

ST. MARY'S UNIVERSITY
COLLEGE
FACULTY OF LAW
LL.B THESIS

POLICE INVESTIGATION AND RELEASE
ON BOND UNDER ETHIOPIAN LAW: -
THE LAW AND PRACTICE IN THE
REGIONAL STATE OF OROMIA

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ADDIS ABABA, ETHIOPIA

July, 2008

**POLICE INVESTIGATION AND RELEASE
ON BOND UNDER ETHIOPIAN LAW: -
AND PRACTICE IN THE REGIONAL
STATE OF OROMIA**

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Submitted in Partial fulfillment of the
requirements for the Bachelors of Law (LL.B) at
the faculty of Law, St. Mary's University College

Addis Ababa, Ethiopia

July, 2008

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

Name _____

Signature _____

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ACKNOWLEDGEMENT

Most of all thank that almighty God for giving me all the strength to accomplish one of my long set projects and for making me so though those wonderful experiences in the past four years.

My advisor Ato Akililu Tesfaye deserves very special thanks for high tireless patience ingoing through this thesis and provide invaluable asset that contributed inspiring me to turn around and rethink from diverse perspective it is with sincere and out most pouring appreciation and respect that I acknowledge his unfailing support and encouragement.

Like every other time, the real and deepest thanks are due to my lovely brother's Kasahun Merga. He has borne the burnt of my travails over the past four years and endured the inevitable pressures and has done so in a loving, caring and passionate manner.

My hear felt gratitude also goes to my brother Abebe Merga, my father Mersa Lema, my Mother W/ro Zenebech Baji, my Sister Mestawat Merga, W/t Roman Asrat and Belaw Aschalew for their material and moral support in accomplishing my college life.

Great thanks would deserve to my all friends learn together in college and who have assisted me both materially and morally. I am truly overwhelmed by their love and concern in which I enjoyed all my life.

Last but not the least, my special thanks and deepest gratitude goes to Tigist, Emebete for patiently and seriously typing and editing this paper.

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INTRODUCTION

Criminal investigation involves that the gathering of facts for the purpose of protecting citizens and solving crimes. Investigation is a fact-finding process normally undertaken by the police, for the establishment of the occurrence of non-occurrence of an alleged offence.

The police investigate the offence. The commission of offence may report to the police by accusation or complaint, the police start to screen out the crime according to the law providing.

Police is the people who work for organization that tries to catch criminals and checks that people obey the law. Investigation is processes of trying to find out are the details or facts about something in order to discover who or what caused it or how it happened.

The police to investigate the crime, they may arrest search, seizures, interrogate and etc. They may also release on bond an arrested person. Release on bond is one of the rights of the suspected person. The criminal procedure law is providing the right to such person.

The main purpose of law is to protect human rights against any violation. Criminal procedure is one of the branches of law regulated to the maintenance of peace and security in the society. The main aim of criminal procedure is to protect the individual personal liberty.

My thesis is designed to show the law and practice concerning the police investigation and release on bond in the Oromia Regional State Special reference to West Shawa zone, Ambo, Dandi and Ejere Woreda. The information's for my thesis are gathered from that woreda police officer.

My paper is organized in three chapters. The first chapter deals concerning the General overview of police investigation in criminal cases. This chapter contains the definition of police investigation, historical development of investigation of polices. And purpose of police investigation. The second chapter deals the right of an arrested person (Released on bond as one of the right of an arrested person), contains of different right of arrested person.

The third chapter is including the police investigation and release on bond under the regional state of Oromia. It contains different Sub-Section; it is the practical problems of police investigation and the law of Ethiopia and the problems of law and practice in releasing of an arrested person with the criminal procedure and the FDRE constitution. The conclusion and Recommendation also included in this chapter.

CHAPTER ONE

General overview of police investigation in criminal cases

1.1. Definition of police investigation

Police investigation is consisted of two words, i.e. the police and the investigation. So, I would explain the definition of both words as follows from different dictionaries and materials.

Police is the people who work for organization that tries to catch criminals and checks that people obey the law.¹ Or to use police officers to control an area or event.² To check that organizations or people behave correctly.³ It is the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.⁴ It is one of the law enforcement organ.

Investigation is the process of trying to find out all the details or facts about something in order to discover who or what caused it or how it happened.⁵ It is a fact finding process normally undertaken by the police, for the establishment of the occurrence or non occurrence of an alleged offence.⁶

In generally, police investigation is one of the organ of government who gather information to strength the evidence when the criminal offences was committed. It is an authorized group of people by the government to finding fact by investigating crime in systematically ways, when the law was violated by different person.

1.2 Historical Development of Investigation of Police.

Criminal investigation involves that the gathering of facts for the purpose of protecting citizens and solving crimes.⁷ The police are the first line of defense against crime, despite the fact that lots of criticisms are directed against them because of the method they are.⁸

The historical origin of the police, as law enforcement agency has along past though very simple and unsophisticated in organizational setup.⁹

In Ethiopia, there used to exist traditional modes of investigating a crime. But currently the traditional approach is substituted by modern methods (approach) of criminal investigation. Both approaches are discussed below.

1.2.1 Traditional Approach

There have been several criminal investigation mechanisms implemented in the various parts of Ethiopia. Those different mechanisms served the time and the society as modern techniques do these days. Although some of those techniques have been abusive, the society of the time abided them due to absence of any other better means and the law level of consciousness. The most commonly and widely exercised techniques were affersata (commonly inquiry) and lebashai.¹⁰

A. Affersata (communal Inquiry)

The term 'Afersata' is said to have been taken from Oromigna word 'Affersa'. An Oromigna word Affersata may be related to the verb 'Affersa' (to fan) , which is applied to the process by which bits of husks are separated from Kernals of corn. The institution is also known as 'auchachigne' in Shoa and Wollo provinces, and as it was in Gojjam province.¹² Affersata is the typical Ethiopian method of crime investigation originated before the coming of Christianity to Ethiopia. And Affersata or auchachigne is a method of crime investigation of long standing and was used almost up to the end of the half of the 20th century. When crime is committed and the culprit is not discovered, the people of the area were made together in an open field or in an enclosure, and were made to confess, confidentially, under oath, to the king's functionaries. In the Afersata, the statement of the people were accepted to be true as long as they were given under oath, as marab put it, on the basis of "Vox Pupuli Voxdei" that is the voice of the people is the voice of God.¹³

The people could be kept for days and nights if the suspect or suspects were not identified. However, Emperor Haile Selassie issued a decree in 1933 to minimize the hardship the people were suffering during the proceedings of the Affersata.¹⁴

It was to be held only on Saturdays and Sundays. The judges were also to hold the affersata at an appropriate place so that the people will not have to travel long distances from their areas of residence. Members of a family should not be made to appear for the affersata at the same time.¹⁵

Affersata has a history of long time. It is said to have begun to function as institution for criminal investigation during the reign of Emperor Adyam saged Iyasu, in 1781.¹⁶ It was serving again aid to the police force of the Emperor in detecting thieves. In the later times the institution served in the detection of any criminal, since its whole purpose has been discovering the identity of the offender. The investigation techniques through 'affersata' could be inferred in two ways. When the inquiry is short after the commission of the offence. In cases where the inquiry is immediately after the commission of the offence all the neighbors in the village of the victim participate in the detection process.¹⁷

The inhabitants block all the outlets of the village. If they find the offender, in case he has not run far from the scene of the crime, they would arrest him by trapping in narrow passage. But if the villagers fail to succeed in catching the offender, then they all lead to the scene of the crime in all directions. All the scene of the crime they would search for traces left by the offender during commission of the crime.¹⁸ If they find traces, they would elect elders to investigate, in to the case. In those the trace found is a foot impression the elders would inquire for a person who is suspected from among the

neighbors. They inquire the grounds for the suspect and when they find the grounds to be reasonable, the elders would require the suspected person to step beside the found foot impression. If the two foot impression are found to be similar, then the elders would request the suspected person to call two reliable witnesses from among his relatives who will testify his innocence by taking an oath.¹⁹ If the witnesses testify by taking an oath, then the suspected person would be discharged of a charge.²⁰ But if the witnesses become reluctant to testify then the suspected person would be held liable.

