

ST'MARY'S UNIVERSTY COLLEGE
FACULTY OF LAW

LL.B THESIS

Pretrial Detention In Light of Human Rights
Instruments: The Law and Practice.

BY: ADANE DESTA

ID. No. 0972/99

ADDIS ABABA, ETHIOPIA
JULY, 2010

Pretrial Detention in Light of Human Rights Instruments: the Law and Practice.

By : ADANE DESTA

ID No. 0972/99

Advisor : TEFAYA G/EYESUS

**Submitted in particular fulfillment of the requirement
for the bachelor Degree of law (LL.B) at the faculty of
law, St Mary's university college.**

ADDIS ABABA, ETHIOPIA
JULY, 2010

I hear by declare that this paper is may original work and I take full responsibility for any failure to observe the conventional rule of citation.

Name : Adane Desta

Signature : _____

ABBREVIATION

FDRE-	Federal Democratic Republic of Ethiopia
UDHR-	Universal Declaration of Human Right
ICCPR-	International Covenant of Civil and Political Right.
ICESCR-	International Covenant of Economic, Social and Cultural right
CRC-	Convention on the Right of the Child
ACHPR-	Africa Charter on Human and People's Right.

Table of content

	Page
Acknowledgement	
Abbreviation	
Table of Content	
Introduction	
Chapter one General overview of pretrial detention.	
in criminal procedure	1
1.1 Brief the concepts of pretrial detention	2
1.2 The purchase of pretrial detention	3
Chapter Two criminal investigation process	6
2.1 Remand	8
2.2 Bail	10
Chapter Three international human right and democratic laws related to crime investigation.	15
3.1 International human right instrument	15
3.1.1 Universal declaration of human right (UDHR).....	15
3.1.2 International covenant on civil and political right (ICCPR)	16
3.1.3 Convention on the right of child (CRC)	17
3.1.4 Convention against torture and other cruel in human or degrading treatment or punishment	18
3.1.5 Africa (BANJUL) charter on human and people's right (ACHPR)....	19
3.1.6 Standard minimum rules for the treatment of prisoners	19
3.2 The democratic law	
3.2.1 The FDRE constitution	20
3.2.2 The Ethiopia criminal procedure code	21
3.2.3 The Vagrancy Control proclamation No 384, 2004.....	25

Chapter four Practical problems related to pretrial detention

4.1 In Police 27
4.2 Public prosecutor 30
4.3 Court 31

Conclusion and Recommendation

1. Conclusion 32
2. Recommendation 34

Bibliography

Annex

Introduction

The function and purpose of criminal procedure can be described as rule designed to balance the important government function of maintaining laws, order and protecting the right of citizens. Criminal substantive and procedural laws separately may not fully address the objective and goals of administration of criminal justice. So, both are mutually indispensable and dependent on one other.

Criminal procedure is dealing with both pretrial and trial stages. This research focuses on the area of pretrial step, related to the activity of detention in Ethiopia criminal procedure laws.

Even though a comprehensive laws about the right of the person detained were enacted at national and international level, practically problem of enforcement of such rights have been seen especially in our country the applicability of criminal procedure law with regarding pretrial detention because a big problem due to various reasons.

There for the objective of the study tries to examine the application of pretrial detention related legal and practical problem in relation to expressed pretrial in light of human right instrument and other laws. It will asses the practical application of arrested and infringements of basic rights examine the causes of miss application of pretrial detention and express the rights and limitation of the suspect and investigation proceeding mechanism related to pretrial detention.

In order to address these issues the paper is divided in to four chapters.

The first chapter dealing with the general overview concept and purpose of pretrial detention.

The second chapter assesses the investigation process which is focused on remand and bail.

The third chapter deals with pretrial detention related with international human right and domestic laws related to crime investigation.

The fourth chapter deals with legal and practical problems related to pretrial detentions.

Finally by way of concluding a remark will be made on some general recommendation which may help to dispense the administrative of justice as a source of ground.

Introduction

The function and purpose of criminal procedure can be described as rule designed to balance the important government function of maintaining laws, order and protecting the right of citizens. Criminal substantive and procedural laws separately may not fully address the objective and goals of administration of criminal justice. So, both are mutually indispensable and dependent on one other.

Criminal procedure is dealing with both pretrial and trial stages. This research focuses on the area of pretrial step, related to the activity of detention in Ethiopia criminal procedure laws.

Even though a comprehensive laws about the right of the person detained were enacted at national and international level, practically problem of enforcement of such rights have been seen especially in our country the applicability of criminal procedure law with regarding pretrial detention because a big problem due to various reasons.

There for the objective of the study tries to examine the application of pretrial detention related legal and practical problem in relation to expressed pretrial in light of human right instrument and other laws. It will asses the practical application of arrested and infringements of basic rights examine the causes of miss application of pretrial detention and express the rights and limitation of the suspect and investigation proceeding mechanism related to pretrial detention.

In order to address these issues the paper is divided in to four chapters.

The first chapter dealing with the general overview concept and purpose of pretrial detention.

The second chapter assesses the investigation process which is focused on remand and bail.

The third chapter deals with pretrial detention related with international human right and domestic laws related to crime investigation.

The fourth chapter deals with legal and practical problems related to pretrial detentions.

Finally by way of concluding a remark will be made on some general recommendation which may help to dispense the administrative of justice as a source of ground.

Chapter One

1. General overview of pretrial detention in criminal procedure

This research paper lays the foundation for the subsequent discussions on different subject matters of criminal procedure related to pretrial detention in light of human rights instruments.

The criminal procedure law is the law which defines the steps to be taken from the commission of crime up to until due judgment or penalty is passed on the criminal by the proper court. It is about the process by which the criminal would be screened out of the society for the purpose of penalty and the prosecution to be taken to avoid subjection of innocents to the un pleasant process of court.

The criminal procedure is dealing with both pretrial and trial stages. We try to focused on pretrial stages related to pretrial detention in criminal procedure. It is about the screening mechanisms by which offenders are selected out of the population to be subjected to criminal process. Therefore, this activity directly relation with the right of detained person. Some of activates related pretrial detention by an investigation departments are arrest remand and search.

In Ethiopia criminal procedure code Article 59(1), provides a ground in which the accused may kept in custody or be released on bail. But according to Article 59(2) of the code provides where the police investigation is not completed the investigating police officers may apply for a remand for a sufficient time to enable the investigation to be completed. These means the discretion of the court play great role. Our criminal procedure code silent with regard to the problem of excessive bail and unlimited remand. Thus, in our law there is no any provision whether it calls for appeal or not like that of other ground of denial of bail and unlimited remand.

In U.S.A, the pre trial detention, whether to secure defendants' appearance or to protect public safety, is nonetheless confinement. Jailed defendants are not free to leave;

they lie in cells, subject to jail discipline and routine, and they must confirm of rules intended to preserve safety and order within the detention facility. But jailed defendants are legally innocent; they do not forfeit their constitutional rights simply because of their incarceration. A number of years ago, someone asked one jail administrator if surveillance of jailed defendants in cells through two-way mirrors of which inmates were unaware violated defendants' right to privacy. The administrator replied, "they have no rights," but this is untrue. Jailed defendants do have rights, but they are "diminished" because of confinement.

STANLEY A. FISHER defined the right to speedily trial, and release on bail. He also indicated that the right of a person in police custody to be brought before a court within forty-eight hours is one of the most valuable guarantees of personal liberty found in the constitution. The court's decision whether he must remain in custody pending the completion of the proceedings against him or whether he may go free on bail is likewise of crucial importance. From the accused's point of view, pretrial custody or detention is punishment. To inflict punishment on someone who has not been convicted of any crime threatens several basic rights under the constitution³. However, the proper implementation of pre-trial detention is different from the above idea. Because, which is made in accordance with the procedural due process of law is necessitated to protect public interest by respecting the basic rights of suspected person under detention.

1.1 Brief the concepts of pretrial detention

There are different definitions developed by different countries. Thus it is difficult to have a single precise definition. A Swiss author called Piquerez defines pretrial detention as follows:

Pretrial detention is the incarceration of a person which is ordered when he or she is seriously suspected of having committed an offence. In order to put he or she at disposal of justice where necessary for the reason of investigation or security, for all any amount of the time period beginning with the start of criminal investigation⁴.

What we can infer from this definition is pretrial detention is a form of detention used for the purpose of undertaking investigation and prosecution. This is to bring the alleged criminals to the bar of justice through the procedure of arrest and remand. There

for, some writer's pretrial detention refers to detainees starting from the date of arrest pending completion of certain offenses and a waiting for a trial.

According to black's law definition defined that; pretrial detention the holding of a defendant before trial a criminal changes either because the established bail could not be posted or because release was denied⁶.

Joel samaha explained that most defendants are released on bail while they wait for trial or other disposition of their cases In some jurisdictions, the quality exceeds.90percent.Nevertheless, pretrial detention remains a serious problem because detaining even 10percent of defendants contributes to jail over crowding. The principle reason for detention is that defendants cannot post ball. Detention can last for considerable time periods: 33percent of defendants remain in detention for more than thirty days and 20percent for more than ninety days. Finally, detention prior to trial places a heavy burden on local Jurisdictions. Housing an individual detainee prior to trial costs about \$30 a day on the average⁷.courts relies on a variety of release mechanisms. About 20 percent of defendants secure release without appearing before judges. In minor cases, defendants obtain a citation release, or a summons to appear, similarly to that used in traffic offenses. or they post bond according to bail schedule that list amounts required for various offenses. Defendants can obtain release any time by posting the amount in the appropriate schedule. Therefore according to the above mentioned points to see that the detention is takes place may be consider the act of criminal dangerous and other facility deleted to detonation.⁷

1.2 The purpose of pre trial detention

Pretrial detention may be ordered only if there are reasonable grounds to believe that the person concerned have involved in the commission of the alleged offenses and there is a danger of absconding or committing further serious offenses, or a problem that the cause of Justice will be seriously interfered with if they are left free⁸.

