempted to define pre-trial detention with general and specify contexts of experience. Black Law Dictionary 8th edition (West Pub. Co 1990) defines pre-trial detention as follows:

> *1. The holding of a defendant before trial on criminal charges either because the established bail could not be posted or because release was denied. 2. In a juvenile delinquency case, the court's authority to hold in custody, from the initial hearing until the probable cause hearing, any juvenile charged with an act that, it committed by an adult, would be a crime.*[1]

If the court is of the opinion that releasing the juvenile might commit criminal acts before the return date, then it is considered as a serious risk and it may order the juvenile detained pending a probable cause hearing. Unless the Supreme Court upholds the constitutionality of such status, juveniles do not have a constitutional right to bail.

The pre-trial detention is one type of detention used for the purposes of investigation and prosecution to apply the criminal justice through the procedures of arrest. Therefore, arrest, in the process of pre-trial detention, is assumed to be authorized by law.

Then, pre-trial detention covers the processes from the arrest to trial, which means the procedure of pre-trial detention is violation of liberty taken before the detainee is proved for trial.

1.2. Purposes of Pre-trial Detention

At any time, whether it is adverse for any party and advantageous for the other, the law may authorize the restriction of the liberty of an individual. By doing so the law achieves certain purpose, which is the administration of justice. By implication the pre-trial detention of an individual also is said to have achieved the following purposes even if it has adverse effect on the life an arrested person.

The first purpose is to prevent the danger of destruction of evidence and interference with witness or otherwise obstruct the court to prove the guilt of the suspects of justice, Ethiopian Criminal Procedure Code Art.67. Some times the suspect may intend to destroy evidence which poses problem for the court to prove and render judgment on whether the suspect is the real culprit or not.

The second purpose is to enable the police complete investigation[2] as a means of screening out the innocent from the actual offender. When the investigator takes the case to the relevant court, the court will have good reasons to decide whether the request from the police for extension of remand is appropriate and convincing.

The third purpose/objective of seeing into the appropriateness of pre-trial detention is to protect the process of investigation from the different tactics the arrested person may employ to shield her/himself from judgment by intimidating and threatening the would be witnesses or promising them sort of rewards or by destroying evidences before the completion of investigation.

1.3. Types of Detention

There are different areas of criminal law administration in which personal liberty may be deprived on different grounds and for various purposes. Pre-trial detention, which is the subject matter of this paper, is one of such areas of criminal law administration. As a common feature of most penal system, detention has been existing in

various forms –arbitrary detention, preventive detention, and pre-trial detention are common forms of detention. These forms of detention have been carried out on various grounds, under certain circumstances and for various purposes.

1.3.1. Arbitrary detention:

The word arbitrary repeatedly is written in Art 9 ICCPR. The meaning of the word has not been clear. However, the third sentences in this articles suggests that the word arbitrary means only an absence of law and procedure by competent authority of a sovereign state.[3] In addition to this, article 9(4) of the same provision seeks remedy from the court to judge the lawfulness of one's arrest and detenton.[4] From this clause, one can infer that arbitrary is meant unlawful or illegal.

The following definitions of the word arbitrary: "*An arrest or detention is arbitrary if it is made: i) on grounds or in accordance with procedures other than those established by law, or ii) under provisions of the law the basic purpose of which is incompatible with respect for the rights of liberty or security of a person*". [5]

The definitions infer arbitrary detention, a detention, which is carried out in accordance with procedures other than, such established by law, or which the basic purpose is according to provision of the law of which is against personal liberty.

The above definition has tried to make clear the purposes and grounds of arbitrary detention. As it has been inferred from article 9(4) of the ICCPR and from the first sentence of the above definition, arbitrary detention is synonymous with unlawful detention. As the definition itself implies, the ground and purpose of arbitrary detention is likely to be determined by authorities that order the detention.

Hence, it is safe to say that the violation of personal rights will be more serious in this form of detention than others.

1.3.2. Preventive detention

Another form of detention which is not imposed to hold a person for trial, but prevent him from engaging in dangerous criminal or other similar activities

Preventive detention applies not to a proven transgression of legal procedures, but rather as a precautionary measures.[6] Hence, there is no need to prove an offence and to formulate a charge.[7]

Preventive detention has mostly, been carried out under specific circumstances i.e. under state of emergencies such as warfare, subversion, economic breakdown[8] etc. This form of detention requires the enactment of special statutes, which empowers a certain authority in a given government to detain persons under specific circumstances.

Unlike either ordinary pre-trial detention, or post conviction detention, is ordered neither by the police in the usual course of criminal investigation nor by the courts. In addition, it is order for detention that comes down from officials of the executive body.[9]

1.3.3. Pre-trial detention

For the purpose of this paper, applies with regard to detainees accused with certain offences and waiting for trial or pending the completion of police investigation. In most circumstances, pre-trial detention has been imposed not for a proven transgression of legal procedures, but rather as a precaution measures based on the presumption of actual or future criminal conducts.[10]

Art 9 (3) of the International Covenant on Civil and Political Rights, pre-trial detention shall not be a general rule. , Art 9(3) reads *"… It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage or the judicial proceeding, and should occasions arise, for execution of the judgment*". [11]

The idea of the above article on the protection of persons under any form of detention or imprisonment implies that pre-trial detention should be the exception rather than the rule principle, which emanates from the rule that liberty is the rule and detention is the exception.

In addition this articles implies that pre-trial detention be used only where non-custodial measures, such as bail is impossible for the proper administration of justice.[12]

1.4. Detention vis-à-vis Arrest

Generally arrest is different from detention i.e. detention refers brief encounter with minimal invasions of privacy. The officer's purpose in a detention situation is to make a very limited seizure of the person to find out whether or not he/she has committed crime[13]; it is a police restraint of a person's freedom of movement[14] i.e. a person who is detained is not free to leave the officer when the officer accosts him.[15]

Whereas detention means the condition of being a detained person under investigation for having committed a criminal offence, having been accused of a criminal offence, or during trial; under administrative detention; or for any other reason other than prosecution as discussed under the different types of detention.[16] Thus as a rule detention usually does last longer and refers to the continued deprivation of personal liberty.[17]

Arrest is a total restraint on an individual liberty, which is utilized by the police to hold him answerable for a crime; the intention of the officer is to make a total seizure of the person so that he can be charged with crime.18

The Ethiopian Criminal Procedure Code Art 56(3) defines arrest as: "*He shall then actually touch or confine the body of the person to be arrested unless there is a submission to his custody by word or action."*[19]

According to this provision arrest consists of actual touching or confining the body of the person arrested to the extent of the use of force to effect arrest so long as it is allowed to effect arrest through the procedure laid down in the law.

Although arrest and detention are different they also have certain similar features.[20] Both are authorized by law in measures applied in the administration of criminal justice and in the deprivation of liberty which affects the fundamental rights of an individual.

Chapter One
Endnotes

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4. Ibid
5. B.P. Srivaltava, "Rights Against Arrest and Detention" Journal of the India Law Institution Vol. 11 No. 1 1968, p. 33.
6 . Fisher, S.Z. Ethiopian Criminal Procedure: A Source Book, (Faculty of Law AAU 1969) p. 170.
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17. Ibid.
18. Supra Not 13, p. 47.
19. Ethiopian Criminal Procedure Code Art. 56 (3)
20. Supra Note 16, p. 11.

Chapter Two

The Law and Practice of Pre-trial Detention

2.1 Cause of Pre-trial Detention

2.1.1 Protection of Justice and Order

Pre-trial detention is the act or fact of holding a person in custody, confinement or compulsory delay.