In case no traces are found at the scene of the crime the neighbors engage in the inquiry, through *affersata*. All the villagers get summones together in a particular area by a local official. The gathered people elect judges to administer the *affersata* from among the villages.²¹

All persons present at the 'affersata' give testimony under oath to the elected elders. The persons would use anonymous denunciation and testify what they saw and heard by referring to their informers as "birds" expression originated in an indigenous saying "that even in a very lonely forest there is either a devil or a bird to see you." ²² The *affersata* did not disperse until the identity of the offender is discovered. It would not be allowed even to milk cows or to suckle children.²³ Desire to go to forms and house hold would force the people to detect the offender, since they stayed for a long time at the gathering suffering from hunger and boredom. Nevertheless such a desire could force to make false accusation and offenders could take advantage of the anonymous reporting by accusing innocent persons or their enemies.²⁴

Gradually two or three persons from among the gathered villagers would throw papers in front of the elders. The papers happen to contain the name of the offender(s). They get opened and read to the villagers. The offenders get arrested and taken to the police, and that leads to the end of the *affersata*.²⁵

B. Lebashai

In old times, the most often committed crime, probably, has been theft. The society has implemented various mechanisms to detect out thieves. One of those mechanisms was *lebashai*(thief seeker).

Baharu Zewde described it as, "..... a whimsical traditional model of detection of criminals, in which a young boy would be given a powerful drug and let loose in the neighborhood, the unfortunate owner of the house where the boy collapsed would be declared the culprit.

The *lebashai* which originated in Shoa, around the 18th century, played an important role until it was abolished by Emperor Haile Selassie because it was unscientific and could be misused to wrongly or mischievously accuse innocent people of committing offences.²⁶ The *lebashai* as an institution to investigate crimes of theft functioned to

discover the wrong doer or any fruit of the crime through the administration of the chief thief seeker.

A man who is affected by crime of theft would go to the chief thief seeker and complain in the theft. The chief thief seeker would send a boy often to fifteen years old who never had sexual intercourse with a woman, accompanying the victim to the scene of the crime.²⁷

1.2.2 Modern approach

In its modern sense investigation is to be defined the process of inquiring in to or tracking down through inquiry. Having seen the definition, the development in technology is changing our world from day to day, and this change brought a new development on the thinking of human being, with the change of its surrounding.²⁸ And when society develops crimes also became more complex, in order to control the said crimes and to screen out the real offender from that of the innocent one we have to follow and adopt modern investigation approach.

Under modern conditions it is absolutely necessary that every system for the administration for criminal justice be provided with an efficient process of screening the type and the number of cases which should receive a trial. This is true for two reasons.
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An individual is definitely affected by being forced to stand trial for a crime, the social and economic pressures brought to bear upon the defendant in a criminal trial are real and substantial.³⁰

All systems must, therefore, strive earnestly to assure that the glaring light of public opinion will be focused only upon those against whom sufficient evidence exists to warrant a public trial of the charges.³¹

And it is easier to charge a person with the commission of a crime than to prove the charge under the strict requirements of the law, and the state must assume the responsibility of weeding out, at the earliest possible time, those charges which are in capable of proof.³²

Secondly, there is the very practical problem of assuring promptness in the administration of criminal justice with the increase of crime in all parties of the world, it is necessary to revive the trial courts of the impossible burden of trying all charges of the commission of a crime.³³ **1.3 Purpose/ Objective/ of police Investigation**

The police are the first line of defense against crime, despite the fact that lots of criticisms is directed against them because of the methods they use. The effectiveness of the criminal justice system will greatly depend on the quality of initial work done by the police. The criticism that is usually directed at the police concerns the fact that policemen go beyond their legal limitations in carrying out their duties.³⁴

According to the criminal procedure code article 9 provides that: - “the duties of the police”, the police shall be:-

- A) “Preserving the peace and preventing the crime;
- B) Discovering the commission of offences;
- C) Apprehending offenders and;
- D) Prosecuting offences when members of the police are appointed as public prosecutors.”

The law of criminal procedure is concerned with the proper selection of offenders to bring them to justice. In this process, investigation is the process of selecting of offenders and manifestation of truth in a rational and systematic way supported by sufficient evidence. It involves the gathering of evidence in support of the suspicion that a certain crime has been committed by the alleged offender.

Investigation is conducted by the police. Once the police have known or suspected the commission of an offence, he shall conduct investigation in accordance with the provisions of the criminal procedure code of 1961 and the FDRE of constitution.

One form of investigation is an interrogation. Its purposes are establishment of the suspect’s identity and address, and ascertainment of his position (admission or denial) in relation to the offence for which he is suspected. It ensures whether he is the real suspect and identifying his real address for further proceeding (like in the case he is released and wanted again.)

In every country, the crime is common. If the society is there, the crime also exist within the society is present, the commission of offences is also present. So, after the commission of the crime committed, there is necessary control the crime was to preserve the peace and security of public. One of the authorities to screen out the crime is the police officers.

According to the 1961 criminal procedure code article 22(1) provides that:- “whenever the police know or suspect that an offence has been committed, they shall proceed to investigate in accordance with the provisions of this chapter.” The police have a duty to investigate the crime. The police has also record the statement of the evidence of the accusation or compliant, summoning of accused or suspected person, arrest, interrogate, examine of the witnesses, search and seizures and report the investigation file to the public prosecutor. So, all I mentioned above is the function of police officers, which to investigate the crime from the innocent person.

In the next section I will be discuss, the starting investigation crime to get the truth solution before the law.

1.3.1 Starting Investigation Crime

A police begin investigating crime, when the information is reported to the police. The information is reported by two ways:- These are, accusation and compliant and also personal observation (Flagrant offence). After the information is reported, the police has a duty to start investigate crime.

1.3.1.1 Accusation and Compliant

A. Accusation

Accusation is one of the first steps that are taken to begin a criminal investigation. When a person reports any offence to the competent authorities with a view to criminal proceedings being institute, the person is said to have made an accusation. Therefore, accusation means informing the competent organs of government regarding the commission of a crime so that investigation could be made. Article 11 of the criminal procedure provides that how an accusation is to be made.

Accordingly, any person has the right to report the commission of any offence whether or not he has witnessed it, with a view to criminal proceedings being instituted.³⁵

The commission of an offence can be reported by accusation either in right or duty forms. Therefore, any person has a right to report the commission of any offence to the law of enforcement organ according to article 11 (1) of the criminal procedure code (Cr.P.C).

With the exception of article 11(1) Cr.P.C, any person has the duty to report to the police (the law enforcement organ or the concerned authority. Article 11(2) of the criminal procedure code provides that:- “there shall be a duty to report in the cases provides in the Federal Democratic Republic of Ethiopian criminal code mentioned in Article 254, 355, and 443.”

Any person has the duty to report (inform) the committed crime to the authority unless criminal liable according to the provides. Article 254(1) of the FDRE criminal code provides that: - “whoever, being aware that a crime under Articles 241-246, 252-258 has been committed or attempted or is being prepared, fails to inform the authorities thereof, or doesn’t to the best of his ability try to prevent the crime from being carried out and to bring the criminal to justice, save in cases of force majeure of manifest impossibility, is punishable with rigorous imprisonment exceeding five years.”

Article 335(1) of cr. code, of FDRE provides that: - “whoever, being aware of plans to commit or of the commission of muting or desertion, fails, except incases of force measure, to report, them to the authorities or makes no attempt to prevent their commission or to cause the criminal to be arrested, is punishable with simple imprisonment, where the crime of mutiny or desertion is at least attempt, or in serious cases, with rigorous imprisonment not exceeding three years.”