Pretrial detention occurs for different reasons:

- ❖ For the purpose of proper investigation; investigation remand:

In this condition whether there was reason to believe that the person has probably committed the offence, and the progress of the investigation and diligence of police by taking steps in collecting evidence such as interviewing collecting of technical evidences or forensic evidence, seizure etc.

- ❖ By the operational incases involving non bail able offenses because of their grave nature.

Example :- the person who was committed a certain criminal act that crime may be penalize above 15 years in rigorous imprisonment that time the suspected person ignored the bail or deprived bail right in our criminal procedure code article 63(1) provides.

- ❖ To prevent the accused not to obstruct justice.

When the accused person might be released by bail that after that person not present or appear the operation of justice obstruct because the court doesn't able to render decision up on the suspect end person.

- ❖ To protect the community from the attainders further criminal conduct,
- ❖ These time the detained person may be dangerous to the society by the commission of a criminal act reputedly so, for seek of public peace and order to deprived his bail right

We try to see the U.S.A practice pretrial detention imposes a several deprivation on defendants. Incarceration, temporary loss of wages or even permanent loss of a job, separation from family and friends, restrictions on aiding in their defense, and less of reputation may all result. Further more these deprivations occur before conviction. Defendants may be incarcerated on probable cause before the state proves beyond a reasonable doubt that they have committed crimes. On the other hand, practical release incurs costs for society. Defendants may not appear for trial, released defendants may commit further crimes and the community may experience anxiety over the threats to public safety that released defendants might pose. The decision of whether to release or detain defendants prior to trial, then, requires balancing the rights of individuals to be

free until they are proved guilty and the need of the community to feel safe from crime and its interest in bringing criminals to justice.⁹

He has also given stress that the decision of whether to release or detain defendants prior to trial, then requires balancing the right of individuals to be free until they are proven guilty and the need of the community to feel safe from crime and its interest in bringing criminals to justice.

When we see pretrial detention and arrest to china once a crime is committed or alleged, it is reported to the public service agency (police), the procurator, or the court. After a brief preliminary investigation, if it is determined that the matter warrant further state involvement the case is filed and an investigation conducted by the police (public service agency) or the procurator¹⁰.

There for, thus which indicates that the China before arresting the suspected person gathering more evidence and operate a brief preliminary investigation because of safe themselves from violation of individual rights.

To conclude, pretrial detention may be essential for either by investigation or post investigation custody due to denial of bail on the grounds specified by the law¹¹.

CHAPTER TWO

2. CRIME INVESTIGATION PROCESS

In this chapter, we focus our attention on the various stages of the criminal justice process relating to crime investigation process which is prior to an actual criminal trial. Although the stages in the pretrial process have not received the same attention as the trial, they have considerable importance. We must keep in mind that our criminal justice network is supposed to be based on the principles of “innocent until proven guilty” and “due process” of law for all those accused of criminal wrongdoing. Many of the pretrial processes, then, act as a sieve to filter out cases lacking necessary levels of proof for a finding of guilt. These stages are beneficiary to citizenry in that they prohibit the state from arbitrary punishment.¹

When we will see in this chapter, we closely examine the stages in the pretrial process, the complaint and accusation, the definition and the operation of remand in custody, and bail in its operation. With associated the law and practice of other countries.²

Criminal procedure in its broadest sense includes the rules and principles which governs the enforcement of criminal laws.³ And it covers the law of crime investigation process.⁴ The operation of crime investigation process begins with the reception of information of the commission of certain criminal acts. The information could reach to the police from different informant.⁵ These are complaint, accusation and occurrence of flagrant offences. They serve as the initial points for starting precedents to set criminal justice in motion.⁶

The process of crime investigation may be made before or after the suspect person's arrest. The police are supposed to hear witnesses and gather other real evidences like exhibit, finger print, blood test, etc... some times the activity of gathering or collecting evidence require search and seizure. The information source could be either from the suspect or out of the suspect.⁷

The process of undertaking the crime investigation raises the constitutional issues of the right to liberty, privacy, against self incrimination, etc... Their violation also brings to the fore the problem of remedial measures.⁸ The task of this part of the study is exposing the legal principles and rules facilitating the initiation and investigation of crimes as well as protecting the interests of the suspected persons.⁹

Further more, international human rights instruments and standards clearly indicate and impose an obligation upon governments. Therefore, the governments responsible to give solution and protect human right violations.

Those rights incorporated under international human rights instruments related to the right of individuals express in the detail. Thus, the governments have take administrative measure with regard to respect and protect human rights, and responsibility to enacting and enforcing different laws related to human right protections. We can see the right of individuals provided under the instruments and those are protecting the suspected person rights in criminal investigation procedure are under universal declaration of human rights expressed that .¹⁰

*Every one charge with penal or criminal offence has the right to presumption of innocent until proven guilt's.*¹²

Formally, a criminal investigation process against the defendant begins with receiving compliant. The word formally is used here because a person's information can be consider as the beginning of the criminal process.¹³

In England a compliant is a written accusation of crime made on oath by private person. In most Jurisdictions certain minor offenses may be initiated in this manner.¹⁴ There for, the compliant must state the essential facts constituting the offense charged, including the time and place of the offense committed and the name of the suspect or a reasonably definite description of the suspect if the name is not known. The compliant must be signed by the person charging the offense (the complaint).¹⁵

The purpose of the compliant in a criminal proceeding can use as a dual purpose: the first one is If the defendant has been arrested with out a warrant, the complaint is prepared, signed and filed at the defendant's initial appearance before the court .¹⁶ More over, the complaint serves as a form of accusation is confined to petty offenses. It gains for minor cases the advantage of simple, non-technical pleading. In such cases, the rights of defendant which be sacrificed by the less strict from are fully protected by the existence of right to a full appeal from the magistrate to the trial court, the country or district.¹⁷ The other one is if the defendant has not been arrested and is not before the court, the complaint serves as the basis for determining whether there is probable cause (fair probability) to justify issuing a warrant for his or her arrest.¹⁸

Further more, we try to see some countries crime reporting (compliant) activities and that the police crime investigation department receiving information, let as see as fallows:

Compliant procedure in France The police must report all crimes, which come to their attention to the public prosecutor (procurer), who is vested with the ultimate authority of deciding whether they will be prosecuted. The police officers are given power to arrest the suspected person in flagrant offence, and to detain person suspected of criminal activity for limited period of time while, conducting a preliminary investigation regardless of law the crime was committed. Although crimes may also be brought to the attention of the prosecutor directly by the victim, they seldom are; thus of criminal complaints in France. Later on the process, before the decision is made by the prosecutor the investigation may be turned over to an independent magistrate, an "Investigation judge" (judge instruction). How ever, this is only required in the case of serious crimes

of crimes is discretionary in the case of serious misdemeanors (delictes) and not required at all for petty misdemeanors (contraventions). Even in the case of serious crimes, much of the investigation work may be delegated to the police, so that the actual practice, the entire investigation of criminal complaints is preferred by the police in the great majority of cases.

In France the police do not respond to complaints and reports of crime made by citizens¹⁹. As with all police, they have extensive network of informants both inside and outside with out the help of these informers, much crime comes to their notice during the performance of their normal policing activities.²⁰

In Germany, in certain cases the victim, through the *privatklage*, has the initiative in starting a prosecution and the right to prosecute. In such a case he has much the same right's as the public prosecutor...though not his powers of coercion, particularly with respect to the investigation. However, prosecution by *privateklage* is only allowed in respect of a few minor offences, restrictively enumerated... and only when these put a private interest at stake. The *privateklage* is little used, particularly due to the financial cost involved.²¹ The thing that is most interesting about this type of procedure is the obligation to engage in a conciliation procedure' before the formal complaint is made. Thus, more than half of private complaint end in an amicable agreement.²²

In our country Ethiopia Prosecuting criminal offence divided in to punishable up on complaint and accusation. The first one is under article 11 of the 1961 criminal procedure code deals with accusation any person has witness to the commission of the offence or the police officer start crime investigation process after receipt the information. The second one is expressed under article 13, of the 1961 criminal procedure code which deals complaint procedure that an offences punishment up on complaint in which the law may be prosecuted and punished only up on formal complaint by the injured party or these driving rights from him.

Therefore, both complaint and accusation shall be reduced to writing by the person to whom it is made and when completed shall be read over to the complainant who shall sign and date it, in addition to that the offence is a flagrant the offender may not it seems to be arrested with out warrant unless the complaint is firstly made. Under article 21 of the 1961 criminal procedure code read 1 as follows:-

- (1) in case of flagrant or quasi-flagrant, proceeding may be instituted with out an accusations or complaint (in the general sense of information) being made, unless the offence is punishable on complaint (in the technical sense of the term) and,
- (2) The offender may in such cases be arrested with out a warrant in accordance with article 49 of the criminal procedure law and the following articles.