The main purposes of pre-trial detention are:-

- To prevent or to protect the attempt of destruction of evidences and interference with prosecution's witnesses by the accused.
- To prevent the accused from interfering with the proceeding of administration of criminal justice. Thus to uphold these purposes as per article 67 cr. pro. Code the applicant can be denied bail as a precautionary measure.

Scholars in the field argue that the requirements or conditions stated above are not the only ground for denial of bail. They say, the court should and will also deny bail, they argue by citing Art.66, 74, and 77/2/ of the Cr. Pre. Code. For the court to make its decision on the application for bail shall call the prosecutor or the investigating police officer (IPO) for comments and recommendations. The court shall also analyze the application and if the applicant is considered not dangerous to the public and to the proceeding bail could be allowed. On the other hand, as Article 74 when new facts that were unknown when bail was granted are disclosed the court may at any time with its own motion or on application, reconsider and may order the released person to counter new facts (structure) or be remand. On the arrest of the accused the court shall release the guarantors. And if the court has reasonable ground to the opinion of the guarantors it

may issue warrant for arrest; but if the reasons are not acceptable the court may not issue warrant for arrest.

Bail, most of the time is denied for the protection of the public or the society and to protect the rule of law or the preceding. If assumed justice is done the court allow bail to the person charged even with death penalty or a case that require imprisonment the accused will likely committee another crime or may abscond. Release is with presupposition that the accused will not commit crime I released on bail that may not help to predict the behavior or the way he/she behaves in the future.

The provisions of bail or bail bond usually involve general standards and subjective standards. General standards as stated in article 63 of cr. Pr. Code, cannot be let to the discretion of the court or to whatever institution or individuals while the subjective standards as provided in article 67 and 74 are open to the discretion of the court to decide with its own motion or analyzing the facts. In the subjective standards the accused can conditionally be granted bail if he/she satisfies the requirements in the subjective standards. But the code does not give any clue to predict whether the accused will commit offences or not to confirm release on bail In the case of denial the accused may apply in writing within twenty days against such refusal to the that has appellate jurisdiction stating concisely the reasons why bail should be granted. Pursuant to article 75 of the cr.pro. code the appellate court, after considering the application may either grant bail or dismiss the request where its decision will be final.

On the other hand the second problem is that there is no clear procedure, condition or method that assists the court to reach to conclusion that the likely behavior or conduct of the accused and interference with the administration of criminal justice. Thus the

future behavior of the accused cannot be known based on the present conditions rather on mere assumptions.

2.1.2 Non- bail able Offenses

The right to bail in the Ethiopian Constitution is clearly stated. Article 63 the Criminal Procedure Code also provides conditions for bail. Release in principle is exception (article 63 cr.pro. code) based as stated hereunder.

" Whoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying"[1]

However, Proclamation No. 384/2004 stands opposed to article 63 cr.pr. code regarding vagrancy offenders. It states as follows: *" A person who is reasonably suspected of being a vagrant... shall not be released on bail"*[2]

In this sense, that the conditions are subjective in nature related to personal character and integrity of the accused seeking released on bail. This is dependent on subjective conditions where testing the status of individual accused rather than a given of future offenders. It could be true that there might be offenders that full fill all the requirements stated under Art 67 and pre trial detention before conviction left to the discretion of the executive authority that is not subjected to judicial scrutiny. This article has negative impact on detaining the accused before clarification of the reasons/causes is sought. Here is one instance to substantiate the above argument: A

person after being arrested for about 4 months as a vagrant was released because the prosecutor failed to institute legal charge based on article 42/1/c/ [3]. Whatever, the truth is that this latitude of insufficiency of evidence goes beyond the basic rights of people as provided in the Constitution.

The Proclamation violates article 19/1/ of the Constitution and article 63 cr. pro. code the to bail and the causes for refusal for release. In addition, there are instances that the implementation of this Proclamation has caused destabilization in peoples' lives where the resultant effect was family breakdown where innocence was proved after more than4 moths in detention.

The other instance in which an accused is remanded is based on the reason that the offense in unbailable. The law authorizes remand of an arrestee pending trial if the offense is unbailable. In an interview with a judge what he said is: «*We have no option other than granting remand"*[4] although article 59(1) gives the discretion to release or remand an accused. If the police arrests a person under the pretext or articles in the Proclamation No.38/2004 the prosecutor rather than working for the respect for the rule of law takes his share of time with the reason to investigate the evidence. In this case the police in normal standards are expected to complete the investigation in a short period (14 days) but the court continues in granting more than 30 days for remand until the prosecutor gives decision whether to institute a charge against an arrestee to pretrial detention for 2 month[5].

The courts do not seem to have possibility of seeing the case right and left but wait for the so-called '*evidences'*. Who suffers most is the

arrested person, his family and society which will be pushed to have no confidence on the law of personal rights and protection.

2.1.3. Incapacity of the Accused to Enter into Bail bond

Apart from non-bail able offense and denial of bail an accused may be released upon the posting of cash bail to the amount fixed by the court or posting of surety bond written by third party. There are times in which bail is granted by the court but an arrested person or third party may be unable to ensure security obliges.

In such circumstances, the arrested person shall be stayed in custody until he executes bail. An interview with an arrested person reveals the following: « *The court granted bail with out taking in consideration my economic back ground*»[6]. He claimed to be poor student to pay bail of Birr 50.00. From the interviewee and remand orders in archives one can see several cases in which he court has granted release with excessive bail[7] obliging the accused to stay in jail for an equivalent number of days worth the bail. Had the bail been reconsidered and fair enough it should have given the chance to the arrestee to produce evidence that he/she certainly has no any income to settle the bail rather than subjecting them to pre-trail detention until they comply with the conditions laid down in the bail bond[8]. One option is to use the evidence from kebeles as is done in case of getting free medical services. But from several files it would be more sophistry to say bail is granted if the bail is excessive.

2.2. Pre-trial Detention in Practice

2.2.1 Practice in relation to Release on bond arrest and Post Arrest Procedures

a/ Release on bond Art. 28 /1

An interviewee [9] did not deny the non-compliance with Art 28/1/ of Proclamation No. 384/2004/ by certain police officers in discharge of the investigation processes. This means, the detainee may, sometimes, remain in custody though the offence committed is bond able. However, this problem is not without remedies. If for instance, a certain investigating police officer disregards the conditions laid down in Art 28/1/ and violates the rights of individuals unreasonably, he may be subjected to punishment according to the internal administration regulation. If violation of individual rights is proven as committed by the IPO, the administrative measures may go from salary deduction to dismissal from the organization

An interviewee with a police[10] reveals certain problems with reference to Art 28/1/. According to his observations some suspected individuals may be held in detention without their identity cards, addresses, the gravity and quality of the allegedly committed offence, being registered. Under such circumstances the detainees may stay in custody for certain days. But one possibility to avert such problems through the supervision three times a week where in many cases they usually find individuals held in detention unlawfully[11].

According to the views of those police officers during our discussion on the problem they admit the investigating officers usually deliberately or not, fail to observe what they will sustain by violating individual rights by misapplying or abusing article 28/1/. For

investigating officers, they say, the violation of individual right by detaining arbitrarily is not considerable or significant and they think *'over sight'* will be an excuse. According to the above statements the law makes the official equally accountable to control the practice of investigation police officer with regard to article 24/1/ of the code and take or propose proper actions against investigators.