Article 443(1) of cr. code of FDRE provides that.¹¹ whoever, without good cause:-

- A. knowing the commission of, or the identity of the perpetrator, of a crime punishable with death or rigorous imprisonment for life, fails to report such things to the competent authorities; or
- B. is by law, or by the rules of his profession, obliged to notify the competent authorities in the interests of public security or public orders of certain crimes or certain grave facts, and does not do so, is punishable with fine not exceeding one thousand Birr, or simple imprisonment not exceeding six months.”

The law requires further that the accusation be reduced into writing by the person (to the police, the public prosecutor or any concerned authority as has been envisaged under Article 17 of the criminal procedure code and it provides that:- to whom the accusation is made. It shall be read over to the person who is making the accusation and signed and dated.”

B. Complaint

Criminal investigation begins by complaint where the offence committed is punishable upon complaint. Some offences are punishable upon complaint by the victim or by any interested person. Others are punishable without the need for the victim or an interested person to make a complaint. The cognizance of the commission of a crime by the organs of administration of justice by accusation is sufficient to begin prosecution where the offence is one that does not need complaint to punish the offender.³⁶

Complaint is a formal request made by the injured person or any other interested person for a criminal investigation to be made where an offence punishable upon complaint is committed.³⁷

The 1961 Criminal procedure code Article 13 provides that “in the case of offences which under the law may be prosecuted and punished only upon a formal complaint by the injured party or those deriving rights from him, the provision of the criminal code of the Federal Democratic Republic of Ethiopia Article 212, 213 and 764 shall apply.”

Article, 212, provides that: - “where the law in the special part of this code or in any other legislation that complements criminal law provides that a crime is punishable upon complaint, no charge shall be instituted against the criminal unless the injured party or his legal representative institutes a complaint.”

Article, 213, criminal codes also provide that: - “The complaint must be lodged within three months from the day when the injured person knew of the criminal act or the criminal.

Upon expiration of this period of time he shall be deemed to have renounced so doing unless he was materially incapacitated from acting, and the complaint shall no longer be entertained.

Where a complaint is not made owing of the aforesaid ground, the period of three months shall run from the day on which the incapacity ceased to exist.”

Article 765 new criminal codes provides that: - “The provisions concerning the suspension of the pronouncement of sentence or the enforcement of the penalty as well as those regarding conditional release reason of their formal nature and the fact that the punishment imposed should be uniformly and rapidly enforced.”

It is the application of an injured party with a view to criminal proceedings being instituted against a person committing against him/her crime private nature.³⁸

In relation to crimes punishable only upon complaint crime will not be investigated and the offender will not be justice, unless the injured applies to that effect.

1.3.1.2. Flagrant offence

There is no definition in the criminal procedure code of Ethiopia for flagrant offence. But in the code there is only the requirement to constitute a flagrant offence. According to Article 19 of criminal procedure code an offence shall be deemed to be flagrant where the offender is found committing the offence, attempting to commit the offence or has just committed the offence .⁴³ And Article 19(2) of criminal procedure code, an offence shall be deemed to be quasi flagrant when, after it has been committed, the offender who has escaped is chased by witness or by members of the public or when a hue and cry has been raised.⁴⁴

The provision of the criminal procedure code article 19, the writer of this paper can understand that two types of offences i.e. either flagrant offence (Article 19(1)) and quasi- flagrant offence (Article 19(2)).

An offence is flagrant when the offender is caught red handed committing the offence. It could happen in any of the following requirements:-

- i) When the offender is found while committing the offence, here, and the offence has began but not yet completed. The offender is still executing in the commission of the offense.⁴⁵
- ii) When the offender is found attempting to commit the offence. Here, the offender has made all the necessary preparation to commit the offence and he is about to commit it but it is not completed. It could have been started but the offence is not get fully committed or at least the intended result is not achieved.⁴⁶

- iii) When the offender has just committed the offence. Here, the commission of the offence is completed and the offender is found just then and there.⁴⁷

The other categories of offence which are not actually flagrant offences but which are assimilated to them are provided under Article 20 of the criminal procedure code. Accordingly an offence is considered to be flagrant when:-

- i) the police are immediately called to the place where, the offence has been committed.⁴⁸
- ii) a cry for help has been raised from the place where the offence is being or has been committed.⁴⁹

In the assimilated cases of flagrant offences, the offender may or may not be found in the vicinity where the offence has been committed. The requirement in the first case of assimilated case is the time within which the police were called to the place. If the police have been called immediately after the offence has been committed, then the offence will be considered flagrant.⁵⁰

1.3.2. Summons and arrest

i, summons

Summons is a written order served to an alleged offender or witness commanding him to appear before a police officer at the police station for the purpose of investigation. It is a means by virtue of which the investigating police officer communicates an alleged offender or witness to make himself available at police station for investigation.⁵¹

When the commission of an offence is reported to the police, by the accusation or complaint, the investigating police officer has the duty to collect information regarding the offence and the offender. To collecting the information, the police officer issues written summons to the alleged offender ordering the latter to appear before the police station. According to article 25 of the criminal procedure code and it provides that: - "The police officer issues summons only when he has reason to believe that a person has committed an offence. Such reasons could be an accusation or complaint made against the person."

Summons could also be issued to call and examine any person or witness likely to give information on any matter relating to an offence or an offender.

"In many other jurisdictions the power to issue summons and arrest warrant is reserved to the court. Likewise it was the power of the court to issue summons to the suspect prior to the promulgation of the code"⁵²

If the accused person is not in custody, the court upon receiving such complaint may issue a summons or warrant to compel the attendance of the accused person before court.

There are no developed literatures on the area and it does not seem to be clear what the practical significance of the distinction between a summons and an arrest warrant is. But one can reason from the historical circumstance of the time that it was drafted presumably by British personalities taking after the British or her dependencies laws. Summons, whoever issues it is issued generally for the purposes of inquiry to make the concerned person appear. Summons does not have arrest in mind. But the person may appear either before the police or the court whichever is conducting the investigation.⁵³ “Once he makes statements, if he wishes to, about the fact for which he has been summoned, he returns to his normal business. In other jurisdiction such as in Sweden there is no summons in criminal proceedings for that matter”⁵⁴

ii. Arrest

Arrest is nowhere defined under Ethiopian law. Different authorities define it in different ways and none of those definitions are coextensive with the notion of arrest under our law.

Arrest served as a mechanism of securing the attendance of a suspect for examination. It is also the state of fact in which a person is kept under the control of law enforcement authorities. The arrested person is usually confined and therefore, his or her liberty is restricted. Arrest as a legal concept is the procedure in which a person is physically kept under the supervision and authority of law enforcement organs such as the police.⁵⁵

When the police arrest a suspected person it is an exception of the constitutional rights of liberty of human beings. When the person is under arrest, that person’s liberty will be restricted.

Arrest may be made with warrant or without warrant. Arrest with warrant is the rule which can be affected by court authorization by the application of the police. The law here obliges the court examine the application in the light of two criteria.⁵⁶

- a. whether or not the attendance of the person to be arrested before the court is absolutely necessary.⁵⁷
- b. whether or not the person can not be obtained by means other than arrest.⁵⁸

The two criteria must be met cumulatively before an arrest warrant is issued. In the other words, these are the grounds that must exist before an arrest warrant is issued. Since a warrant of arrest is a court authorized permission to arrest a person. If, for instance, the attendance of a person in a court of law is absolutely mandatory but the person can appear up on court summons, then the court should not issue a warrant of arrest. Because the persons attendance can be obtained without arresting him or her.