In general principles expressed under the Ethiopian criminal procedure law every criminal acts concerning about public at large the police investigation departments have responsible to investigation and prosecute. When ever they received information indicates about the commission of certain offenses. But under some exceptional circumstance some crimes are investigate or prosecute only when the injured person requests criminal proceeding to start the whole conditions that are started on the above made clues that the enforcement organs not violate the individual rights and to prevent abuse of power under the condition of pre trial detention procedure.

2.1 Remand

Remand is the court before which the arrested person is brought may decide that such person shall be kept in custody, such an order may be given at a latter stage of the proceedings, any way, remand in custody is a situation where the suspect has to wait the court's order of release or judgment being in custody be it a person may be remanded. There are different grounds on which a person may be remanded.²⁷ The main reason for the purpose of investigation.²⁸

Remand in custody is highly inter related with the right to speedy trial. Especially, remand for further investigation may affect speedy trial. Again, keeping a person in custody with out punishment raise a question relating to the rights are involved in the procedure of remands in custody.²⁹

More over, the rights of suspect persons affects at the time when post arresting procedure is takes place.³⁰ After an accused has been taken in to custody by the police, he or she is to be taken with out unnecessary delay before the nearest and most accessible court, and brought the case with in 48 hours.³¹ Then, the court at this stage. First, the judge is responsible for determined that probable cause exist, the accused will be held for further criminal processing. Second If the case is dismissed, and no formal charges are filed. This is the first stage of the filtering effect of pretrial procedure.³²

According to black's law dictionary definition:-

*To send back prisoner, after a preliminary or partial before court of magistrates is to send the accused back to custody to kept until the hearing is resumed or trial comes in*³³

The criminal procedure code article 59(1), possesses two options either to release on bail or to remain in custody,³⁴ then when bail is denied remand is granted and the suspect remains in custody,³⁵ so article 59(2), of the code deals that where the police investigation is not completed,³⁶ that is the discretion of the police to request or not to request and release on bail by assertion of article 28.³⁷ And article 59(3) a request of remand must be in writing,³⁸ and second each accession remand shall not be granted for more than for teen days.³⁹

When we see on the side of the suspected persons rights, even if the person is remanded for further investigation or for trial (till judgment), is to be presumed innocent is intact it is good to see that remand has go nothing to do with guilt or its possibility. Hence, the law grant rights of the person remanded. The FDRE constitution, under article 21, provides that all persons in custody have the rights to treatments respecting their human dignity.⁴⁰

It is also says that such persons shall have the opportunity to communicated and to be visited by their spouses or partners, close relatives, friends, religious counselor , medical doctors, and their legal counsel. In this country it would be too much to request so much right. There are situations, in practice where visits are completely prohibited or seldom permitted with specific reference to the right to legal counsel, article 61 of criminal procedure codes provides.

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.

Condition of remand

The court has to take some conditions in to consideration in making its decision to grant or to refuse remand such conditions are:-

- ❖ Whether there was reason to believe that the person has probably committed the offence.
- ❖ The progress of the investigation and diligence of the police by taking steps in collecting evidences such as interviewing, collecting of technical evidence or forensic evidence, seizure.
- ❖ Whether the person's being released effects the investigating action,

The case and the Nature of the evidence to be gathered.

- ❖ The complexity of the case, and the nature of the evidence to be gathered.

Granting remand with out considering such points may amount to punishing a person who is presumed to be innocent.⁴³

In order to be fair and as an aspect of due process of law the arrested person should be given the opportunity to be heard in case of remand, which affects him directly. The draft criminal procedure code of Ethiopia has made a good Improvement by granting the arrested person to be heard before deciding on the issue of remand.⁴⁴

The other problem with regarded to remand is the newly in acted substantive laws like corruption law and vagrancy law are that denies bail. Because of this conditions the court always granting remand but denial of bail for unlimited paired.⁴⁵

When we see other legal system, for instance, in England under the magistrate's court act his power to remand the accused in custody for a period of not exceeding eight days.⁴⁶

Similarly, the Spain law, the normal rule is that detention for investigation shall not exceed ten days but where the judge finds that "Unavoidable circumstances" exist it may extend up to fifteen days.⁴⁷

Before I concluded this topic I want say some thing about our country practice related to the above points, according to article 59(3) provides that the court no remand shall be granted for more than fourteen days on each occasion. But, doesn't say any thing about the maximum period of the repetition of remand in custody.⁴⁸

Generally, an individuals if they maybe suspected by certain criminal act, it have protect the rights of suspected persons, a constitutional requirement to bring the detained individual with in a reasonable time to the nearest court. The court has to ascertain the legality of the arrest. At this time the court can not weighting evidence because it is a pretrial stage. The police usually have to gather further evidence and the court should limit it self to checking a prima-facile case against the suspect.⁴⁹

2.2 Bail

One of the most controversial pretrial procedures involves setting bail. Simply stated, bail is the security given for the release of a person who is in the custody of the

law, that he will appear before a court or magistrate as required in the bail bond or recognizance.⁵⁰

When we try to see that the traditional explanation about bail is that meant the money or property pledged to the court or actually deposited for the release from custody of an arrested or imprisoned person as a guarantee of a persons appearance in court at a specified date and time, accused person who are released from custody and subsequently fail to appear for trial forfeit their bail to the court.

The right of bail is constitutionally, which means the constitution of nearly the entire states guarantee in to some degree there are a few guidelines regard in bail. The eighth amendment provides that bail shall not be excessive. There is not federal constitutional right to bail, but if bail is generated conflict in several areas.⁵¹

In FDRE constitution also given guarantee about the right to bail, according to Article 19(6) of the constitution provides as follows:

person arrested has the right to be released on bail, in exceptional circumstance prescribed by the law, the court may deny bail or demand adequate guarantee for is conditional release of the arrested person.

This shows that release of the arrest on bail is the principle, but exceptionally that bail maybe denied.

Thus, person's accused, convicted or under arrest for an offence may be granted bail, which means they are released under a duty to attend court or the police station at a given time. However, the right to bail has been reduces in recent years a mid concern that individuals on bail re offend and fail to turn up at court for their trial.⁵²

Constitutionally, the suspect person presumed to be innocent when the task of arresting or keeping in custody up until the decision of the court to convict or acquit the person would be tantamount to arresting an innocent. It is a particular possibility that a person may be found not guilty after a trial taking some years. It is equally possible to see the effect (irremediable troubles like absence from activities of means of life) of such person's being kept in custody for some any years. Considering this and other problems; the right to be released on bail is made a right of paramount importance. That is why putting a person in custody is not desired inprinciple.⁵³

Our criminal procedure code, Article 59(1) clearly provides that the court before which the arrested person brought according to article 29 shall decide the suspected person kept in custody or released on bail, out of these two possibilities, released by bail is prioritized. But for certain exceptional condition the court given order remain in custody of the person.

The operation of release on bail is a kind of release on bail which is a conditional release. As will be seen, you have to go through some conditions to be released on bail. However, assume that the person before the court is apparently a mistaken person or it has became clear for the court that according to the circumstances, there can not be evidence of guilt. In this case, there seems to be a need for unconditional release of the person.

But there is no clear provision about the law of this effect. It is said that such provisions not included in the law because it is clear on bail in situation where cases like the above appear before them.

Further more the courts need not grant bail when the accused should be kept in custody for their own protection, where the accused is already serving prison sentence or

where there has been insufficient time to obtain information as to the criteria for bail, if the court doesn't choose to grant bail in such case, its reasons for doing so must be in reverse where someone is charged with a further indictable offence which appears to have been committed while on bail⁵⁴

The practice of bail involves the posting of cash, property, or securities by the defendant or someone on his or her behalf. Originally, the manifest function of bail was to ensure that the accused would be present for trial or other pretrial procedure.

In most jurisdictions, bail is set by the court as a monetary sum. Thus, the criteria for granting or refusing bail are contained in the Act 1976. There is a general presumption in favor of bail for unconvicted defendants, but there are some important exceptions. Bail need not be granted where there are substantial grounds for believing that, unless kept in custody, the accused would fail to surrender to bail, or would commit an offence, of justice.

In assessing these risks the court may take account of the nature and with the character of antecedents' events and communities of the defendant.⁵⁵

In addition to the above point, the Criminal Justice and Public Order Act 1994, following concern at offences being committed by accused while on bail, provided that a person charged or convicted of murder, manslaughter, rape, attempted murder or attempted rape could never be granted bail if they had a previous conviction for such an offence. This complete ban breached the European Convention on Human Rights.

STANLEY Z. FRISHER, explained that the factors should the court consider in setting bail, historically, the nature of the charge and the defendant's criminal record have been important criteria in setting bail, some judges recognize that factors extraneous to the offence are also relevant in determining one's probability of appearance such factors as residence in the community, employment and the presence or absence of relatives and friends in the community are now being considered in the administration of bail.⁵⁶

When we see the grounds of denial of bail in our country Ethiopia, we have seen that release on bail is in principle, Article 19(6) of the FDRE constitution provides that the court may deny bail in exceptional circumstances prescribed by law. There is a need for express prohibition of the law denying bail, there are circumstances where such release may be dangerous or bring about a miscarriage of justice. With this in mind, the law puts grounds for denial of bail. There are some specific non-bailable crimes. This is based on other grounds than the seriousness of the crime with which the person is suspected. The latter prohibition takes the possible negative consequences of release on bail into consideration.

Denial of bail on the type of seriousness of the crime with which a person is suspected is primarily based on article 63(1) of the code which reads:-

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.

This shows that release of arrestee a bail is the principle but exceptionally that bail may be denied.