The public prosecutor [12,] with whom the interview I had an interview with explained that visits to detention centers and police stations. But as it is one of their major responsibilities they should have fixed schedule at least on weekly basis. After arrest the police cannot detain a person any longer than forty-eight hours. What should be noted here as one reason is that personal liberty is the most sacred of human rights and the police are given to interfere law fully with in this right only for 48 hrs, This goes with the principles laid in constitution: *"…one shall be deprived his liberty except in accordance with such procedures as are established by law.*[13]

However, if the prosecutor who is entrusted to safeguard the law supports the violation of individual rights with the pretext of isolated articles in a proclamation, what legal good would one expect from an investigating police officer? If regional prosecutors fail to conduct regular visits to detention centers despite cries from detainees and their families, who else could be accountable for the gaps created that bless the '*achievements*' of investigating police officers? How can detainees and their families have confidence in the prosecutors who do not know the difference between stand by the law and simply support to the executive branch?

b/ *Past Arrest procedure Art 29/1/*

Once a person is arrested, the principle is that he should be brought before the court within 48 hours. But this may not be true in case where the police release the arrested person on bail bond when:

- The offence committed/complained is not punishable with rigorous imprisonment;
- An offence that has been committed is doubtful;
- The summoned/arrested person has clearly committed the offence complied[14].

If, however, the police has not released an arrested person with in 48hr the criminal procedure required that every confined arrested person shall be brought with in 48hr from the time of arrest so long as the local circumstance and communication permit.[15]

Here the law expects the police to complete investigation with in 48 hours that is taken as a possible standard time. If investigation is not completed with in this period of time the obligation on the part of the detaining authority is to bring an arrested person before the court to assume arbitrary or unlawful arrest is strictly unacceptable.

This obligation is indirectly included, in the supreme law of the land and in same other international instruments ratified by Ethiopia beyond what is stated in Art 29/1/ of the criminal procedure according to this provision *"…there the accused has been arrested by the police of private person and hand over to the police Art /58/, the police shall bring him before the nearest court with in 48hr of his arrest".*

After establishing the need for the appearance of an accessed before the court, the next question should be to which court does an accused person be brought? The problem is the phrase " *nearest court".* Is the nearest court understood in terms of distance or

jurisdiction? If we say that the phrase *"nearest court''* is understood in terms of distance, other question that could be raised is related with the current governmental structure of Ethiopia. Due to the federal arrangement of the country, the central and regional government courts have their own exclusive jurisdiction in certain matters [16..]

In an interview I had with a police officer in Art 58/1/ and 29/1/ did no raise the phrase *'' within 48 hsr''* This is the outmost limit beyond which the arrestee cannot be detained in the police custody with out court authorization. This is indirectly to mean that the police should take the arrested person before the court immediately after the moment of arrest if he will not be released on bail. If the police detain an arrestee beyond 48 hr, logically, the court should order the police to release the arrestee for the simple reason that the detentions is considered as arbitrary. But *'' when does the 48 hours begin in this case''?* The clock starts clicking/counting just on the moment the police effects the arrest. But the problem is when a private person effects an arrest. In this case, the private person shall without unnecessary delay hand over the person so arrested to the nearest police station. According to this Art/29/1/ the 48 hr begin at the moment of arrest if an arrest is effected by the police, but if an arrest is effected by private person, it begins at the time when the private person hands over to the police. [17] Despite this fact, an individuals is arrested for more than 48 hours any where, he has an inalienable right to question to the court to order his physical realease.[18]

Some times the police, for any reason may require detaining an arrestee beyond 48 hours But should get the consent of the court because the police has no authority to resort conventionally, to the issue of extension of time.

2.2.2 The Practice of Remand

In modern times the proceedings between police activity and formal adjudication have become major areas of contention and debate in the criminal procedure.[19] An initial appearance before a court within a day or two begins the pre-trial process. At this stage, the court may release on bail if the arrestee affords bail bond or order remand. In these criminal processes of release and remand, institutions involved are the police, the prosecutor, and the court. To this regard my concern will be to Judge, in the following subtitles, whether or not the practice in/by these institutions is in line with the expectation of the law.

i/ The Role of Police on Remand

In the normal course of things information may be communicated to the police about the commission of a crime. Based on this information the police will start investigation by summoning or arresting the suspected individual.[20] If the police fails to complete investigation or does not effect release on bail within 48 hours, this institution (the police) has no power to deprive, lawfully, the right to liberty of an individual beyond the specified time. Thus what authority left to the police is to bring an arrested before the court for the authorization of the deprivation.

During an interview with police officials to explain as to when the arrested person is brought to court, the reply that the arrested individual is brought to court within 48 hours as provided in the law and in consideration of distance. [21].

And as to the question for when the police does apply for remand, the response was that they request remand based on article 59/2/ for non-completion of investigation.

In one case, a police request remand for 14 days for the reason that he doesn't complete the investigation, nevertheless, in another case, a police officer requests remand consecutively for more than 5 months on similar ground as the above one.[22] In post investigative remand the police may request remand even if he completes investigation but from the cumulative reading of art 59 and 109 of the criminal procedure code, the police can request remand for maximum of one occasion. The result effect of release of an arrestee after long stay in custody will be both psychological and social problem.[23]

ii / The Role of Public Prosecutor on Remand

The role of prosecutor emanates from its relationship with the police and the general duty to prosecute criminals. To this effect, the police would gather the evidence to the extent that shows the guilt of an accused and forward the case to the prosecutor.

Up on receiving the police report the prosecutor does not prosecute all crimes that come to their notice[24] rather they exercise their discretion in deciding whether or not the evidence is sufficient to warrant prosecution which otherwise would be damaging to the administration of justice.[25]

Having gone through all these steps the prosecutor is expected to render either one of the following three decisions:

- Evidences to be introduced,
- Witnesses to testify, and

- The strengths and weaknesses of the case with the types of testimony investigators can supply.

If the prosecutor is of the opinion that there is sufficient evidence to initiate charge against an arrestee, it is here that art 109 of the procedure code comes into operation. Pursuant to this provision, the prosecutor is duty bond to form a charge and file it with the court having jurisdiction within 15 days of the receipt of the police report. However, practice goes against this provision.

In connection with this, in one case, the court permitted remand for about three month after the police for warded the report to the prosecutor. The problem here is that the law doesn't state what measures to be taken if the prosecutor fails to prosecute within 15 days. By putting time limitation, the law seems to stand to make the prosecutor liable both in civil and criminal liability for his being the cause for the detention of the individual contrary to the law. Nevertheless, the law says nothing about the fate of the case if the prosecutor fails to discharge his duty. The practice in this respect is that the court can order the arrestee for other 14 days until the prosecutor initiates the charge with the court having jurisdiction.

The prosecutor after having received the report may order the police to conduct further investigation although the law does not specify the types of evidences to be collected. In practice the prosecutor is required to indicate the type of evidences to be gathered and the time limit within which the police has to conduct the investigation

The time lost between the police and the prosecutor on grounds of evidence insufficiency should be considered as time for remand. Yet the authority of the prosecutor to remand the case is limited to 15 days. When this time elapses police goes t court for an extension of remand. The Court, usually, without considering the issues between

the police and the prosecutor grants remand. But this should not have happened as it is considered violation of his rights.

With this regard an interviewee explained that strengthening the justice system with resources (both in manpower material) is taking place where it will be one factor to solve this problem – so be it.

Looking for such evidences in the archives of same of the Addis Ababa First instance Court for records if there are persecutor order which show the return of the case on ground of further investigation to be conducted was not successful. However, from interviews conducted with prosecutors the practice is said to be routine.