The application for arrest warrant has to be made in writing to a court of law. Then the court examines the application in light of the grounds under Article 54 of the criminal procedure code i.e. the two grounds stated above and may grant or deny the issuance of the warrant. Article 55(1) and (2) criminal procedure code, in urgent cases the investigating police officer may apply for a warrant by telephone and telegraph. Some times the ground to secure an arrest warrant may exist but there may be no sufficient time to make a written application to a court of law. Or that might give a chance to the suspect to escape. In such circumstances, the law allows the police officer to apply for a warrant of arrest by telephone or telegraph. But even in such cases the investigating police officer must confirm his/her application in writing within 24 hours. ⁵⁹

1.3.3. Interrogation and confession

A. Interrogation

Interrogation is the examination of a person by the police in connection with investigation. When a person is accused of committing an offence or is arrested committing an offence, the police officer in charge will examine him or her regarding the offence by asking questions. Under article 27 of the criminal procedure code, the method as to how interrogation should be made is provided as follows:

1. Any person summoned under article 25 or arrested under Article 26, 50 and 51 shall after his identity and address have been established, be asked to answer the accusation or complaint made against him.⁶⁰
2. He shall not be compelled to answer and shall be informed that he has right not to answer and that any statement he may make may be used in evidence.⁶¹
3. Any statement which may be made shall be recorded.⁶²
4. When the arrested person is unable properly to understand the language which his answers are to be recorded, he shall be supplied with a competent interpreter, who shall certify the correctness of all questions and answers.⁶³

A person suspected of committing a crime may be arrested with or without a warrant. In all criminal cases the person appears before an investigating police officer. Because, police is one of the law enforcement organs and they have a technique to screen out the committed crime from the society. Police is a stronger organ than the other law enforcement organs of the government. Then the police officer should establish the identity and address of that person. Since the purpose of the suspected person's appearance for investigation, the police officer can put questions to the person under investigation. However, the person under investigation shall not be compelled to answer the questions. In other words, he/she does not have any obligation to answer. Rather he/she should answer upon his/her own wish. For that matter, the person should be

informed that he/she has the right not to answer the questions asked by the police officer. The police officer must further inform the person under investigation that if he/she answers then the answer or any other statement he/she makes may be used as evidence. It is mandatory for the investigating police officer to inform the person of these fundamental rights.

According to Article 27(3) of criminal procedure code, any statement made by the suspected person under investigation has to be recorded.⁶⁴ when an interrogation is made the issue of language will arise. When the person being interrogated is unable to properly understand the language in which the interrogation is made, he/she must be provided with a competent interpreter.

During the examination of an alleged offender or a witness, the person being examined has the obligation to answer truthfully all questions put to him. He may refuse to answer any question the answer to which would have the tendency to expose him to a criminal charge. In other words, in the course of the examination, if the person under examination thinks that an answer to a question puts forward to him would incriminate him, then he is entitled not to answer at all. (Article 30(2) of the criminal procedure code.⁶⁵

B. Confession

When a person is being examined, he/she may disclose the facts that show he/she has committed or participated in an offence.⁶⁶

The legal requirements that must exist to make a confession acceptable by law and remedies available where it is unlawful are provided under Article 19(5) of the FDRE constitution and Article 31 of the criminal procedure code.

Article 19(5) of the FDRE constitution “Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible” Article 31 of the criminal procedure code. 1, No police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police. 2, No police officer or other person shall prevent or discourage by whatever means any person from making or from requiring to be recorded in the course of the police investigation any statement relating to such investigation, which he may be disposed to make of his own free will.⁶⁷

Confession is a voluntary statement made by a person charged with the commission of an offence, communicated to the investigating police officer or another person, when he acknowledge him self to be guilty of the offence charged, and discloses as to how the offence took place or what role he had in the commission of the offence the confessing person admits and his closes his own participation in the commission of the offence

he/she does so voluntarily, i.e. as of his/her own wish. Thus confession assumes a voluntary utterance or statement made by a person being investigated. If, however, the confession is made by means of coercion or employing other methods then it lacks the very essential characteristic of confession. Therefore, confession must meet some criteria set by the law to ensure that it was voluntary and, therefore, admissible as evidence.⁶⁸

Confession, if valid, will serve as evidence before a court of law against the person who makes the confession. But in order to serve as evidence it must be in accordance with Article 31 of the criminal procedure code and Article 19 (5) of the Federal Democratic Republic of Ethiopia constitution.⁶⁹

Article 31 (1) of the criminal procedure regulates the situation under which confession must be obtained in order for it to be admissible.

It stated that police officer making the investigation or a person in authority shall not offer or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police.

If the confession obtained by offering or causes to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police, they will be excluded or inadmissible such confessions before law. In order for a confession to be admissible as evidence, the person who made it must have done it voluntarily. In other words it must have been free from offers inducements, threat, promise or improper methods like torture.

When a person wishes to make confession he/she is entitled to do so as long as it is made of his/her own wish. As there exists the duty not to compel a person to make a confession, there is also a duty on the part of the police not to prevent or discourage the making of the confessions.⁷⁰

1.3.4 Search and Seizures

Search and seizure are part of the investigation steps which enable the police to carry out investigation. Search is an examination of a person's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some crime or offence with which he/she is charged. Search, therefore, is the process of looking for evidence in the person or property of the accused or in the property of others. Seizure is the act of taking possession of forcibly, some goods or things that can be used as evidence against an accused.⁷¹

Search may be made with or without warrant.

A. Search with warrant: - The right to privacy of every one in Ethiopia is protected under Article of the Federal Democratic Republic of Ethiopia constitution. Accordingly,

no one shall be subjected to searches of his person, home or property. The property of a person under his possession should also no be seized.⁷²

These are private matters of the individual. This is recognized and protected by law. Therefore, no one should search the person, or home or have access to the correspondences and notes of an individual except upon the consent of the latter. However, this right may be restricted by law in order to safeguard public interest, to prevent the commission of a crime or to protect the rights and freedoms of others. The right to privacy is not an absolute right. A limitation can be made and is made according to Article 26(3) of the FDRE constitution. The limitation is justified by other competing interests such as public safety. Search warrant can be issued by the procedure of criminal code Article 33.

A search warrant may be issued by any court.⁷³ No search warrant shall be issued unless the court is satisfied that the purpose of justice or of any inquiry, trial or other proceedings under the code will be served by the issue of search warrant.⁷⁴ Every search warrant issued shall specify the property to be searched for and seized and no investigating police officer or member of the police may seize any property other than that specialized in such warrant.⁷⁵ On seizing any property such investigating police officer or member of the police shall make a list of the property seized and where possible shall have the list checked and signed by an independent person. Any property seized which is required for the trial shall be preserved in a safe place until handed over to the court as an exhibit. Any property not so required may be returned to the person from whom it was taken and a receipt shall be taken it.

B. search without warrant: - Hence in principle, search has to be made upon securing a permission form the court. That permission or order is what is called a search warrant. Hence in principle, search has to be made up on securing a warrant, because, it is a restriction on the right to privacy. However, sometimes, there are instance which don't allow the time or possibility to get a search warrant. In such circumstances, the intended result of the search may not be achieved because it may be too late by the time the warrant is secured. Therefore, the law provides for the possibility of making search and seizure without a court warrant.⁷⁶

According to Article 32(2) of the criminal procedure code search without warrant is possible in exceptional cases. No premises may be searched unless the police officer or member off the police is in possession of a search warrant in the form prescribed in the third schedule of the criminal procedure code except where.⁷⁷

- a. an offender is followed in hot pursuit and enters premises or disposes of articles the subject matter of an offence in premises;⁷⁸

- b. information is given to an investigating police officer or member of the police that there is reasonable cause for suspecting that articles which may be material as evidence in respect of an offence in respect of which an accusation or complaint has been made under Article of this code and the offence is punishable with more than three years imprisonment are concealed or lodged in any place and he has good grounds or believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed.⁷⁹

Search without warrant can also be made where information is given to investigating police officer or member of the police that there is reasonable cause for suspecting that articles which may be material as evidence in an offence in respect of which an accusation or complaint has been made and the offence is punishable with more than three years imprisonment are concerned or lodged in any place and he has good grounds for believing that by reason of the delay in obtaining a search warrant such articles are likely to be removed.