Generally speaking there are money responsibilities of the proceeding magistrate at this stage. First, the judge is responsible for determined that probable cause did exist, the accused will be held for further criminal processing. If not the defendant released and no formal charges are filled, and no formal charges are filed. This is first stage of the filtering pretrial procedures prior to this and both the public and the police have excised discretion in reporting offenses or suspicious circumstances and affecting the arrest.⁵⁷

For the purpose of elaboration a bout the different counties practice and a very precise historical show see as follows:

Bail law in England and Wales

In the med Laval England, the sheriffs originally possessed sovereign authority to release or hold suspect criminals. Some sheriffs would exploit the bail for their own gain. The statute of Westminster (1275) limited the discretion of sheriffs with respect to the bail.

Although sheriffs still had the authority to fix the amount to bail required the statute stipulates which crimes are bail able and which ones are not bail able.

According to the English Bill of right (1689) states that “Excessive bail have been required of person’s committed in criminal case, to elude the benefit of the laws made for the liberty of the subjects. Excessive bail ought not to be required.” This was a precursor of the eighth amendment to the us constitution.

In the UK there are three types of bail namely:-

1. **Police Bail**:- where a suspect is released with out being charged but must return to the police station at a given time.
2. **Police to court**:- where having been charged a suspect is given Bail but must attend his first court learning at the time and Court given.
3. **Court bail**: - where having already been in court a suspect is Granted bail pending further investigation or while The case continues.⁵⁸

Bail law in United State

Before the independency of America, the law related to bail is used by English law. Some of the colonies simply guaranteed their subjects the protections of British law. In 1776, after the declaration of independence, those which had not already done so enacted their own version of bail law.⁵⁹

Section 9 of Virginia’s 1776 constitution states

Those shall be let to bail who are a apprehended for any crime not punishable in life of limb, or if it be manslaughter and there be good cause to believe the parry guilty there of, shall not admitted bail.

The eighth amendment in the US Federal bill of right is derived from the Virginia constitution, and also the sixth amendment, to the constitution, like the English habeas

corpus act of 1678, requires that suspect must “be informed of the nature and cause of the accusation” and thus enabling a suspect to demand bail if accused of a bail able offence.

When we see the current bail laws of U.S.A the newly enacted bail law of the United State code title 18, section 3141-3150 replace the former bail law in 1984 congress. The main innovation of new law is that it allows pretrial detention of an individual based up on their danger to the community, under prior law and traditional bail statutes in the U.S, pretrial detention was to be based solely up on the risk of flight. In this reform which is also provides that only person’s who fit into certain charged with a crime of violence, an offense for which the maximum sentence is life imprisonment or death, certain drug offense is greater than 10 years felony offenders.⁶⁰

Finally, in principle everyone arrested suspected of a crime has the right to released up on conditions set. Denial of bail should be an exception. The accepted grounds for denying release are possibility of absconding, tampering with evidence, commission of other offences, gravity of an offence, etc. incase account determines to release the suspect,

it has to take in to account several factors, such as, the nature of the crime, socialites of the suspect, and the capacity to bring guarantee. The put in further conditions on the released person.

The FDRE constitution given guarantees and provides to ensure the right of bail at large. But the only circumstances can be denied on certain conditions. Whether the constitution allows automatic denial of bail by law is not clear. It formulation seems to restrict disallowance of bail and a case by case basis by court. In this regard test regulating bail matter.

Therefore, bail is a constitutional right. It could be limited by law on justifiable ground. It takes different forms. Failure to comply with bail obligation could entail civil and criminal liability.

CHAPTER THREE

3. International Human Rights and Domestic laws related to Crime Investigation.

International Human Rights Instruments.

States have adopted a number of international legal standards to affirm the rights of arrested or detained persons with relation to criminal investigation process. Such standards fall into various categories and following one another. The manner of arresting the suspect person with regard to crime investigation process still in problems in different jurisdictions. For the purpose of this chapter, the major significant conventions that have been ratified by most countries shall be reviewed leaving a side the specific chronological development for the chapter that specifically deals with the historical evolution of the right of arrested person though the activities of crime investigation process.

The Universal Declaration Of Human Rights (UDHR)

UDHR is one of the basic and fundamental human right document and was adopted 1948. The right of the detained or arrested person has been universally recognized in this document in its, Article 9,10 and 11 of the declaration not only as a right in it self but also as a means of promoting peace and respect for human rights and fundamental freedoms in generally.

Article 9

“No one shall be subjected to arbitrary arrest, detention or exile.”¹

Article 10

“Every one is entitle in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his right and obligations and of any criminal charge against him.”²”

Article 11

1”.Every one charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence. Under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”³”

This article specifically states that no one shall be subject to arbitrary arrest, detention or exile; every one is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in addition to that the determination of his rights and obligation and of any criminal charge against him.

In addition, every one he/her charged with a penal offence the right to be presumed innocent until proved guilty according to the law and the formal proceeding; more over no one shall be held guilty if at the time of the act is commission which did not constitute a penal offence, under a national and international law.

UDHR is a very important and fundamental constitutive document of the united nation that represents the global expression of rights to which all human dignity of all people being the foundation of justice and peace in the world.

Even though not formally legally binding, the declaration has influenced most national constitutions since 1948. It also serves as foundation for two binding UN human rights covenants the International covenant on civil and political rights and the International covenant on economic, social and cultural rights.

It is also served as a foundation for a growing of international treaties and national laws protecting and promoting human right, and its principles are elaborated in international treaties such as the United Nation Covenant on the rights of the child, convention against Torture and other cruel, in human or degrading treatment or punishment, and many more. It also used as the foundation for a growing number of international, national, sub-national institutions protecting and promoting human rights.

3.1.2 The International Covenant of Civil and Political Rights (ICCPR)

The right of arrested or detained person has been universally recognized international covenant on civil and political rights (ICCPR).

ICCPR is a part of International bill of human rights along with the universal declaration of human right (UDHR) and international covenant on economic social and cultural right (ICESCR). It was adopted and opened for signature, ratification and accession by the United Nations general assembly resolution 2200A (xx1) of 16 December 1966 and coming in to entered in to force 1976 in accordance with its article 49. It requires its parties to work to ward the granting of civil, political right to individuals, including the right to hold opinion, the right to the protection of innocent person, it addresses the right to the arrested or detained person in article 9,10,11, and 14(2) as follows;

Article 9

- “1. Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*
- 2. Any one is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*
- 3. Any one arrested on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding,*
- 4. Any one who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.*
- 5. Any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.⁴”*

Article 10

- “1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*
- 2. a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.*
- b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*
- 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.⁵”*

Article 11

“No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.⁶”

Article 14(2)

“2. Every one charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.⁷”

ICCPR further elaborates what is stated under UDHR, hence every one charged with a criminal offence shall have presumed innocent until proved guilty, no one shall be arbitrarily arrested or detained, no one shall be guilty of a penal offence any act at the time of omission which did not constitute a penal offence and every one entitled to a fair and public hearing by an independent and impartial tribunal. The difference in ICCPR, unlike UDHR, it states that; article 9(3) any one arrested on a criminal charge shall be brought promptly before a judge or other officer authorized and 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 which means ICCPR takes about bail right, article 10(2)(b) says that accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication, and the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation, under article 11 deals also, no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation which means any one not arrested with in a civil contractual relation to performance problem. This implies that since ICCPR is adopted later than UDHR, the right of arrest or detention of a person has been given more emphasis than in the earlier times.

3.1.3 Convention on the Right of the Child (CRC)

Convention on the right of the child (CRC) was adopted and opened for signature, ratification and accession by the General Assembly Resolution 44/25 of 20 November 1989 and entry in to force in 1990 in accordance with its article 49.

CRC addresses specifically the right of arrest or detention of child in article 37(b), and article 40(1) (2) (b) (1-3), with relation to crime investigation process see as follows.

Article 37

“(b) No child is deprived of his or her liberty unlawfully or arbitrarily. The arrest or detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”⁸

Article 40

“(1) States parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

(2)(b) Every child alleged as accused of having infringed the penal law has at least the following guarantees

i) To be presumed innocent until proven guilty according to law,

ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the legal proceedings

iii) To have the matter determined promptly by a competent independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, his or her parents or legal guardians;

iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.”⁹

Like UDHR and ICCPR, the CRC declares that states should recognize the right of detained or arrested child person in achieving and on the basis of equality. It addresses how the right of accused child, no child shall be deprived of his or her liberty unlawfully or arbitrarily, every detention of child must be in conformity with the law, to give special protection for child, every accused child to be presumed innocent until proven guilty, moreover, to be informed promptly and directly of the charges against him or her, and also not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality. Thus, CRC places more emphasis on the right of arrested or detained person through the time of pretrial procedure or trial stage in a criminal justice system.

3.1.4 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The right of arrest or detained person has also been confirmed again in the 1987 convention on torture and other cruel, inhuman or degrading treatment or

punishment. The convention is an international convention adopted 1984 by the united nation general assembly and came in to force in 16 June, 1987.

The convention is described as an international bill of right for detained person and define which type of treatment made by enforcement officer and its specifically address the detained or arrested person at the time of crime investigation process see article 15 as fallows.