The last ruling of the prosecutor is that he may close the file if the evidence gathered by the police is insufficient to institute legal proceeding. In support of this ruling there is a case where the prosecutor requested the court to release an arrestee who was suspected for first-degree murder. Initially, the arrested persons have been brought to court and the court in turn has given two consecutive remand orders. In short after this the police forward the report on 13/10/97/eht.cal/ to the prosecutor and in return the prosecutor gave his ruling on 23/5/99 /eth. Cal./. This is actually greater than 2 years delay contrary with what is stipulated in article 109/1/ based on insufficiency of evidence.[26]

From an interview with a prosecutor[27]: How can you identify whether detaining a person is unlawful or not? What could be the subsequent measures to be taken after having identified the unlawfulness of the detention? The public prosecutor stated the procedures on how to arrive at the unlawfulness of a person's detention as follows: Communicate with the detainee and ask him/her why, how and by

whom he is detained. By this mechanism they can identify whether or not the detention is lawful. Subsequently if the prosecutor proves a person is detained unlawfully he would order the investigating officer, orally or in writing to comply with the conditions stated in art 28 (1).

Another intreviewee[28] explained that it is not unusual to come across with the unlawfulness of detention of persons after reviewing the application received from the detainees themselves, their relatives or friends or when they visit prison centers. To see the arbitrariness of the detention the public prosecutors could only order the investigating authorities to comply with the law but they do not have no power to order the release of persons held in detention.

The police officer has a power to release the detainee according to Art 28(1) of the Ethiopia Criminal Procedure Code. But if the investigating officer failed to comply with the conditions stated under such provision, the detainees have the right to apply to the court according to art 64 of the Ethiopia criminal procedure code. From the above discussions detention may be carried out arbitrary by the police authorities.

iii/ The Role of the court on remand

The court is one institution that plays a great role in the pre-trail process as well as the actual trial. Remand is one of the pre-trail processes. As a result of this, it is the court that orders the remand of an arrested person at the initial appearance if he is not released on bail. Police investigation report is the prerequisite for the court to take any one of the two actions i.e. remand or release.

The law is silent in respect of the contents i.e. the name of an accused, the alleged offense and the duration of remand as well as why the police request for it where the court entertains the police diary before proceeding on for remand. Almost all files in the archives of the Addis Ababa City First Instance Court, evidence that the investigating police officer requests for additional time to conduct further investigation[29] for similar reasons i.e. destroying evidence, committing further offences, probability of not appearing to court etc. From among files visited there was no one case the court has denied the request of the IPO and ordered the release of the detainee.

The next point to be considered is the release of an arrestee if investigation is completed and the offense is bail able. From personal observation in the court proceedings the court raises the issue of bail on its own motion in such circumstance. But, it is the police requesting remand of an arrestee not to be released on bail contradicting the stand of the police officer (representing an institution) for the observance of the constitution rather than ignoring the right of an arrestee to be released on bail. The IPO has the right to propose the release of a detainee for insufficiency of facts after investigation, but to protect themselves from being suspected on corruption, compromising such provisions by law they always insist on time extension or continue detention. Such compromise is dangerous to the institution for it can fail to win the trust of the public and destructive to the detainee personal, on the family and the community.

What will the court do if and arrestee is brought before it beyond 48 hours? The response from an Intrvewee[30], for this question is that the provisions say nothing on what actions should be taken if and when the case is brought before the court beyond such time.

Rejecting the request of remand or dismissing the case for the sole reason that the police places request beyond 48 hours may be wrong. Rather, he insists that the court should punish or warn the police for his failure to bring an arrestee within the specified time. the law clear on the issue of 48 hours giving the responsibility to the court no to accept any request for extension when the case is brought to it after 48 hours, but considers the suspected person as released.

However, we may agree as to the illegality of the detention as stated in art 423 of the revised penal code, which entails punishment with imprisonment on the IPO. Thus the court should take measures to discourage the police from engaging in similar illegal activity. In this respect, in one case, an arrestee informed the court that he was brought to court beyond 48hours. The court, instead of rejecting the request of remand, reduced the 14days to 3 days as a punishment for the failure of the police that he should have not brought the arrestee before the court after the specified time elapsed.

There is possibility for the arrestee to stay in remand even after 15 days from the date the prosecutor received the investigation report from the police. If the prosecutor fails to initiate charge within 15 days police will go to the court and request for extension of remand. The court cognizant of the situation does not involve itself but directs the police to write a letter to the prosecutor either to initiate charges o release. In practice this is done. Yet the law is not clear as to the limit the file should stay in the hands of the prosecutor after 15 days. Though not stated in the criminal procedure, it is the court that should involve to take legal measures to get the case an end.

Up on receiving the report, the prosecutor render a decision on the fate of the case. It the prosecutor assumes presence of sufficient evidence, he is duty bond to frame a charge and file the case with the court that has jurisdiction within 15 days. However, the practice is different from that set forth in the law. There are instances where the prosecutor did not frame a charge and file it in a court within the prescribed time limit. In this regard the law failed to precisely address the measure that the court may take when and if the prosecutor fails to form a charge and file with the court on the due date. This is a case taken as advantage or a cover for unreasonable delay to filing of the charge on the due date.

A question put to a judge was that; what the court (in the person of the judge) would do if the prosecutor fails to frame a charge and file it within 15 days time limit. The reply was that, there is nothing in the code that gives the power to the court what actions to take in such cases. [31]

It should be underscored that lack of clarity on the part of the law to provide the appropriate measures has served partly as a cause for the court not to resort to appropriate measures which should have upheld the ideals of its role in the realization of the rights by enforcing speedy trial rather than swiveling in between on the contrary, the court should have upheld the ideas in the criminal code by dismissing the case rather than allowing extensions for a reason un acceptable.

An interview with another judge[33] on what actions he could take when the IPO continuously requests for extension although article 59/3/ does not provide any limitation. The number of 14 days could not continue unchecked if the court feels that there is negligence or carelessness on the part of the IPO to respect the rights of the

detainees. The court has its own controlling mechanisms to check such practices. He said that, the investigation police officer shall record each step of progress in proceedings in his investigation diary.

Any new findings have to be recorded and facts that incite the need for further investigation shall also be recorded which will be handed over to the judge on completion of investigation shall also be recorded and will be handed over to the judge on completion of investigation.

A judge interviewed[33] on how the number (series) of the 14 days remand could be limited. He explains as follows: the number of remands could be limited on gravity or quality of the offence process required, and access to evidences as bases.

2.3 Remand vis-à-vis Speedy Trial

So far remand is an ordered by the court on police request. On the other hand speedy trial: is a manifestation of it's nature, feature as well as remedies for the violation in the other hand. Thus the following paragraphs show how these two issues are treated.

The Absence in limiting maximum number of remand as a case for delay: The criminal procedure code requires that every confined person be brought before the judicial authority within 48 hours from the time of arrest. Here the law expects the police to complete investigation with in this time limit. This is also further strengthened through the provision of art 37 of the Criminal Procedure Code where the police is required to complete investigation without "*unnecessary delay* " Which otherwise implies that denial of the right to speedy trial presupposes delay in the conduct of criminal

proceedings. So to say, delay is a precondition that must be satisfied with substantial evidence to assert denial of the right to speedy trial.

Actually, this provision (art 37 cr.pr.code) intends to impose a duty on the police to complete investigation with the shortest possible time, which could therefore be within 48 hours of arrest made. But, where the police investigation has not been completed as required by law, í. e, with in 48 hours, the court is given the power to grant remand.

If so it is essential and more practical for the code to adopt a provision to the effect limiting the maximum number of remand to which the police could request in the enhancement of an arrested person right to speedy trial. Additionally, if the law prescribes the duration of time within which criminal investigation could be conducted, thus, the discretion of courts in such instances would be some how limited. In fact the absence of specified time limit is a cause for a delay for the right to speedy trial. But in this the draft criminal procedure article 63/3b/ shows the maximum numbers of days in which investigation could be conducted will not exceeding 180 days what ever the reason there is no clue to allow the court to grant remand after the 180 days elapsed and what ever serious the offence would be.