General, I would be discuss in the next chapter two, the released on bond as one of the right of arrested person. In chapter two I will be raised different right of the individual person an arrested or a suspected person. For instance, the right to against delay arraignment and etc would be including in the chapter.

CHAPTER TWO

RELEASED ON BOND AS ONE OF THE RIGHTS OF ARRESTED PERSONS

2.1 General Overview

Individuals may be put under police custody, lawfully or unlawfully whatever the ground of arrest be arrested persons should not be deprived of their right exclusively. Individuals' right is protected and respected by different laws or instruments in all countries. There are different international and domestic instruments providing the human rights. For instance, international covenant on Economic, social and cultural rights, international covenant on civil and political rights, Universal Declaration of Human Rights, African Charter of Human and peoples Rights and Federal democratic Republic of Ethiopian constitution have provision regarding rights of an arrested person.

when an offence is committed by any person, the information may be reported to the authority, the concerned authority may be police officers, then the police officers have a duty to screen out the crime committed whether or not doubt he/she start the necessary procedure within the respecting of the law. The police start to investigate the commission of crime, then after collecting the information he/she release the arrested person within his/her discretionary power unless bring him/her to the court of law. Then arrested person may apply to court for bail. So, I will try to discuss the arrested person's rights below.

An arrested person has different rights, from these the right to remain silent, the right to counsel, the right to self-incrimination, the right against delay- arraignment, the right to bail or the right to bond and etc are includes in my papers.

The FDRE constitution and the 1961 criminal procedure code are the most essential one for my paper. Depending on this provision, the police officer and the court of law are expected to respect and protect the right of an arrested person.

The arrested or accused person has the right to be released from the jail (custody). He/she may be released on bond or released on bail. This chapter is more concerned with the right of an arrested person. The arrested /accused person may be released on bond by the investigating police officer. If the police officer didn't release the suspect on bond, the suspected person has to apply to court of law to be released on bail. Bail is both the substantive and procedural right of an arrested or accused person. But, Bond is a procedural right of an arrested /suspected/ person. Both the bond and bail have the same effect. Because both of them bring about the release of an arrested /accused/ person from the jail. Even the effect of bond and bail are the same. The execution for bond and bail in the criminal procedure code is given for different organs of the government i.e. police and court of law respectively. Bond is not clearly expressed in the constitution to release on bond an arrested by police. Bail is performed by the court of the law according to the constitution and procedure of law. As provided in the criminal procedure code article 28(1) is the discretionary power of an investigating police to release an arrested person.

2.2 RIGHTS OF AN ARRESTED PERSON

2.2.1 RIGHT TO REMAIN SILENT

The Ethiopian constitution, Article 19 (2) provides that; "persons arrested have the right to remain silent. Upon 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." Similarly, Ethiopian criminal procedure code of 1961, Article, 27(2) provides that: - "He shall not be compelled to answer and shall be informed that he has

the right not to answer and that any statement he may make may be used in evidence.”

The Ethiopian constitution is a reasonable ground to remain silent before court or police officer. Most of the Ethiopian citizens don't know their investigating officer, the suspected/ the charged/person compelled by the police to give his/her confession or the place of guilt. In the rural area most of the arrested person is an illiterate, so the police can't inform the constitutional right, said by he /she has right to remain silent, informed to the answer what he/she gives their confession (statement) right to remain silent especially in the rural areas. In the police may be used as evidence in court.

In conducting interrogation, especially in asking the suspect to answer questions relating to the crime with which he is suspected are certain condition that need to be fulfilled; these conditions are mentioned below.⁹

1. The investigating police shall inform the suspect that he can remain silent (refuse to answer any question) if he wishes to in the language the suspect understands;¹⁰
2. The suspect shall be informed that any statement he is going to make may be used as an evidence against him in court, in the language he understands;¹¹
3. The police or any person in authority for that matter should not compel the suspect to elicit consent. They shall not offer or used or make or cause to be offered, made or used any inducement, threat or promise or any other proper method to any person examined by the police¹².

The right of remain silent is one of the privileges conferred to the suspect or accused or arrested person. Even though most of the Ethiopian citizens without discrimination are duty bound to cooperate in law enforcement, nobody should be forced to answer questions of the police.

When the investigating police officers is interrogating the summoned or arrested/suspected person it is duty bound to respect and enforce the law of the nation and also international instruments.

In Ethiopia, the FDRE constitution as well as the criminal procedure code recognized the right to remain silent. As the Federal Democratic Republic of Ethiopia Provides that Article 19(1) “ the constitution is the supreme law of the land and 9(2) all citizens, organ of state , political organization, other associations as well as their officials have the duty to ensure observance of the constitution and to obey it. So, constitution is above all laws, if the police officer is going violate the individual right during the interrogation, the interrogation will be invalid because of the violation of constitution. Due to this Article 19 (2) constitution recognizes the right to remain silent and to be informed that any statement the arrested makes may be used in evidence. The criminal procedure code also recognizes the right to be informed that the suspect has the right not to answer and that any statement he may make may be use in evidence.

The right of remain silent is effective on the question to be raised by the police regarding the accusation or complaint made against him (suspected or arrested person).

To collecting (gathering) information the police officer interrogate the arrested / suspected/ person. The police must be identify the suspected /arrested/summoned/person.

To identify the commission of the crime suspected one they asked to answer the his/her/address. The right to remain silent is not effective this time. But the accusation or complaint only asked to be informed by the police to the summoned /arrested person. The experience in USA indicates that police is under duty to caution the arrestee that he/she has the right to keep silent caution and other right.¹³ Failure to comply

with the duty to caution has an impact on the admissibility of a confession made by the arrestee.¹⁴

2.2.2 the right against- self- incrimination

In principle, all citizens are duty bound to assist the maintenance of peace and order of the society by reporting, to appropriate authorities of the commission of crimes. In spite of this duty, the law provides for individuals to be protected by imposing the burden of proof of guilt or not guilt. For an arrested /suspect/ persons are advantaged by the privilege not to assist police officers by incriminating themselves. That seems why the constitution as well as the criminal procedure code of the Ethiopia provides that a suspect or arrested person should not be compelled to confess or to give answer to the police question about accusation or complaint. Moreover, the provision or Article 30(2) of the code give option, to refuse the answer to the question or which would have attendancy to incriminate him, to the person under police examination. Although the title of Article 30 refers to the examination of witnesses by the police, undoubtedly there could be nothing that hider the application of the provision to the suspect or the accused since noting prohibits a person from being witness for themselves.

Intrusion into the right against self-incrimination may also entail violation of the provision of due process and equal protection of law.¹⁵ If a person is compelled to testify against himself that will not be justifiable under the requirements of the due process. To compel one person to incriminate himself and to allow the other to enjoy the privilege to the right against self-incrimination will be deviation from the requirements of the principle of equal protection of the law. The privileges to protect right against self-incrimination are the right to counsel and right to keep silent during interrogation.

2.2.3 The right against delay in arrangement.

In principle, suspected/ arrested/ person should not remain under the police station control until trial rather; the police should present physically such arrested /suspected/ person before court within a fixed period of time from the time of arrest. In Ethiopia, the police is expected to present within 48 hrs from the time of arrest. Before such presentment, the police is under duty to ask the suspect or accused about the accusation or complaint's made against him. Ethiopian criminal procedure code of Article 27 (1) seems to make the requirement of asking mandatory. Where the suspect /arrested/ person is asked promptly, there will be no more ground to delay his present before the court to plead to the criminal charge against him. The existence of the duty to ask questions up on the police mitigates delay in arraignment.