Article 15

“Each state party shall ensure that any statement which is established to have been made as result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the testament was made.”¹⁰

Convention against torture and other cruel in human or degrading treatment and punishment also similarly give protection to the detention or arrest person as UDHR such that, each state party shall ensure that any statement which is established to have been made as a result of the torture shall not be invoked as evidence in any proceeding by the same token the convention to be involuntary confession not acceptable moreover, this convention imposed an obligation to the member states legislative, administrative, judiciary or other measure to prevent act of torture in any territory under the jurisdiction.

3.1.5 Africa (BANJUL) charter on Human and Peoples’ Rights (ACHPR)

The right of arrest or detention persons’ has also confirmed again in 1986 the convention entitled “African charter on human and peoples right (ACHPR). The charter is the African states members of the organization of African Unity, the charter was adopted 1981; by the African states members of the organization of African Unity and came in to force October 21, 1986.

This charter as a human right instrument to addresses different problems, related to the right of arrested or detained person through the criminal investigation process – accordingly, it specially addresses the right of detention person in article 6, and 7(1) as fallows.

Article 6

“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular no one may be arbitrarily arrested or detained.”¹¹

Article 7

“(1) every individual shall have the right to have his cause heard this comprises.

- (a) the right to an appeal to competent national organs against acts or violating his fundamental rights as recognized and guaranteed by conventions, laws and customs in force;*
- (b) the right to be presumed innocent until proven guilty by a competent court or tribunal;*
- (c) the right to detente, including the right to be defend by counsel of his choice;*
- (d) Othe right to be tried with a reasonable time by an impartial court or tribunal.”¹²*

ACHPR is entitled to specifically ensured the right of arrest or detention person through the activity of crime investigation process, particularly similar to other international conventions it also described that, no one shall be arrested or detained arbitrarily the right to defense, the right to treated by with in reasonable time by an impartial court or tribunal, and no penalty may be inflicted for an offence for which no provisions was at the time it was committed.

3.1.6 Standard minimum Rules for the treatment of prisoners.

The right of arrest or detention person also specifically recognized, by the first united nation congers the presentation of crime and the treatment of offenders, adopted 30 Aug, 1955 on standard minimum rule for the treatment of prisoners. This document gives more emphases about the right of the arrested person. The points that are found in relation to crime investigation, When we try to see selected articles pertinent to our case is Article 7(1), 8, 84 and 85 as follows:

Article 7

“(1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- a) Information concerning his identity*
- b) The reasons for his commitment and the authority therefore,*
- c) The day and hour of his admission and release¹³.*

Article 8

“The different categories of prisoners shall be rapt in separate institutions or parts of institutions taking account of their sex, age, criminal record. The legal reason for their detention and the necessities of their treatments:-

Thus,

- a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;*
- b) Untried prisoners shall be entirely separate from convicted prisoners;*
- c) Persons imprisoned for debt and other civil. Prisoners shall be kept separate from persons imprisoned by reason of a criminal offences;*
- d) Young prisoners shall be kept separated from adults’ accommodation¹⁴.*

Article 84

“(1) Person arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners,” here in after in these rules.

(2) Un convicted prisoners are presumed to be innocent and shall be treated as such¹⁵.

Article 85

“(1) untried prisoner shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions¹⁶.

Standard minimum rules for the treatment of prisoners, similarly to other United Nations documents, which declared that, states to recognize the right of arrest or detention person in achieving and on the bases of equality. It addresses how the right of those person under the control of police custody or in prison custody (jail); the prisoners must be rejected, information concerning his identity, the reasons for his commitment and the authority. Therefore, the day and hour of his admission and release further more, the men and women, untried prisoners from convicted prisoners, civil prisoner from crime offences prisoners and young prisoner from adults, all in all the prisoners according to the above mentioned points shall be kept separated from one to the other, in addition to that unconvicted prisoners are presumed to be innocent and shall be treated as such. So, standard minimum rules. For the treatment of prisoners to introduce the activity of prison in custody in general must be conformity with the manner of international human right standards.

3.2 The Domestic Laws

This section focuses on the national laws laid down in Ethiopia legal system. It includes the FDRE constitution, the criminal justice. Administration control over all activity and the government also made deferent laws related to the process of crime investigation.

The FDRE constitution in its article 9(4) states that all international agreements ratified by Ethiopia are an integral part of the law of the land. Following this, article 13 elaborates that all legislative, executive and judicial organs have the responsibility to respect and enforce what is embodied under that section, which should be done in conformity with human right consideration.

3.2.1 The FDRE Constitution

The FDRE constitution, in the 9th article, clearly states that the international agreements ratified by Ethiopia are the fundamental parts of the law of the land as below.

Article 9

4. *All international agreement ratified by Ethiopia are an integral part of the law of the land*¹⁷.

Following this, article 13 elaborates all legislative, executive and Judiciary organs have the responsibility to respect and enforce what is embodied under the section, in conformity, with human right considerations.

Article 9

1. *All federal and state legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this chapter. (Fundamental rights and freedoms)*
2. *The fundamental rights and freedoms specific in this chapter shall be interpreted in a manner conforming to the principles of the universal declaration of human right, international covenants on human right and international instruments adopted by Ethiopia*¹⁷.

This implies that has the conventions and declarations that are ratified by Ethiopia in are part and parcel of the law of the country. The particular fundamental right and freedoms, including the right of arrest or detention person, enshrined in the constitution shall according its article.13 (2), will be interpreted in a manner conforming to the principles of the UDHR, ICCPR and international instruments adopted by Ethiopia. In addition to this the constitution states several articles related to the right of arrest or detention person through the activities of crime investigation process in its different parts.

The FDRE constitution regard to crime investigation process states the following.

Article 17

1. *No one has been deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.*
2. *No person may be subjected to arbitrary arrest, and no person may be detained with out a charge or conviction against him¹⁹.*

Article 18

1. *Every one has the right to protection against cave-in human or degrading treatment or punishment.*
2. *No one shall be held in slavery or servitude trafficking in human beings for whatever purpose is prohibited.*
3. *No one shall be required to perform forced or compulsory lab our.*
4. *For the purpose of sub-article 3 of this article the phrase "forced or compulsory lab our" shall not include.*
 - a) *Any work or service normally required of a person who is under detention in consequence of a lawful order or of a person during conditional release from such detention.*
 - b) *In the case of conscientious objectors, any service exacted in lieu of compulsory military service;*
 - c) *Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;*
 - d) *Any economic and social development activity voluntarily performed by a community with its locality²⁰.*

This the above two articles of the FDRE constitution implies, No one subject to arbitrary arrest, no one has be deprived of his or her liberty except on such grounds and in accordance with the law; in addition to that every one has to protection against cruel, in human or degrading treatment or punishment, no one shall be in slavery or servitude and no one shall be required to perform forced or compulsory lab our.

Article 17

Clearly expressed that with out the formal legal proceeding or in accordance with the law no one shall be deprived then liberty of the person; in addition to that arbitrarily arrest is clearly prohibited by the law and any one may not subject to arbitrarily arrest, and any one not arrest or detained with out a charge or convention against him, more over article 18(1) implies that every person should not be handled against cruel, in human or degrading treatment or punishment there for the FORE constitution put prohibition for an individual persons through the caring out criminal investigation processes.

Article 19

- 1) *Persons arrested have the right to be informed promptly in a language they understand, of the reasons for their arrest and of any charge against them.*
- 2) *Persons arrested have the right to remain silent, up on arrest they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.*
- 3) *Person arrested have the right to be brought before a court with in 48 hours of their arrest such time shall not include the time reasonable required for the journey for the place of arrest to the court on appearing*

before a court, they have the right to be given prompt and specific explanation of the reasons for their arrest due to the alleged crime committed.

4) All persons have an the right to petition the court to order their physical release where the arresting police officer or the law enforce fail to bring them before a court with in the prescribed time and to provide reason for their arrest. Where the interest of justice required, the court may order the arrested person to remain in custody or, when requested remand him for a time strictly required to carry out the necessary investigation in determining the additional time necessary. In determining the additional time necessary for investigation the court shall ensure the responsible law enforcement authorities carry out the investigation respecting the arrested persons right t6o a speedy trial.

5) Person arrested shall be compelled to make confessions or admission which could be used in evidence against them any evidence abstained under coercion shall not be admissible.

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

20

The FDRE constitution resembling to international instruments adopted and recognized the right of arrestee or detention person through the activities of crime investigation specifically under article 19 implies that any person he may be arrested by enforcements officer they have the right to be informed promptly in the language they understand, to given protection to the arrested person they have understand, to given protection to the arrested person they have the right to before a compliment court with out delay it is with in 48 hours from the time of under control or arrest but such time shall not included the time reasonable required for the place of arrest to the nearest court; in addition to the court if the police officer or enforcement officer fail to bring them before a court with in the prescribed time and to provide reason for their arrest the court also may give order the arrested person remain in custody or for a time specifically carry out the accomplishing investigation; and with out certain exceptional circumstances the arrested person have the right to release on bail and also the arrested person shall not compelled to make confessions or admissions which could be used as evidence against them.

Article 21

1. All persons held in custody and persons imprisoned upon conviction and sent fencing have the right to treatments respecting their human dignity.

2. All persons shall have the opportunity to communicate with and to be visited by their spouses or partners, close relatives friends, religious councilor's medical doctors and their legal counsel.²¹

This article states that all person hold in custody whether at the pretrial or trial stage and persons imprisoned up on conviction and sentencing they have the right to protection against unlawful treatments and respecting the human dignity moreover, all persons not only the person held in custody which means under the control of police officer before conviction and also the persons imprisoned up on conviction and sentencing they shall have the opportunity to communicate with, and to be visited by their spouses or partners, close relatives, friends, religious councilors medical doctor and their legal counsel.