Although experts who drafted this code might have their own reasons at face value, granting remand for 180 days is difficult to accept. But the decision taken to limit it is a marked change in a most controversial issue in the legal system. Article 19/4/ in the constitution authorizes the court to order a remand in custody of an arrested person for a period of time of no longer than strictly required to carry out the necessary investigation. A mechanism to calculate the speedy by ordering the court to take in to account of the diligence

of the responsible authority engaged in the investigation process is also devised in this same article.

In both, the criminal procedure code and the constitution there is no time limit with the exception it indirectly tries to order the court to grant remand observing the diary of the police to check the diligence of the police officer by observing the development of the case. As such this does not strictly protect the rights of individual to speedy trial.

As information is received the police will arrange to start the investigation. If the police decides to conduct investigation, and unable to complete it within 48 hours, then option will be to apply for remand. When the court ascertains that there is a need to remand, it may grant it to that effect. But this might not be practically true. But there are instances where remand may be permitted without any valid reason to that effect.

When reference was made to several files[34] in the archives, almost all indicate that police request for remand was based on non-completion of investigation. The court in this regard permits remand for about three months based on the same ground stated here in above. In each accession of remand request, the police did not specify what types of evidence he would gather and from where he would find it rather he has requested remand based on non-completion of investigation in general terms. The court, without bothering to observe the fact why the police didn't pursue the investigation… as well, without clarifying why such remand is necessary, permits remand implies that the court is not taking into consideration of the right to speedy trial.

It is not unusual for the police to appear before the court to request for remand without pursuing the investigation. In this time, it is the court that has the power to take appropriate measure on those who are the cause for delay of the speedy trial right. Most of the time the police request remand until the court refuses its application[35]. The police could understand this as intentional punishment of the arrestee by repeatedly asking for remand; also contradict the presumption of innocence.

In connection with this, the police request remand for consecutive time and finally the court refuse remand and close the file. This indirectly to mean that, the court orders the police to for ward the report to the public prosecutor this is what the law dictates. But, the practice is different in this respect.

Chapter two

Endnotes

1. Ethiopia criminal producer code art 63 (1)
2. Vagrancy control Proclamation No. 384 /2004 art 6/3)
3. See appendix 1
4. Interview with, Ato Bezabeh Moges, Lideta municipal court, Remand beach judge, June 12, 2008.
5. See appendix 2
6. Interview with, prisoner Henok Abebe on may 30, 2008
7. Ibid
8. Case observation
9. Interview with commander Bedru Shirie, Lideta Sub-city police crime investigation main section chief may 27, 2008
10. Interview with, sergeant – Major Solomon Shimels police investigation Lideta sub-city, May 29, 2008
11. The establishment of the office of the central attorney general of the Transitional Government of Ethiopia Proclamation No. 39/1993 art.12/1/
12. Interview with Ato Getachew Tadesse, Lideta federal first instant public Prosecutor officer main section chief
13. Art 17 of the FDRE constitution
14. Ethiopia criminal procedure code art 28 (1)
15. Ethiopia criminal procedure code art 29 (1)
16. Ethiopia criminal procdure code art 59
17. From the cumulative reading of Art 58 (1) and Art 29 (1) of the criminal procedure code.
18. Art 19 (4) of FDRE constitution
19. Zalman M sigel, L, criminal procdure, annual Edition, West Publishing Company 1994, p.709
20. from the cumulative reading of art 25 and 26 of the criminal procdure code.

21. Art 19(3) of the FDRE constitution

22. Case observation

23. See appendix 3

24. Fisher, Stanly z. Ethiopia Criminal Procedure. A source book A.A.U 1996, p.88

25. Ibid

26. See appendix 4

27. Interview with Ato Getachew Tadesse Lideta federal first instant public prosecutor officer main section chief.

28. Interview with, Ato Chanyalew Eshetu, yeka federal first instant public prosecutor officer main section chief.

29. Criminal fills No 1432/99

7254/99

30. Interview with federal high court 13th division of criminal bench Addis Ababa June 9, 2008

31. Ibid

32. Ibid

33. Interview with, Ato Bezabeh Moges, Lideta municipal Court, Remand bench Judge, June 12, 2008.

34. Criminal file No * 1002/97

* 128/98

*3158/99} this as a sample

35. This is true if we see art 13(2) of the FDRE constitution in line with the request of remand by the police.

CHAPTER THREE

3. Rights of the Detainees

3.1 The Right to Bail

The dictionary defines bail as, A monetary amount for or condition for pretrial release from custody, normally set by a judge at the initial appearance … and to appear in subsequent proceeding.[1]

Generally, the right to bail of the accused or the suspect is not absolute; it rather goes with circumstance and the degree of the offence committed. But it is one of the most important rights of the accused. The main purpose of the bail is to allow the accused to remain free so that the normal activities of life can be maintained including work and family support and allow the defendant to prepare defense to the charge. But there is other important aspect of bail as well. Besides its contribution to the defense of the accused, the disadvantages of the pre trial detention are the financial burden on society to maintain jails and the cost of the loss of liberty including the appalling conditions in many of the jails, which threaten the life, and limbs of the prisoners.[2]

The right to bail is guaranteed under Art 19(6) of the FDRE Constitution that states as follows: "*Persons arrested have 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".* [3]

If in the constitution the arrestee or accused is presumed to be innocent it would be tantamount to arresting an innocent until the court decides to convict or acquit the person.

In the absence of counsel the duty of protecting and enforcing an accused person's right to bail falls upon the judge. In practice, judicial enforcement of the right to bail at a minimum would seem to mean that the judge must inform the accused of his right to bail. As many are unaware of their constitutional rights and in the absence of counsel it would seem that the judge is mandated to let the accused know this right. Through inquiring if the circumstances lead to the possibility of releasing on bail the judge of the accused mandate his release on bail and ordering can make/decide the accused to be released on bail.[4]

Article 59(1) of the Criminal Procedure Code also provides: "The court before which the arrested person is brought (Art 29) shall decide whether such person shall be kept in custody or be released on bail. [5]

In this provision the two possibilities left to the court are either to order the release on bail or remand in custody on its own motion. But Article 63(1) is clear on the conditions the deprive an arrestee the right to bail: "*The offences carrying the death penalty or rigorous imprisonment for fifteen years or more; and where there is no possibility of the person in respect of whom the offence was committed dying*"[6]

This is based on the seriousness of the crime. Bail may also be denied on grounds of the seriousness of the crime with which the person is suspected where the latter prohibition takes the possible negative consequences of release on bail in to consideration.

International human rights instruments also incorporate this right in their provisions. For example the Universal Declaration of Human Right (UDHR) adopts the right to bail under Art 11(1) by stating that: "Every one charged with a penal offense has the right to be presumed innocent until proven guilty according to law in public trial at which he has had all the guarantees necessary for his defense.[7] In this article the phrase "*at which he has had all the guarantees necessary for his defense"* refers to bail and other measures that enable the accused to prepare his defense.

International Covenant of civil and Political Rights (ICCPR) also recognizes the right to bail in article 9(3) that states as follows: *"It shall not be the rule that persons awaiting trial shall be detained in custody … at any other stage of the judicial proceeding and should occasion arises for the execution of judgment"*[8]

Thus, bail is a principle that holds very few exceptions only in the execution of judgment, As the general comment on the above article, the UN Highly Commissioner for Human Rights in his speech address to the 8th regular meeting stressed on the issue of detention as follows: "*Pretrial detention should be an exception as short as possible"*[9]

The right to bail can also be inferred from the African Charter of Human and Peoples right in its Art 7(1) (c) states that is a right to give the accused time to prepare his defense and to enable him to participate actively in the process of trial [10] From the practice in some countries one can conclude that, pretrial detention would not be allowed for capital offenses and to those offenders that will have the capacity to flee or to tamper with the evidence at hand.