The right against delay in arraignment has a great connection within speedy trial. If the suspected /arrested/ person appears before the court of law in accordance within the provision of constitution and criminal procedure code of Ethiopia. When the arrested person delay to bring before the court of law, the right of arrestee affected. Because the police has power to arrest a suspected/summoned/ person when the courts gives a permission or without court warrant like in flagrant offences. After the police has arrested or private person arrested the suspected person by rules of the procedures and constitution. The police either release on bond or bring before the court of law within 48 hours. The releasing an arrested person on bond by police or bringing before the court of law is known as procedure after arrest .Arrest may made by individual (private) person according to the criminal procedure code art.58. The criminal procedure code art.58 (1) it provides that: - "where anarrest is made the person making the arrest shall without unnecessary delay hand over the person so arrested to the nearest police station." When I return to the duties of police, the police has a constitutional obligation of bringing the arrestee to a court of law. The

court may be any court. But, most of the times the person will be brought to the court which has issued the arrest warrant when the arrest is made with warrant and nearest court of law. The FDRE constitution Article 19(3): provides that: - “persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonable by required for the journey from 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.

The constitutional provision will imposed on police. Some of the police station of Oromia is violated the provision of constitution of FDRE. When the police arrest a person the don't bring before a court of law within the specified time.

Appearing before a court is a aright to be told of the reason for the reason for the arrest when the arrestee is brought to court.¹⁶ This means the person must be told of the reason for his arrest by arresting person as well as the court of law before.¹⁷ Again the right to be brought before a court of law.

It is a procedure to be effected if the arrested/summoned is not released on bond by the police officers according to the 1961 Ethiopia criminal procedure code Article 28(1). Due to this the police is duty to bound to bring a person to court of law.

Not only the constitution express the 48 hours rules but also the 1961 criminal procedure code article 29(1) also provides that “where the accused has been arrested by the police or a private person and hand over to the police (Art. 58), the police shall bring him before the nearest court within forty-eight hours of his arrest or so soon thereafter as local circumstances and communications permit. The time taken in the Journey to the court shall not be included.” This provision also clearly provided that the police have an obligation to bring an arrested person to the nearest court within 48 hrs. No need of requirements to bring before

a court within the specific time. But, the criminal procedure code employees the phrase: “So soon thereafter as local circumstances and communications permit.” This is not provided in the constitutional law. The 48 hours rule may not be affected because of the phrases, “Local circumstances and Communication permit. This phrase might be a good ground for the police not extend the 48 hours rule. In addition the phrase, “----such time shall not include the time reasonably required for journey from the place of arrest to the court. Article 19(3) of the FDRE constitution and criminal procedure code article 29(1) have also a similar effect. Communication may be actually taken as representing the system of the transportation.

A police officer may be say that circumstances failed. Permit by, for instance, invoking shortage of police man. However, the constitutional right of the arrest should not be affected by pretext which the police is likely to present when they fail in their duty.

2.2.4 The writ of Habeas corpus

Habeas corpus is constitutionally granted right of an individual, article 19(4) of the FDRE constitution provides that: - “All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforces fails to bring them before a court within the prescribed time and to provide reasons for their arrest.”

This provision prominently provides the right to be released though the write of habeas courpus.²⁶ It may well also apply to bail. Be the grounds for application as they may, the constitutional provision shows you the strength with which the right for habeas corpus is protected.

Habeas corpus is bringing the body of the person before the court. It is the procedure by which a person restrained otherwise than in pursuance of an order duly made under the civil or criminal procedure code applies to be released.²⁷ It safeguards an arrested persons from illegal arrest. It

may be order the court which enforces officials or police officers to bring the arrested person before court.

Habeas corpus called the “Great write”, is the most effective remedy to illegal arrest ²⁸. The procedures by which an arrested person may be released are habeas corpus, bail and unconditional release.

Concentrating on bail, there are situations where it may be disallowed and even where granted it is conditional. It mostly applies in situations where there is lawful detention. It may also be applied for where the person is detained for more than what the law requires or illegally (criminal procedure of Ethiopia Article 28 (2)).

Habeas corpus is governed by Article 177-179 of the civil procedure code of Ethiopia. It presumably a civil proceeding in Ethiopia as different from some other jurisdictions. That is so because the aim of habeas corpus is not punitive, but to safeguard the civil right of personal liberty. The whole purpose of habeas corpus is the release of the person from custody. There is no the slightest possibility of the proceeding’s ending in punishment of one of the parties involved. As such, it is a proceeding of civil rather than criminal nature.²⁹

The logical and traditional procedural vehicle for a petition for physical release from wrongful state custody in Anglo-American law and in the many countries influenced by the Anglo-American tradition of civil Liberties is the petition for a writ of habeas corpus.³⁰ The Ethiopian civil procedure code of 1965 Article 177-179, authorizes the use of writ of habeas corpus to secure the release of wrongfully held person.³¹ An application for habeas corpus may be made to the (First instance) court by any person restrained otherwise than in pursuance of an order duty made under this code or the criminal procedure code.³² The application may be filled by any person on behalf of the applicant.³³ On receipt the application for habeas corpus the first Instance court shall summon the person in whose custody the petitioner/applicant is, and the petitioner him/ herself, to show cause why the petitioner should not be released.³⁴

At the hearing on the date fixed in the summons, the court shall investigate the truth of the application and where the court is satisfied the restraint is unlawful, it shall order the immediate release of the person restrained.³⁵ If in doubt as to the truth of the allegations of wrongful custody, the court may order the applicant released conditionally, on his executing a bond, with or without sureties, that he will appear in court.³⁶

2.2.5 The right to counsel

“It is a constitutional right of an arrested/ accused /person to communicate with his/her legal representatives⁴ Article 20(5) constitution provides that:-“Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.”

Moreover, the right to counsel is not only required during the post-indictment questioning but also during the custodial interrogation, regardless of the time when it takes place. ³⁷ This is so because, in both cases, that the presence of counsel is viewed as an important means not just of ensuring intelligence decision making, but also of deterring police abuses and exposing improprieties at later proceedings.

However, when the persons accused is destitute to hire one of his choice and the state emerges under the legal duty to provide one on it's expense, the learned article of the constitution seems to have set up a conditional requirement to be met, before the state pays for a legal counsel to the accused person.³⁸ The requirement in the provision is the miscarriage of justice. Miscarriage of justice paves the way to an open legal argument among the people of law and hence the auspices of state funds.³⁹

2.2.6 The Right not to be compelled to confess/Inadmissibility of coerced confessions.

The Federal Democratic Republic of Ethiopian constitution provides that:- “persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible”.

In absence of counsel, the burden of inquiring into the circumstances under any person out of-court confession was made falls on the judge.⁴⁰ Judicial performance of the constitutionally required duty of protecting and enforcing the constitutional rights of the accused mandates such inquiry.⁴¹ A judge should inquire into the circumstances of a confession both when an accused person is produced before him to make a judicial confession and later at trial when the prosecution seeks to introduce either the out of court or the judicial confession in to evidence.⁴²

The police officer is violates the constitutional right of the individual persons during the process of interrogation by compelling them to collect evidence by incriminating themselves (arrested person).

2.2.7 The right to speedy Trial

The accused or arrested person once charged with an offence is no more at liberty both legally and psychologically. The right to speed trial is one of the rights of an arrested or accused person according to the Federal Democratic Republic Constitution Article 19(4) and it provides that:- “where the interest of Justice requires, 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 for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person’s right to a speeds trial.” According to this provision the right to a speedy trial is not an absolute right. The right of Liberty is restricted by some reasonable ground and in

accordance with such procedure as are established by law; however the constitution also provides that when the concerned authorities require to carry out the necessary investigation to the court, the court may order the arrested person to remain in custody.

The law enforcement authorities or an investigating police officer request according to the Ethiopian Criminal procedure Code Article 59 Provides that as follows:

1. The court before which the arrested person is brought (Art 29) Shall decide whether such person shall be kept in Custody or be released on bail.

2. Where the police investigation is not completed the investigating Police officer may apply for a sufficient time to enable the investigation to be completed.

3. A remand may be granted in writing. No remand shall be Granted for more than fourteen days on each occasion

The remand shall not be granted excessive for fourteen days. The investigating police officer without any delay the must try to complete the investigation. Then the speedily police should report to gathered the collecting evidence for public persecutor. As soon as possible.