3.2.2 Criminal procedure code

The 1961 criminal procedure law incorporated different provisions related to the right of arrest or detention person through the act of crime investigation processes. Similarly the criminal procedure code stated that those rights recognized by international human right documents and the FDRE constitution in a general manner. But, the criminal procedure code formulated and made in accordance with international and national human rights provisions. There for, our criminal procedure

code stipulated that all conditions related with the day to day crime investigation process in the detail manner.

Even though the criminal procedure code is the law which defines the whole steps to be from the commission of the criminal up to until due judgment or penalty is posed on the criminal by the proper court. But we only faces on the area of provisions related to crime investigation processes specifically regarding the pretrial arrest at detention.

When we will try to see in this particular topic from the criminal procedure code preorder to the case such as article 23, 26, 27(2), 28, 29, 35(2), 59, 61 and 172(1) see as fallow:

Article 23

*Investigation police officers shall carry out their duties under this chapter not- with standing that they are of opinion that the accusation, complaint or informant they may have received is opine to doubt.*²²

Article 26

1. *Where the accused or the suspect has not been arrested and the offence is such as to justify arrest or where the person summoned under article 25 fails to appear, the investigation police officer under shall take such steps as are necessary to effect his arrest.*
2. *Where the arrest can not be made with out warrant the investigation police officer shall apply to the court for a warrant of arrest in accordance with the provision of article 53.*²³

Article 27(2)

*2 He shall not be compelled to answer and shall be informed that he has the right not to answer and the any statement he may make may be used in evidence.*²⁴

Article 28

1. *where the offence committed or complained of is not punish able with rigorous imprisonment as a sole or where it is doubtful that on offence has been committed or that the summoned or arrested person has committed the offence complained of the investigating police officer may in his discretion release such person on his executing a bond with or with out sureties that he will appear at such place on such day and at such time as may be fixed by the police.*
2. *where the accused is not released on bond under this article, he may apply to the court to be released on bail in accordance with the provision of article 64.*²⁵

Article 29(1)

1. *where the accused has been arrested by the police or a private person and handed over to the police(art58) the police the nearest court with in forty eight hours of his arrest or so soon there after as local circumstances and communications permit the time taken in the journey to the court shall not be included.*²⁶

Article 35(2)

2. *No cure shall record any such statement or confessions unless upon questioning the person making it it ascertains that such person voluntarily make such statement or confession. A note to this effect shall be made or the record.*²⁷

Article 61

*Any person detained on arrest or on remand shall be permitted for with to call and interview his advocate and shall if he so requests provided with the means to write.*²⁸

Article 172(1)

*In any case where a young person is involved he shall be taken immediately before the nearest warred court by the police the public prosecutor, the parent or guardian or the compliant.*²⁹

The 1961 criminal procedure code contain the whole process of crime investigation on the day to day activates. The above mentioned articles explain that; article 23 states that, the processes of crime investigation began after receiving accusations complaints compliant and information's article 26 deals about the procedure of arresting the suspected person and in what manner the act was done which stapes must take in to consideration the suspected or convicted person arrestee which time the police officer uses court order according to article 53 clearly explain in it; when we see article 27(2) Explain about the arrest person shall not compelled to answer and shall to silent and also any statement he may make may be used in evidence; article 28 deals with that or with out charities but this right is for some circumstance when able with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an offence has been committed more over this article also put that the accused prohibited his/her bail right in accordance with sub article 1 of the same provision the person the right to apply to toe court to be released on bail in accordance with the provision of article 64 article 29(1) tokes about post arresting procedure when the accused has been arrested by the police or a private person they must hand over to the police and the police officer shall bring him before the nearest court with in 48 hours of his arrest or so soon there after as local circumstances and communications permit but this not token in the journey of the court shall not be included.

The 1961 criminal procedure code article 35(2) states that the court has responsible it ascertaining tat the curt prohibited from record any such statement or confession unless up on questioning the person him self making it article 59(1) token about the court before which the arrested person on arrest or on remand shall be allow for with to call and interview his advocate and if he so requests be provided with the means to write.

Article 172 (1) Of the criminal procedure code implies that what ever the case where a young person is involved the police the public prosecutor the parent or guardian or the compliant immediately brought him before the nearest court.

3.2.3 Vagrancy Control proclamation (No. 384,2004)

The right of arrested or detained persons through the activities of crime investigation processes found in different laws of the country related to criminal investigation When we try to see the proclamation o vagrancy control adoptee and proclamation No 384/2004, come in to force of the 27th day lf January s004. law the nature of this law different from other criminal laws because on the one hand the proclamation to enhance the power of enforcement officials on the other hand the enforcement organs power out from the control of court these affects the right of presumption of innocent until proved

guilty and the right to release on bail is denied. Therefore the vagrancy control proclamation to affect that right stated on the above.

The provisions related to the right of arrest or detention person through the pretrial procedure specifically in the process of crime investigation are article 6,7(1)(2)(4) and article 8(1)(2) see as fallows.

Article 6

- 1. any police may arrest with out warrant any person who may reasonably be suspected of being a vagrant*
- 2. Police shall bring the arrest suspect before the court with in 48 hours of his arrest the time reasonable taken to bring the suspect to the court not be included*
- 3. A person who is reasonably suspected of being a vagrant in accordance with article 6(1) of this proclamation shall not be included.³⁰*

Article 7

- 1. The investigating police officer who has arrested a person on suspicion of his arrested a person on suspicion of vagrancy shall complete his investigation file the public prosecute with in twenty eight days after the arrest.*
- 2. The investigating police officer shall carry out the necessary investigation with in the a for mentioned period of time in accordance with the criminal procedure code.*
- 3. where the investigation police are ordered to conduct further investigation pursuant to article 38(c) of the criminal procedure code, he shall complete the investigation with in five days of the receipt of the order and five days of the receipt of the order and return the file to the public prosecutor.³¹*

Article 8

- 1. Not with standing the power given to the public prosecutors under article 38(c) of the criminal procedure code he shall institute proceeding with in ten days on receiving the investigation file.*
- 2. where the public prosecutor refuses to institute proceedings against the suspect as per article 42 (1)(a) of the criminal procedure code he shall cause the release of the suspect and report the same to the court.³²*

This articles specifically states that under article 6, the police officer acquired the power arrest with out warrant who may suspect reasonably, in addition to that the police shall bring the suspect person with the nearest court with in reasonable time this time is with in 48 hours from the time of his arrest article 7, the investigation of vagrancy shall complete his investigation file to the public prose cut or with in twenty eight days after the arrest. moreover under the same article sub article (2) tokens about the activity or the processes of investigation must be fallow or in accordance with the law of criminal procedure code provision; furthermore article 8(1) and (2) states that when the public prosecutor send back to the file to police for in accordance with article 38 (c) the police officer or the investigation officers instituted with in ten days on receiving investigation and also when the public prosecutor refuse to institute preceding against the suspected person to article 42 (1)(a) of a criminal procedure code cause for release the suspect report the same to court.

CHAPTER FOUR

4. Practical Problem Related to Pretrial detention

4.1 In police

The police investigation department given the power to the police for conducting the activities of investigation. These activities can easily gathering from the provision of the criminal procedure code, Article 22 and 23, and the proclamation of federal and regional police. Specifically article 23 of the criminal procedure code provided that the police have the duty to investigate. But this doesn't mean that the police can conduct investigation involves activities which in one way such rights of the suspect includes the right to liberate, the right to remain silent and the right to privacy.

Generally speaking we know that the process of crime investigation is the process of selecting of offenders and manifestation of truth in a rational and systematic way supported by sufficient evidence. It is involves the gathering of evidence in support of the suspicion that a certain crime has been committed by the alleged offender. All steps during investigation will be taken with this purpose in view.

In Ethiopia police investigator have the technical training related with investigation although this may not be adequate and also the police investigator official's lack of knowledge in the detail about the systematic way of crime investigation.

Police investigation, in most case, are by past record of suspected person and also some suspects may provoke them, due to this the investigation officers starts by biting the suspected persons on the street even in recent time as has been practiced similar to previous times. In most case the police crime investigation officer or members of the police doing not necessary use of force in police custody. But in most cases suspects seen to rise complain concerning the usage of force by police investigator's during their stay at custody of the police through the time when pretrial detention. But this types of activities not always truth.¹

Let us take the example, kolfe Keranyo subcity police investigation department Vs mukemil Muhammad,² the case was suspicion of theft, a person he have one utilized tin and cross the street in morning, the police cache up the suspected person and put under the control of police custody. The Kolfe keranyo sub city police investigation department rather than proof the thing as to stolen or not, arrest Ato Mulkemil in custody and requested a remand from kolfe municipal remand bench, but the court grant bail. From the researcher opinion when we look in to the investigation proceeding for two days then the police release the person on bail, the reason for the police investigation

department to release the suspected is that the property was given from his employer he ascertain this fact, finally the case send to public procesecutor and given legal decision up on the given case, he said that not criminal act was committed by the suspect because not fulfilled the three basic conditions to institute crime act that is lack of legal fact therefore not sue the accused, then closed the file. Pursuant to article 42(1) (a) of criminal procedure code and article 23(1) of the criminal law: we can infer from the case violate constitutional bail, the right of liberty and presumption of innocent because the person without reasonable doubt or having sufficient evidence, even if the police didn't able to proof the facts with in short time. We are able to see from the case clearly indicate that the violation of individual rights.