3.2 The right to speedy trial

Many writers in the field have their own definitions that have variations. But, "*The right to speedy trial is necessary relatives. It is consistent with delay and depends up on circumstance*"[11] is an acceptable definition.

This is also due to the fact that the immediacy of the trial may not always be judged only through length of time i.e. the evaluation of speedy trial may vary from case to case.

a) Interests of the Arrestee

This right protects three interests of the arrestee as stated hereunder:

i) It protects the interest of all arrested persons " *in avoiding prolonged detention prior-to trial*"[12]

ii) It protects the interest of all arrested persons " *avoiding prolonged anxiety concerning the charge and public suspicion while charges are pending*"[13]

iii) It protect the interest of an arrestee " *in litigating a case before evidence disappear and memories fade*" [14] Thus that is why the right to speed trial is said to be arrestee centered.

Among these three interests the most serious is item (iii) because, the inability of a defendant to adequately prepare his or her case challenges the fairness of the entire system[15] since it is the weight of evidence that determine the guilt of innocent of on arrestee.

b) Public Interest

The state representing the interest of the society use it's utmost effort to ensure the public by bringing the wrong doers to the justice machinery and leave the innocent undisturbed. The inference is that, those who commit wrong deserve adequate punishment but taking rehabilitation one of the purposes of penal law.

Society is interested to have information about what the wrong doer committed. To achieve this purpose the case should be disposed speedily i.e. if an arrestee cannot make bail, he/she is generally confined in custody. This is because" *delay between arrest and punishment may have a detrimental effect on rehabilitation"* [16]

Once an individual is arrested and detained, it is the state, which should speed up the investigation and prosecution because lengthy pre-trial detention entails substantial cost and administrative burden associated with it.[17]

Society is also interested in the criminal process through its maintenance of justice by convicting the guilt and releasing the innocent.

The court is one important institution expected to set out the criteria how speedy trial be handled when the legislature enacts law taking in to account the need of the right specifying under what condition and in what circumstance the right to be denied.

If this so, all the three organs of the government shall have the duty to respect and to enforce the provision of human rights. Among these

organs of the government the judiciary is the most responsible of the organs for the enforcement of this right. But in practice the inability of the court to provide prompt trial has contributed to a large backlog of cases in court, which among other things enables the accused to negotiate more effectively for plea of guilt to lesser offences and otherwise manipulate the system.[18] In addition to this when people see the person who is alleged to have committed serious offence released, and if in case, he again commits crime, it might endanger peoples' attitudes of trust in the administration of criminal justice. It is because of this fact that - "*Ensuring speedy trial reduces the likelihood of crimes being committed by those who are free on pre-trial release programs" [19]*

3.3. The Right to Communicate with Others

The right to communicate with and be visited by spouse, close relatives and friends on the one hand and availing professional service on the other are fundamental rights specifically provided for by FDRE Constitution and stated as that "*All persons shall have the opportunity to communicate with and be visited by their spouse, close relatives, friends, religious fathers, medical doctors and their legal counsel "[20]*

This provision imposes that no exception to the principle of having access to the above mentioned people. Although it could be taken that communication would start at the time of arrest, the provision is not clear on the exact time communication to commence.

The communication of the detainee with this group of people has its own importance; the first is the right to be presumed innocent operates in his favors, the second is the right to meet his legal

counsel, and the third is to the family to ease the tension that might develop for not knowing the where about of their person but more important is to provide them food. But the interesting question on the viability of this article on the issue of/to state security deserves to be looked into.

Suppose, an individual is arrested as a suspect for committing a certain, serious crime such as robbery act of terrorism, drug trafficking in which allowing an access to his family friends, lawyers etc. What if it may be used as a channel of communication between the detainee and others alerting them or hindering the recovery of the stolen property thereby jeopardizing the effort of the police to crackdown the culprits? The Constitution is silent about such issue and does not address as for example practices in Zimbabwe and India provide: Zimbabwe Rule 10 "*Detainees shall be allowed, under necessary supervision, to communicate with their family at regular intervals both by correspondence and by receiving what?"*[21]This is access to one's family is a basic right, which could be infringed or denied for reasonable causes.

In India Rule the Supreme Court considers the position of the detainee as different to that of a convicted prisoner and so permits to have at least two interviews a week with friends and relatives.

3.4. The Right to Legal Counsel

The importance of having a qualified legal counsel in general and in criminal proceeding in particular is a litmus paper to test the independence of the judiciary. The FDRE Constitution provides that: "*Accused persons have the right to be represented by legal counsel of their choice, and if they do not have sufficient means to pay for it and miscarriage of justice would result to be provided with legal representation at state expense*"[22] Here the Constitution guarantees the right to legal counsel at the extent of state expense where miscarriage of justice is likely to occur and the accused is unable to raise the expense for defense counsel

The necessity of having a defense counsel starts from the moment of arrest provided as by FDRE Constitution. "*Accused persons have the right to be informed with sufficient particulars of the charge brought against them and to be given the charge in writing"*[23]and "*Any person detained on arrest or on remand shall be permitted forth with to call and interview his advocate and shall, if he so requests be provided with the means to write"*[24]

This information for the accused is to enable him to organize an effective defense during confession to the police or statement to be made to the court.

This is very crucial moment for the defendant and it is vital for the rest of the procedure, there for the suspect has to be informed of its importance (to him) as soon as he is brought to the police station for questioning in the police or remain as the criminal procedure stated above. Like the Ethiopian Constitution laws in Zimbabwe and

Malaysia have similar expressions as regards to the right to communicate.

Rules 11 *"Detainees shall have the right to consult with a legal representative of their own choice in private at all reasonable times and for a reasonable period"*[25]

Here access to legal representatives is a basic right of detainees which is infringed if reasonable access is denied and in most cases this right is seemingly exercisable but can be infringed or denied for good cause although in Malaysia, detainees are not allowed to see their lawyers concerning their conditions in detention.

3.5. The Right to Remain Silent

The right to remain silent or the privilege against self-incrimination is a fundamental constitutional right of the suspect/accused.

The importance of this right in almost all system is the desire to prevent investigators from coercing and getting unreliable confession from the mouth of the accused. The FDRE Constitution is clear with the right to be informed on the reasons of arrest: "*Persons arrested have the right to informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them."*[26]

The fundamental requirement of this provision is to inform him or her of his or her right to silence and in addition to the fundamental right to remain silent. In this regard the criminal procedures provided the following: "*He shall not be compelled to answer and shall be informed*

that he has the right not to answer and that any statement he may make may be used in evidence"[27] i.e. be warned and cautioned against any statement he may wish to give since it would be going to be used as an evidence in a court of law during trial.

The importance of the right to remain silent is that, it would have a significant impact on the conduct of the interview or interrogation and would ensure that a suspect had bulwark against giving into pressure to speak save in the circumstance were the suspect is under obligation to answer. But questions for example his name address etc will not deny him any right under FDRE Constitution that provides:" *Persons arrested shall not be compelled to make confession or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible"* [28] Thus as the violation of the constitution entails punishment when the right of the suspect is ignored and evidence obtained under such situation may risk to be considered as involuntary thereby refused to be admitted as a credible evidence.