The Right to speedy trial is noticeable that a promote trial promotes three interests of the person in police custody.⁴³ It (1) prevents undue incarceration, (2) Minimizes the anxiety accompanying public accusation, and (3) prevents imprisonment of the defendants case due to delay. On the other hand, lengthy delays may lead to loss of exculpatory evidence, thus witnesses may die or third memories fade and tangible. Evidences may disappear on the process. ⁴⁴

“ Unjustified investigative delays cause material as well as spiritual damage to the person placed under police custody, in the dense that his reputation is spoiled and his financial and occupational interests are affected as an arrested person. On the contrary, it should be noted that accused may suffer from a trial that takes place to quickly, this means

the defendant must be given sufficient time to prepare his code. ‘ The essential ingredient is orderly expedition and not more speed’. ⁴⁵

In addition, protected in the prompt adjudication is the society’s which in the majority of cases, out weigh the individual interest, in other words, society interests to see the prompt prosecution of those criminals, so that disability in the society wouldn’t continue any more. Thus society interest occasionally may run counter to the defendants. ⁴⁶

The right to speedy trial, while the person is either in police detention or released on bail at waiting for trial is explicitly guaranteed under article 19 (4) of Federal Consⁿ. Hence, if a person is kept in police custody under the disguise of investigative delay while actually, intention is to” gain technical advantage over the detainee. ⁴

2.2 Definition of bond

Bond is a document with which on part promises to pay another within a specified amount of time.¹ Bonds are used for many things, including borrowing money or guaranteeing payment or money.²

Bond is the discretionary power of the police to release an arrested person from the custody. And also bond is a conditional release. In the criminal procedure code of Ethiopia Article 28(1) provides that: - “where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment; or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained or 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 as may be fixed by the police.” In this provision there is definition of bond. According to the blacks law Dictionary Bond is to secure payment by providing a bond “at the creditors’ instance.³

2.3 Type of Bond

According to the criminal procedure code of Ethiopia, article 28(1) bond can be executed by the police. So, for investigating police officers, the bond can be classified into two groups. Before the police offices the two groups of the bonds are effective. These are:

2.3.1 Personal guarantee of bond.

2.3.2 Personal Security (third party) of bond

2.3.1 Personal guaranty of bond

Personal guarantee (personal recognizance) if bond is a situation whereby the police will simply be asking the arrested (accused) person put her/his signature he/she will appear on a certain date time and no further requirement .It is a promise of an arrested or summoned person. The suspected person declares himself or herself regarding to his/her identity card of residence and properties. The properties may be movable or immovable properties. The movable properties may be cattle, car. And the immovable may be trees, house, building, etc.

The police officers record, the properties of an arrested person. The properties of an arrested person are registered with comparing to the danger of the commission of offence. The offence may permit the bond or not before the police if it is not petty offence. According to Article 28(1) of the criminal procedure code provides that:-“where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or that the summoned or arrested person has committed the 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 without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.”

The phrases in the provision “---- on his executing a bond....”refers to the arrested/summoned/ person by himself/herself represent or guarantee

and release from the custody, when the released the arrestee recognizance his/her signature to justify appearing on day, on place and no time.

The amount bond should always be compared to the financial position of the

Person⁴. The financial position of the person may be his/her properties. In the fixing the amount of bond the police exercises some form of discretion by having regard to the live and likely hood of the appearance of the person at place and time to be fixed by the polices⁵

2.3.2 Security bond (guarantee of third party)

Security is a measure taken to guarantee the safety of a country, person, thing of value, etc⁶. Surety is a voluntary agreement with the third party on behalf of the debtor or a person who suspected by commission of a crime. The third party may be individual person. Surety ship involves three party relationships. These parties are creditor, debtor and surety of third party in the contract. In the criminal cases also there are three parties. Those are creditor in the criminal case may be organ of government (court, police officer, different institution or company). Debtor also criminal cases a person or a group of person who is suspected by a criminal offence and detained. The third one is surety the same with the civil cases and criminal cases. Surtyship is defined as a contract in which a person binds himself for another already bound and agree with the creditor to satisfy the obligation if the debtor does not.⁷ This definition is according to the civil cases in contract.

The investigating police officer may release an arrested or suspected (summoned) person by his/her discretion power, when the summoned/arrested person deemed to be suspect by a crime committed is doubtful or not punishable. Security is on behalf of the arrested or suspected person agree with the police officer to guarantee (the safety) of the suspected person to release from the custody in forming a bond.

When the summoned or arrested person is to stay in the custody until the judgment is passed, the liberty of the person's is going to be affected. Because of presumption of innocence. I will try to classified security into two groups. These are the security bond and security on bail. Security bond is performed by the police and security on bail is the power of court which releases the suspected person from custody after the person appears before the court.

The contract of a surety and the contract of a person released on bond are independent of each other. The surety promises to pay a certain amount of money which is fixed by the police officer of the summoned/arrested person does not appear at such place, such time and at such day fixed by the investigating police officer to release such suspected person from custody. If the released person does not appear the money is forfeited unless the released person has a reasonable ground why he/she is absent. A security bond would be valid even though the person arrested/summoned person does not himself sign the bond. It is even to that the sign of the person who agree with the organ of the government.

Securities must be such persons as can in all cases be imprisoned in case of default and as such surety bond cannot be executed by artificial persons like Banks⁸.(source Indian, criminal procedure). The surety bond was excited in the time of investigation. Each surety is liable for the amount which he/she has undertaken to pay. The amount of payment man fixed by police or court.

Pre-trial release is a situation whereby the police or the court releases an arrested person from the jail or custody before starting trial criminal proceedings .The police officers have a power to protect and respect the constitutional laws and other laws. When a person being affect the law or committed a crime, the police can investigate the commission of the crime and takes all the necessary procedures. Then after complete the necessary procedure they can send the case to the public prosecutor.

The court cannot immediately enter into hearing the case. The courts first observe the liberty of the individual who is arrested or accused whether release on bail or not.

So, according to the writer of this paper pre-trial release is including

2.2.7 The right to pre-trial release

release on bond and release on bail. Release on bond is the discretionary power of police, but, release on bail the discretionary power of court. I will try to discuss one by one as follows.

2.2.7.1 Release on bond

Once the summoned /arrested/ person appear before the police station, she/he has right to be released on bond according to the criminal procedure code. Once the police has suspect /arrested/ person in custody, it will conduct interrogation. Without of the violation of the procedure and constitution. The procedural law and the substantive law must be respected when the police interrogate a suspect otherwise the interrogation is affecting the right of an arrested person. After the interrogation is concluded, the police has two alternatives: - releasing on bond and bringing the person before the court with 48 hours.

According to the constitution bringing the person before the court with 48 hours is a mandatory one. The criminal procedure code is expressed both provision release on bond and brings the person before court with 48 hours. If the police release the arrested /summoned/ person without the expire of the 48 hrs, it is a great advantage to the suspected person.

The 1961 Ethiopian criminal procedure code article 28 (1) provides that:-
“where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternatives punishment; or where it is doubtful that an 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 without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.”

According to the above provision, the police is conferred with discretionary power to release a person arrested or summoned. On bond with or without surety. Only in same circumstances. The polices can release on bond the arrestee/summoned only if:

1. The offence committed or complained of to have committed by the suspect is not punishable with rigorous imprisonment as a sole or alternative punishment; or,
2. It is doubtful that an offence has been committed, or
3. It is doubtful that the arrested person has committed an offence.

This three circumstances are not cumulative it is an alternatives. The conjunction “or” refers to the alternative either of the above, if one is fulfilled it is enough to complete something. Either the offence, which the police believes to have been committed, is not that serious or however serious it may be, it is very doubtful that the offence has been committed at all or the offence is committed but it is doubtful, that the person arrested has committed it. If the crime for which the arrestee is suspected is punishable by rigorous imprisonment even alternatively, the police cannot release such person.