When the process of police crime investigation starts by way of a skiing the accused to answer the complainant or accusation made against him based on article 27(1) from what stated in the law, which means that intentionally or being negligent investigators do not in form to the suspects their constitutional and legal rights which they are supposed to protect. They do not make the accused aware of his right and tell him his right not to be complied to answer and that any statement he may choose to make may be used as evidence at the trial stage. This the process of interrogation is takes place at the time of pretrial detation.³

In addition to that, these accused rights are, though not informed to the suspect, written on the paper before suspected person reached police station. Police investigator's doesn't read or inform the accused about the right that the accused has if accused confess a criminal offence, investigator bring him to lower level city court according to article 35 of the criminal procedure code.

However, the accused deny the charge s against him, at the court, police investigator who makes him appear at court can get information about the denial of the accused. After the police retention about the denial of the accused. In different ways and after getting confession they can take him back to court and make his confession registered. We can observe from the above practice the accused confession could be doubtful and sound able also at the process of pretrial the right of individuals and constitutional rights breaches.⁴

From the interview point of view the police investigate on officer sometimes even before the completion of gathering evidence arrest the suspected person in this case without suspicion of the arrest person and stay in police custody for a long period by brought the case to a court, more over the courts also grants for repeat time without reasonable question of police crime investigations.⁵

The other problem regarded to the crime investigation department is situation under the investigator officer may under criminal procedure code of article 28(1) where the offence committed or complained of was not punishable with rigorous imprisonment as a sole or alternative punishment, or that the summoned or arrested person has committed the offence complained of the investigating police officer may in his discretion release such person on his executing a bond with or without sureties that he will appear at such place, on such day and at such time fixed by the police.

From the interview point of view the police crime investigate or sometimes even after the completion of the process of investigation not release those bail able cases, or without collecting sufficient evidence about the suspected person committed the crime arrest them and also not use the given discretionary power according to article 28(1), the police brought the case to the court and request remand, the court grant a remand. As a researcher's opinion of view the police crime investigation officers didn't able to proof the facts within short time. We are able to see from the case clearly indicate that the violation of individual rights.

The present practice of police crime investigation in some area of police stations, that an individual police officer holds a large number of files or cases at hand a time, and yet he or she is required by law to conduct the investigation with reasonable speed.

However due to the implacability of conducting a large number of cases, even with most diligences, it became inevitable to take much time to complete investigation of an individual case even if such time is not necessitated by the investigation of that specific case. Therefore, the whole points mentioned in the above at the time of pretrial detention by way

of creating detainees affect the constitutional rights of the suspect detention persons.

When we look the interview of police crime investigation about the arrest or detention person mostly focus not to exceed the strict forty-eight hours that is the first obligation and option but second option so soon after as local circumstances and communication permit and the remand municipal court distance not further than four Km radius, so respect the first option ignoring the second alternative through it is subjective by its nature and excess of criminal reports cases without over crowding. So , fringe to exceed the clearly remarkable forty eight hours, through at nine o'clock may brought before a court the day after tomorrow morning eight o'clock that fits the exact forty-eight hours and if the case is bail able the court decide the release of the sup section on bail.⁷

4.2 Public Prosecutor

Public prosecutors have a power and duty to protect constitutional right of individuals accused as it made to be the duty of every official to ensure the observance of the constitution. In addition to that only public prosecutor shall be diligent and cautions in exercising these powers. After receipt of the investigation reports of the police they prosecute the accused person or order for a preliminary inquiry or further investigation.

The prosecutor is supposed to make all determinations, and fill the charge with in fifteen days of the receipt of the police report. However the practical reality is different from what stated under the law.⁸

The aim of prosecutors should not be prosecution of innocent person, and before they decide to charge the accused they have to check the whole evidences.

When we look to the interview point of view particularly the prosecutors do not vested the accused persons they are arrested in the police custody and they cannot prove the day to day compliant of at the accused in the police custody.

At time of examining the file sent to them from the police, they may came across confessions at this time the prosecutor cannot face problem of identifying the falseness or truth ness of the confession and other evidence , he cannot decide whether the police have used force to extract the confession. But we don't mean that the act of the prosecutor.⁹

Even though the power and duty of public prosecutor or practically they effect what is stated under the law because a large number of files or cases at hand and they

presume as a guilt before the court decision. Sometimes the public prosecutor send back the file with article 38(1)© of the criminal procedure code to the police but that the document the reason for sending back is still attaché.

The whole problems with regarding to from the researcher point of view the public prosecutor directly or indirectly affect the right of the pretrial detention of the person.

4.3 The court

The courts have a power and duty clearly given in our constituent and other laws. The court to protect the right of the suspect person, it is constitutional equipment to bring the detained individual within reasonable time to the nearest courts. They have to ascertain the legality of the arrest, and it cannot enter into the business of weighting like trial.

From the interview point of view practically different from that are stated under the law, in some courts individual person to the court after lapsing 48 hours then the court grant remand without any order with regarding the constitutional right of the arrested person similarly the court doesn't ascertain in the legality of the arrest of the suspect person.

The court must allow the detention of the person unless there are legal grounds to deny bail or it is necessarily till the completion of the investigation but practically the court allow for police officer without good reason to stay the suspect in police custody more over, deprived the right of bail and granted remand for reputed time. By looking the above basic principles we are able to assess the municipal courts practice.

Let us take the first example, Kolfe Keraniyo Sub city police investigation department Vs Yenaneh Yemam.¹⁰ the case was theft. A person was under the control of police custody from the suspicion of stolen 100,000 Birr. The Kolfe keraniyo sub city police investigation department rather than gathering evidences with in short time arrest Ato Yenaneh Yimam in custody. When the investigation police officer request remand the Lideta municipal remand bench grant's remand for four occasions forty eighteen days in each occasions and lastly one week, totally for two months and seven days stay in police custody the police also request remand for five time lastly the court grant bail. From the researcher's opinion when we look in to the investigation proceeding five courses of remand that the accused arrested without reasonable doubt or having sufficient

evidence we are able to see clear picture of violation of constitutional bail and liberty right of an individual with relation to the pretrial detention procedural in addition to that the police violate the universal recognized human rights instruments.

From the interview of the gulela remand bench sight such kind of the problems faced because of the over load or bulky files from the police and unable to examine each, in addition to that the investigation office having bulky cases and capacity problem with number of the suspect is not balance and considered by courts.¹¹

From the researcher opinion, in the above case the lack of control or chewing and balance by courts. Granting what was requested by the criminal investigation police officer without the clear grounds of remand and development of investigation in due permitted period is very dangerous and incurs abuse of power by violating constitutional human right principles. That is creates a big dilemma or doubt in the main objective of the judiciary like “goring the notion of bail during remand period takes place the time of pretrial stage, and also the arrest or detention procedure is in accordance with the law or contrary to the law.

Conclusion and Recommendation

1. Conclusions

In Ethiopia legal system, the issues in the pretrial detention in lights with human rights are expressed in the FDRE constitution and Ethiopia criminal procedure code. The above mentioned laws and other international instruments confer the right and duties of the arrested person in the process of criminal justices at pretrial stage the pretrial detention of the suspect remain in custody has the right to bail, speed trial, the right presumption of innocent until proven guilty and the right to counsel and communicate with others, similarly, there is a protection of peace and order of the public in these legal instruments.

The very purpose of criminal can be described as rule designed to balance the government function of maintaining laws, order, and protecting the right of citizens. Moreover, the criminal law condemns certain acts to be criminal law and imposed punishment on those who breaks its rules. It rules of criminal law are violated the responsible government organs began to act against the law breakers.

The main actors in the criminal justice system discussed are the police prosecution and courts. The organization of the organs of the government is affected by the legal tradition of a country. The role of victims also varies from jurisdiction to jurisdiction.

Where an offence is committed by an individual the police precede with the investigation and collect relevant evidences that may help to prove the relevant facts in relation to the offence Investigation is the required to substantiate the information pertaining to the commission of crime.

The police have to undertaken investigation to the suspect as well as witnesses gather real evidence, such as exhibit fingerprint etc. in this process the police refrain from illegal activities leading to the rebuttal of the evidence in court. It has to avoid the use of the'' third degree'' to elicit information from the suspect and witnesses. Otherwise, the fate of evidence collected the rights of persons might have rejection. In addition to that the police could face administrative, civil and criminal sanctions

While taking information as well as examination of witnesses, the police have to act in such a way that it is possible to protect the right of innocent persons. To the extent possible, the informant or the witness has to explain the fact taking any kind of responsibility that might follow to achieve this propose, the police have to register the fact known to the informant or the witness acquired through the five senses. Thus the police have to handle criminal investigation with due care not to by pass legal restriction in place to the protect the rights innocent persons and suspects. Attention has to be given for both the means and the end of the criminal justice system. The crime investigator also a problem as due to lack of sufficient number and competent criminal investigators and over flow of the criminal cases, the crime investigators are unable to address issues, on time and they are expected to complete the investigation promptly. As a result they obligated to request as remand and shift. Its burden to court.

The court with or without understanding the institutional and personal problem of the police and with out examining the grounds and procedures of remand tend to grant unnecessary remand or deny the necessary remand with in this activity of administration of justice the invoked as a constitutional and international human rights principles are violated.

After the police, it is up to the public prosecutor to scrutinize the police investigation file to determine the person of sufficient evidence to prove guilt. The projection office should not rush to form charge. The available evidence has to be evaluated. If they are point not clarified a further investigation has to be ordered.