Chapter Three

Endnotes

1.Saltzubrg, A. S. and Capra J.D , American criminal procdure : cases and commentary , 5th ed ,west publishing co, st PAUL MINN, 1996 p.851

2. Ethiopian law review article Dolores, Adonovan, vol.1.No. 1 August 2002 page 54.

3.Article 19 (6) FDRE constitution

4.Supera not no 2

5.Ethiopia criminal procedure code , art 59 (1)

6. Ethiopia criminal procedure code , art 63 (1)

7. Universal declaration of human right art 11 (1)

8. International covenant on civil and political right (ICCPR) ART 9 (3)

9 "Right to liberty and security of persons " ICCPR general comment

8, UN right commissioner for human right Switzer land, Geneva 1982 p.1

10 "Africa charter of human and peoples right "Art7 (1) (c)

11. American jurisprudence VOL 8 2nd 1967, p.781

12. Saltzubrg, A.S. and Capara, J.D, American criminal procdure : case and commentary , 5th ed . West publishing Co. St PAUL MINN, 1996 p.851

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15.Ibid

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19. White bread H.C and slobogin C, criminal procdure, an analysis cases and concepts: 3rd Ed, west bury New York, the foundation press, in 1993.
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22. Article 20 (5) FDRE constitution
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24. Ethiopian Criminal Procedure Code. Article 61
25 Harding, Andrew and Hatchard, John Preventive detention and security law, A comparative survey:(Martinusnijhoff Publishers 1993) rule 11 pages 14.
26. Article 19 (1) of the FDRE constitution
27.Ethiopian Criminal Procedure Code. Article 27 (2)
28. Art 19(5)of the FDRE constitution

CHAPTER FOUR

Legal Remedies For Unlawful Detention

4.1 Procedural Remedies:

The rights of a person held in detention may be violated on various grounds. However, the victim will not be left with out any remedy. Article 8 of the Universal Declaration of Human Rights is one of the remedial legal instruments that:

> *" Every one has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law. "*[1]

In addition to the rights of effective remedy by national judicial authority this provision implies that they may be entitled to compensation from the violators, thus it is said to protect the victims' rights violated illegal detained authority.

The International Covenant on Civil and Political Rights in Article 9/5 provides remedial provision on unlawful detention that states as follows:

> "*Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation. "*[2]

Anyone subjected to arbitrary detention can claim compensation against a person who has exercised unlawful detention. In the Ethiopian Criminal Procedure Code there are provisions, which provides important remedies that apply for the victims of arbitrary detention. Article 28/2/ that states:

"Where the accused is not released on bond this according to this Article, he may apply to the court to be released on bail in accordance with the provisions of Article 64 of the Ethiopian Procedure Code "[3] is one essential provision.

The Police officer is empowered to release the accused with or without sureties in conditions. But he fails to release the accused per this Article the detainee can apply to competent judicial authority to be released in bail with remedy as per Article 64/1/ of the Ethiopian Criminal Procedure Code that provides the possibility to apply for bail at any time.

4.2 Penal Remedies

It many countries it is difficult to bring an action and to impose criminal sanctions on members of the police, who illegally practice unlawful activities mainly due to the reluctance by public prosecutors and judges to initiate such actions to deter unlawful practices. [4]

Due to this reasons we refer to Article 423 of the Ethiopian Procedure Code, which provides the most important sanctions against unlawful detention.

"Any public servant who, contrary to law or in disregard of the forms and safeguards prescribed by law, arrests, detains or other wise deprives another of his freedom, is punishable with rigorous imprisonment not exceeding ten years and fine." [5]

Since the effective of penal sanction against any public servant who may exercise detention unlawfully as provided by law or arbitrary to

explicit articles he will be subjected to punishment according to the above article.

4.3. Civil Remedies

This remedy protects the injured persons right a victim of illegal arrest or unlawful detention can bring a civil action for compensation of the damage.

An extra contractual liability action may be instituted violation of specific provision of civil law that entails possibilities to sanction to pay certain amount of money to injured party. The practice of unlawful methods to obtain statement from a suspect or accused may result in extra contractual liabilities as stated in Art 2033 or 2035 Ethiopia Civil Code (Art 2035) that states as follows:

> *" A person commits an offence where he infringes any specific and explicit provision of law, decree or administrative regulation. "*[6]

In addition to that, there is another civil Remedy under the Ethiopia civil code Art 2126/1/ provide:

> " *Any civil servant or government employee shall make good any damage he causes to another by his fault. "* [7]

This provision clearly states that the right of a victim to claim compensation against the wrong doers if the detention is unlawful.

For example Police officer held a person in custody either by negligence or intentionally other than the legal procedures established by law he is obliged to make good damage he causes to such individual.

If the fault is committed by the government or civil servants, the victim of unlawful act is entitled to claim compensation from the state or from the employee.[8] Besides bringing action for any material damage that may result from unlawful activities victims are also entitled to bring action for moral damages as provided by law.

4.4. Department Disciplinary Measures

This enacted in accordance with proclamation No.313/95 Art.29 of the federal police commission administrates regulation No. 86/1995 under art.79 members of the federal police commission will be penalized on certain acts or omission. For example if the members of the commission lost her identification card, or catch in action in relation with corruption or if the members lost his fire arm or transfer his fire arms to third party, after the discipline committee analyzing the matter in deep will impose a penalty in accordance with the regulation left with out monitoring. Major human right relation done by member of the federal police failure appear the detained person with in 48 hr, arresting a person with out any sufficient evidence and torturing the detainee person some of the act or omission the regulation did not mention these un lawful acts or omissions violate the fundamental human rights and freedoms guaranteed by the FDRE Constitution.

The commission must take in mind those major gaps and must incorporate the above acts on omission in the penalties of disciplinary measures.

Although they did not avail me a copy to see the Federal Police Commission Department says it has clear guidelines for disciplinary action for illegal detention by its members. The disciplining measures, they say, vary according to the fault committed. Here it is good/worth

to note that 'variation' implies openness of the system for abuse of subjective interpretation.

To further know if they have ever applied (assuming the have) the guidelines on how many members in a definite period of time, they failed to provide me data. Thus, lack of willingness to allow me to read their guidelines prevented me from:

- Commenting on its content as related to the measures against unlawful detention;
- Assessing the level of awareness of its members to the magnitude to the level of disciplinary actions to be imposed on any officer who detains unlawfully;
- Comparing the relevance of the guide line with the relevant articles in the laws of Ethiopia and International Human Rights Instruments;
- Analyzing and acknowledgement its contributions to deter the practice of unlawful detention and respect peoples' rights;
- Proposing possible recommendations on what is to be improved, etc…

Chapter Four
End notes

1. Universal Declaration of Human Rights Art 8.
2. International Covenant on Covenant on Civil and Political Rights Art. 9/5/
3. Ethiopian criminal procedure code Art 28/2
4. Fisher, Stanly Z. Ethiopia criminal procedure
   Source book: A.A.U 1996 P.171
5. Ethiopian Criminal Procedure Code Art 423
6. Ethiopian Civil Code Art 2035
7. Ethiopian Civil Code Art 2126 /1/
8. Ethiopian Civil Code Art 2126/2

Conclusion

Pre-trial detention has to be seen as integral part of the proper administration of the criminal justice system. Since deprivation of the liberty of a person before conviction amounts to punishing an innocent individual, it needs the authorization of the court for an arrested person to be remanded to custody.

Thus, thoroughly reviewing the case against the relevant laws and legal instruments before deciding to remand a suspect is essential for the proper end of justice. Since the role of justice system is to protect the rights to speedy trial of an arrestee, the prosecutor and courts have the duty to closely examine if the police is discharging its responsibilities diligently. Here it is no to say that the police alone is accountable in the unlawful detention of a victim i.e. prosecutor and courts have their share in this action. One foul play is that it is not unusual for the police to request remand until the court turns down the request. To challenge the diligence of the police there are evidences that show the police had requested remands even long after the investigation has been completed.

It is true that the major essence of remand is to make available the arrestee until the police have completed investigation. It is also extended for a long time until the public prosecutor does frame a charge in a competent court on time i.e. within 15 days of the receipt of police investigation diary.