The other main problem in the partial detention is the law itself. The criminal procedure code articles 59 relies on three options the first one is granting the necessarily bail, the second one is granting for precautionary measure and the third one is for the competition of the investigation. If a courts grant bail and the suspect is unable to produce surety or bail band some judges obligated to grant remand fore waiting bail and other judges at the moment granting bail terminate or closed remand in file. And it be comes open for interpretation and different application.

In general the inconsistency in the application of the detention or arrest procedure through the pretrial procedure through the pretrial procedure the vague and open nature of the remand provision and the application of the police integration and the confession

of the person in the police and the court so the law and the illegal practice contribute for more problems and violation with regard to the right of the individual under the partial detention and in capacity to protect constitutional and human right instrument.

2. Recommendation

When we look at the partial detention in light with international human right instruments the legal and practical problem in Addis Ababa municipal courts and police crime investigation departments, it is more serious with the main causes of enforcement organs and lacuna of a remand provision. That leads with the improper interpretation and application of the law. In order to address some of the problems and to alleviate the existing problems in the legal framework of the country, the writer has tried to recommend the following

The main objective of the administration of the justice are protecting individual's rights as well as securing the society at large. Although the constitution grants fundamental rights of an individual and the public at large the administration of justice has to balance those two competing basic interests.

At the time of pre trial detention firstly, the process of crime investigation starts by way of asking the accused to answer the complaint or accusation made against him based on article 27(1) the criminal procedure code the investigator's must be tell to the suspect the right to inform by the investigator practically do not inform to the suspects their constitutional and legal rights.

The purpose of pre trial detention is used for gathering evidence and for the completion of investigation as provided under article 59(2) of the criminal procedure code. The other purpose as in article 59(1) seems that remand is for trial but the practice shows that it also provides chance of waiting for bail bond.

The police investigators and public prosecutor's now they started doing jointly, but they are not applicable in strongly manner, and also, the public prosecutor must be visit the suspect. They are found in police custody for the purpose of elevating the day to day complaint of the suspects.

All police crime investigator's before coming to the profession they must be take training, learned about human rights and other laws of the country with relation to the process of the crime investigation. in addition to that the whole police investigator's there must be take additional skill development training with regarded to the systematic way of investigation and who to protect the rights of detention or arrest person through the partial stage of criminal justice system.

The other main problem is institutional as well as individual incapacity of administration of justice. So, the government has to be responsible for the organizational stricture and to build their capacity in providing competent and sufficient man power which are involved in the processes of administration of justice. To balance the number of cases with that officials in the institutional number of who are competent to discharge their respective duty in compliance with constitution in order to balance the individual interest with that of the public.

CHAPTER ONE

ENDS NOTES

1. The Ethiopian criminal procedure code, 1961. Article 59(2),63(2)
2. JOEL SAMAH, *criminal procedure*(4th end)
3. STANLEY Z. FISHER, *Ethiopian criminal procedure*. P 140,141
4. TADESSE GESSESSE, *pretrial detention in Ethiopia law in light of human rights , the law and practice* (unpublished 1997) p.17
5. Ibid. p.19
6. BRYYA A. grant Black's law dictionary (west publishing 8th ed,2009
7. JOEL SAMAHA, *criminal procedure* (4th ed) p.518
8. Ibid
9. Ibid
10. Ibid
11. ADERAJEW TEKLU AND KEDIR MOHAMMED , *Ethiopia criminal procedure teaching material* ,2009 .p

CHAPTER TWO

END NOTES

1. Steven M.cox and Jhon E.wade , *The criminal justice Network*, P.162
2. Ibid
3. Robert M.Anderson, LLB, *Forrest cool law, Review criminal procedure*, 1959,P.1
4. Ibid. P.2
5. Aderajew Teklu and Kidir Mehammed, *Ethiopia criminal procedure, teaching material*, 2009,P.77
6. Ibid P.78
7. Ibid
8. Ibid
9. Joel Samaha, *criminal procedure* (4th ed) P.11
10. •• •••• ••• ••••• ••••• ••••• ••••• ••••• ••••• ••••• 2000 •/•
11. Universal declaration of Human Right (UDHR) article 11
12. International Convention on civil and political right (ICCPR). P.14
13. Joel Samaha, *Criminal procedure*. (4th ed) P.37
14. Ibid P.38
15. Ibid P.111
16. Ibid P. 37
17. Barton L.Ingaham, *the structure of criminal procedure law and practice of France, the soviet union, china and the United States* (1st ed New York, 1987) P.37
18. Ibid P.45
19. Ibid P.12
20. Ibid
21. Aderajew Teklu and Kidir Mohammed, *Ethiopia criminal procedure, Teaching material*, 2009, P.79
22. Ibid 80

23. Ethiopia criminal procedure code (1961) article 11 and article 13
24. St.Mary University college distance education, criminal procedure module, P.150
25. Ibid
26. Steven M.cox and John E.wade, the criminal justice network, an introduction, P.150
27. Ibid
28. Tadesse Gessesse, pretrial detention in Ethiopia law in light of human Right: law and practice (Unpublished material 1997) P.23
29. St.Mary University College education criminal procedure module, P.150
30. Ibid
31. Aderjew Teklu Kidir Mehammed, Ethiopia criminal procedure teaching material,2009, P.147
32. Ibid
33. Tadesse Gessesse, pretrial detention in Ethiopia in light of Human Right: law and practice (Unpublished material 1997) P.23
34. Ethiopia criminal procedure code (1961) article 159(1)
35. Ibid article 74
36. Ibid article 93
37. Ibid article 59(1)
38. Ibid article 59(2)
39. Ibid article 28
40. Ibid article 59(3)
41. FDRE constitution article 21
42. Aderjew Teklu and Kidir Mehammed, Ethiopian criminal procedure teaching material, 2009, p.149
43. St.Mary University College distance education criminal procedure module.
44. Ibid
45. Joel Samaha, criminal procedure (4th ed) P.24
46. Steven M.cox and John E.wade, the criminal justice network an introduction, P.163
47. Robert M.Anderson, LLB, Forrest cool, law review criminal procedure, P.23
48. Ibid, P.24
49. Ibid, P.23
50. Ibid, P.23
51. Steven M.cox and John E.wade, the criminal justice network an introduction, P.163

52. Ibid, P.24
53. Ibid, P.163
54. Ibid, P.164
55. Stanley Z.Fisher, *Ethiopia criminal procedure*,
56. Ibid
57. Ibid
58. Steven M.cox and John E.wade, *the criminal justice network an introduction*, P.164
59. Aderjew Teklu and Kidir Mehammed, *Ethiopia criminal procedure teaching material*. 2009, P.162
60. Ibid

CHAPTER THREE

END NOTES

1. Universal declaration of human rights (UDHR), 1966, Article 9
2. Ibid, Article 10
3. Ibid, Article 11
4. International covenant of civil and political Right (ICCPR) 1966,Art 9
5. Ibid Article 10
6. Ibid Article 11
7. Ibid Article 14(2)
8. Convection on the rights of child (CRC) Article 37
9. Ibid Article 40
- 10.convection against Torture and other cruel in human or
Degrading Treatment or punishment, Article 15
- 11.Africa (BANJUL) charter on human and peoples Right
(ACHPR) Article 6
- 12.Ibid, Article 7
13. Standard minimum Rules for the treatment of prisoners,
Article 7
14. Ibid, Article 8
15. Ibid , Article 84
16. Ibid , Article 85
17. The FDRE constitution, 1995, Article 9
18. Ibid, Article 13
19. Ibid, Article 17
20. Ibid, Article 18
21. Ibid, Article 19
22. The Ethiopia criminal procedure code, 1961, Article 23

23. Ibid, Article 26
24. Ibid, Article 27(2)
25. Ibid, Article 28, 29(1) (35) (2), 61 and Article 172(1)
26. Vagrancy control proclamation, (No, 384, 2004) Article 6
27. Ibid, Article 7
28. Ibid, Article 8

CHAPTER FOUR

END NOTES

1. Interview Assistance sergeant Sirak Haylu
2. Kolfe keranyo sub city police investigation vs. Mukemil
3. Interview assistance sergeant Tamirat Alemayew
4. Interview Chief sergeant Goytom Halefom
5. Interview Chief sergeant Selomon Asrat
6. Interview deputy inspector Semere Weldu
7. Interview Chief Sergeant Tesfaye Zeberga
8. Interview Ato Ashimawi Seyifu , Federal prosecutor
9. Interview Ato Eegest Chanyalew, Federal prosecutor
10. Kolfe Keranyo sub city police investigation VS Yenaneh Yimam
11. Interview Ato Danale Eshetu A.A Municipal Court Judge

Bibliography

- Criminal procedure for Justice professional (Jhon N.RFDRICD)
- Ethiopia criminal procedure by (Stanley Z.Risher)
- St,mary university college distance education, criminal procedure module
- Universal declaration of human right declaration
- International convent of civil and political right
- Federal constitution
- Remand related legal problem in Addis Ababa municipal court case created analysis by Zelalem W/mariam, (seiner thesis)
- The criminal justice network an introduction (Robert M.anderson)
- Ethiopia criminal procedure teaching material (Aderjew Teklu and Kidir Mehammed)
- Pretrial detention in Ethiopia in light of Human right law and practice (unpublished material)
- Convention on the right of child
- Africa character on human and peoples right
- Vagrancy control proclamation (No.384/2004)