It should be noted that the recurrence of problems in the execution of pre-trial justice administration has impact in the implementation of constitutional rights of the detainees. Moreover, as the number of

detainees increases space becomes overcrowded, feeding becomes burden and starving family members of detainees an excusable outcome.

The public prosecutors and judges need to play great role to speed up the investigation process and bring the accused to trail. But the practice shows no significant contribution in taking action by them.
There is another ground, which may affect the rights of persons held in a pre-trial detention when a judge presumes that the accused person as criminal which might not be the case when investigated. This challenges to the capacity of the judge to assume that a suspected person would commit crime in 'the future'. Because judges depend on intuition rather than looking for reliable facts the rights about individuals will easily be violated. There are cases that are extended for more than a year showing that the law is not properly practiced to protect the innocent individuals in this case justice will be dashed if prosecutors and judges fail to discharge their duties diligently.

Article 17 (2) of FDRE Constitution which says "No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him" is clearly violated. Therefore, those in the legal system know that it is illegal to arrest a person without fulfilling what is stated in the provisions of the Constitution that confirms recognition of the right to liberty. This is not only a question of constitutional rights but also an instrument to warn violators to perform rightly.

Deliberate protection of this basic rights means enhancing the socio-economic and psychological mind set of people, less number of detainees, thus less work and more confidence of the public on the

legal system. Detaining a person with criminals is another serious violation unless some means are sought to assign separate the places.

Capacity to comprehend cases and special attention to the urgent in administration of criminal justice is basic requirement of a police office, more so of public prosecutors and judges. Sensitivity to the outcomes of investigation by the police officers, placing charges by the public prosecutors and verdicts by judges is a challenge to their positions and oaths they made means to defend the law thereby protecting basic human rights as a core responsibility of being in the justice system.

As judges take legal measures against persons who have trespassed certain provisions in the law, by quoting 'ignorance of the law is no excuse' it is also true for judges to pay meticulous attention while administering criminal justice, which requires the utmost precision.

Findings from investigations, legal processes by public prosecutors and verdicts by courts could be used as inputs during review of legal documents by the legislative organ. It is because of the action by the police, the prosecutor, and judges in the administration of justice that a country would be referred to as a violator or model to the respect of human rights.

Being cognizant of the commitment Ethiopia has entered when it ratified the international human rights instruments and explicitly included in the constitution should be the minimum requirement of at least of public prosecutors and judges. If so they vigilant of the implications and consequences of their actions while administering justice with regard to cases of pre-trial detention.

Although the number of persons interviewed, the court documents referred, court hearings attended there a lot of problem in the implementation of the law.

Even, during individual conversation/interviews, the trend is that one organ (say the police) complains against the other (say for example the prosecutor) to presume clean for their act.

A researcher would be fortunate to comfort himself if he/she ever finds a clean document (verdict) that has gone according to the relevant articles laid down. If the three bodies (police, prosecutor, and judge) fail deliberately for not discharging their duties, they will be ultimately liable for the outcomes. Thus it is fair to conclude this way: Lest the salt bar, if it fails its natural taste it will be considered as stone and thrown away.

Recommendations

The process of pre-trial justice, which is directly connected to the protection of human rights, is one of the contested elements in the fair/proper administration of justice. But the practice is the reverse of what the ideals of the law requires. The trend seems to continue unchecked which twill be too expensive and dear to correct. Thus to address this issue of magnitude importance the following suggestions are expected to serve both as preventive and remedial measures to improve the justice system.

1. Regular awareness creation programs (through print or electronic media, discussion forums etc.) should be organized and conducted to enable each member of the society to know and defend their own rights.
2. Through there are sort of legal instruments, a system of coordination or collaboration, with clear duties between the investigating officer, the prosecutor and the court should be drawn to explicitly identify the points/levels of accountability so that measures could be facilitated for delayed detentions.
3. Authority has its own limitations. Traditional ways of practicing authority need be replaced and the police should be taught and continuously monitored in cases of pre-trial detention that should, in most cases, be acted up on after reliable evidences are on hand to also enhance society's confidence in the laws of the country.
4. Legislating laws with clear procedures is vital to maintain the rights and dignity of each person where as vague legal instruments are susceptible to misinterpretations and abuse by

those who administer the judicial system. If so who is to be blamed? Vagrancy law is one vivid case where it gives unlimited right to the police to suspect, detain, deny bail etc to any person they presume vagrant until proved innocent which might take months.

5. Article 28 of the Criminal Procedure Code does not empower the police to release an arrestee no matter how innocent the arrestee might be. Article 59(1) in the same code does not permit the court to release a detained person who might not have any relation with the offence he is suspected of. In both cases the issue of adequate bail is not clearly defined thus open for subjective interpretations. It is good to create hierarchy of limits of bail depending on the type of each case. But logic (common sense) should dictate judges to consider which impact is greater – releasing the person with minimum bail or keeping him/her in detention. However, a provision empowering courts to release such detainees unconditionally should be effected.
6. Those who violate provisions that support arrests to be made after reliable evidences are collected, verified and accepted by the court should be penalized to help others learn from them.
7. There should be clear guidelines and mechanisms on how to evaluate and determine the level of income of an arrested person to facilitate the process of granting bail.
8. Vagrancy law was issued in haste leaving the police, prosecutor, and court to interpret it according to their own understandings and feelings. This situation leaves no space for higher courts to reprimand/penalize those who violate procedures because there is no clear guideline and no formal orientation given to concerned bodies in the legal system. Therefore, clear guidelines must be taken as pre-requisite to any legal provision before it is implemented.

9. The Ethiopian practice on compensation is not clear because laws (proclamations) are not specific to claim of compensation. But clear and specific guidelines on how to administer compensation will challenge the police, prosecutor, and judges for not taking the appropriate measures in their deliberations.

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VI. Interviewees

1. Ato Bezabeh Moges, Lidecta Municipal Caurt, a judge remand bench
2. Commander Bedure Share, Lideta Sub – City police Crime investigation main section chief
3. Ato Getachew Tadesse, Lideta Sub-City Police Crime investigation Main Section Chief
4. Sergeant – Major Solomon Shimelis Police investigation Lideta Sub-City
5. Prisoner Henok Abebe
6. Ato Chaneyalew Eshetu, Yeka federal first instant public procecuter officer main section chief
7. Interview with Federal high caurt 13th division of criminal bench Addis Ababa.
8. Sergeant W/ro Asrat, Police investigation Lideta Sub – City
9. Commander Aklilu, Lideta Sub – City Police Crime investigation main section chief
10. Sergeant Solomon Moges, Police Investigation Lideta Sub - City

VII. Interview Questions

i. COURT

1. Art 59/3 does not put any limitation that how many 14days remand may be accorded. So what criteria may be used to limit the number of 14day remands?

2. What will the court do if an arrestee is brought before the court beyond 48haurs?
3. The court granted bail with out taking in consideration my economic back ground?
4. What do you do if the prosecutor fails to frame and file in a court within 15 days?

ii. PUBLIC PROSECUTOR

1. The law doesn't state what measure to be taken if the prosecutor fails to prosecute with in 15days?
2. Can you identify whether detaining a person is unlawful or not? What could be the subsequent measures to be taken after having identified the un-law fullness of the detention?
3. Has stated out clearly that they can come across with the unlawfulness of the detention of persons when the detainees themselves, their relatives of friends apply that they are detained arbitrarily?

iii. POLICE

1. The police officers in discharge of the condition stated under Art 28/1/ what will be solution?
2. Art 29/1/ states that the 48hrs begin at the moment of arrest, If an arrest is effected by the police where as if arrest is effected by private person?

3. The police investigators are using inhuman or degrading treatment against the accused during investigation?