If one of those requirements is fulfilled, the police may release the arrested person upon his discretion by executing a bond with or without sureties. It seems that releasing on bond is within the discretion of the police. But, again in my opinion if the clear requirements are being set for the exercise of power of release on bond, this should not be taken for granted. It is the voluntary discretion of the police.

A bond will be executed with or without surety to the effect that the person (arrestee) will appear at such place on such day and such a time as fixed by the police. Fixing the amount of bond is the discretionary power of police. The amount of bond should always be compared to the financial position of the person arrested /summoned/. The bond may be

effected by putting his/her signature of an arrested or summoned person.

According to criminal procedure code the only type of release by police after arrest/summoned/ is on bond. It is a conditional release, no reference to unconditional release. Release on bond is the disadvantage to the innocent individual, cannot be release a substitute for absolute release according to the law. Here too you may interestingly argue that there is no need for an express legal provision to the effect that an innocent be released without bond. This is one of the problems of this law. The fact that an innocent be released without any condition must be taken for granted. After all Art. 28 (1) talks about situations where There is doubt and no punishable rather than clear innocent. So, one can say, it should not apply to the case of an arrested found innocent.

Releasing on bond is not constitutional right of the arrested person. Because of the phrases "Release on bond" is not expressed in the constitution. It is a procedural right in the criminal procedure code. We call that an implied right of an arrested person, the discretionary power of the police. The express right of an arrested person if the police is refuse to release the arrested person he/she has a right to apply to the court for the release on bail. Article 28 (2) of criminal procedure code of Ethiopia, provide that: - "where the accused, is not released on bond according to Article 28(1), he may apply to the court to be released on bail in accordance with the provisions of Art.64."

Regarding the application of bail Article 64 I would discuss in the next section.

Generally, bond is a conditional release by the police with or without sureties that she/he will appear on specific place, day and at such time. In the Ethiopian law unconditional release absent even if the suspected person is real innocent. Polices are a constitutional obligation to bring the court within 48 hours and respect the liberty of person and also rather takes others functions of the officers.

2.2.7.2 Release on bail

Bail is a pre-trial procedure permitting an arrested person to stay out of jail by depositing a set of money as security that they person will show up for trial.¹⁸ Bail is also a pre-trial conditional release of the arrested /accused person by the court of law. It is a constitutional right of an arrested or an accused person. The Federal Democratic Republic of Ethiopian Constitution Art.19 (6) provides that; “persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.” And the criminal procedure code of Ethiopia Art 63(1) as a principle provide that: - “Whoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.”

The two provision i.e. the constitution and the procedure code it sets the principle, but it has an exception to that of principle where the prescribed by other laws and where the judgment is not passed by the death penalty or rigorous imprisonment for 15 years or more or where the injured parson has died.

There are two types of bail is fulfilled in criminal charges. These areailable charge and nonailable charge. Theailable cases are the grant of bail is a matter of course ¹⁹. It may be given either by the police-officer in charge of a police station having the accused in his custody or by the court.²⁰ The release may be ordered on the accused executing a bond and even without sureties.²¹ According to the criminal procedure code bail apply to the court i.e. known as application for bail Art.64 is:-

1. A person under arrest may at any time apply for bail
2. The application shall be made in writing and signed by the applicant. It shall contain a summary if the reason for

making the application and the nature of the bail bond the applicant is prepared to enter;

3. An application for bail may be granted by any court. Any court to which an application for bail is made shall consider it without delay and shall call upon the prosecutor or the investigating police officer in his absence for comments and recommendations. It shall make its decision within 48 hours.²²

In non-bailable cases, the accused may be released on bail but not bail can be granted where the accused appears on reasonable grounds to be guilty of an offence punishable either with death or with imprisonment for life. ²³ But the rule does not apply to: - 1. A person under sixteen years of age, 2. A woman or 3. Sick or infirm person. ²⁴ (source:- the supreme court of India, criminal procedure code of India). In Ethiopian legal system, bail is denied where the charged is carry death penalty or rigorous imprisonment for fifteen years or more and where there is the injured party (person) is the possibility of the offence was committed die. And according to Art.67 of criminal procedure code the applicant is of such nature that is unlikely that he will comply with the conditions laid down in the bail bond. The applicant, if set at liberty, is likely to commit other offences; and the applicant is likely to interfere with witnesses or tamper with the evidence. Generally, in court bailable charge may be fulfilled by three ways. **Those are:-**

1. Personal cognizance, 2. Money deposit 3. Personal guarantors.
1. Personal recognizance is a situation whereby the court will simply be asking the accused to put his/her signature he/she will appear on a certain date and no further requirement. For instance, saying by I have a car, I have a house and his/her residence by expressing his/her address, like phone etc. then if the court is believe for his/her explanation of them may be release on bail from custody.

This is called personal recognizance of an arrested /accused/ person.

2. Money deposit is a situation whereby an arrested or an accused person will deposit some money to be released from custody. The amount of money depends upon the nature of the charge. This amount is fixed by court.
3. Personal guarantor: - it is an agreement of the third person with the court on behalf of the arrested or accused person. It is a consent agreement. If the arrested /accused/ person fails to appear according to the court fixed time and date, the guarantor may pay the money on behalf of the arrestee. But, if the arrest and the personal guarantor have a reasonable ground that can be accepted by the court not forfeited.

2.4. 5 The writ of Habeas corpus

Habeas corpus is constitutionally granted right of an individual, article 19(4) of the FDRE constitution provides that: - “All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforces fails to bring them before a court within the prescribed time and to provide reasons for their arrest.”

This provision prominently provides the right to be released though the write of habeas courpus.²⁶ It may well also apply to bail. Be the grounds for application as they may, the constitutional provision shows you the strength with which the right for habeas corpus is protected.

Habeas corpus is bringing the body of the person before the court. It is the procedure by which a person restrained otherwise than in pursuance of an order duly made under the civil or criminal procedure code applies to be released.²⁷ It safeguards an arrested persons from illegal arrest. It may be order the court which enforces officials or police officers to bring the arrested person before court.

Habeas corpus called the “Great writ”, is the most effective remedy to illegal arrest ²⁸. The procedures by which an arrested person may be released are habeas corpus, bail and unconditional release.

Concentrating on bail, there are situations where it may be disallowed and even where granted it is conditional. It mostly applies in situations where there is lawful detention. It may also be applied for where the person is detained for more than what the law requires or illegally (criminal procedure of Ethiopia Article 28 (2)).

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The logical and traditional procedural vehicle for a petition for physical release from wrongful state custody in Anglo-American law and in the many countries influenced by the Anglo-American tradition of civil Liberties is the petition for a writ of habeas corpus.³⁰ The Ethiopian civil procedure code of 1965 Article 177-179, authorizes the use of writ of habeas corpus to secure the release of wrongfully held person.³¹ An application for habeas corpus may be made to the (First instance) court by any person restrained otherwise than in pursuance of an order duty made under this code or the criminal procedure code.³² The application may be filled by any person on behalf of the applicant.³³ On receipt the application for habeas corpus the first Instance court shall summon the person in whose custody the petitioner/applicant is, and the petitioner him/ herself, to show cause why the petitioner should not be released.³⁴ At the hearing on the date fixed in the summons, the court shall investigate the truth of the application and where the court is satisfied

the restraint is unlawful, it shall order the immediate release of the person restrained.³⁵ If in doubt as to the truth of the allegations of wrongful custody, the court may order the applicant released conditionally, on his executing a bond, with or without sureties, that he will appear in court.³⁶

2.2.8 The right to counsel

“It is a constitutional right of an arrested/ accused /person to communicate with his/her legal representatives⁴ Article 20(5) constitution provides that:-“Accused persons have the right to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense.”

Moreover, the right to counsel is not only required during the post-indictment questioning but also during the custodial interrogation, regardless of the time when it takes place.³⁷ This is so because, in both cases, that the presence of counsel is viewed as an important means not just of ensuring intelligence decision making, but also of deterring police abuses and exposing improprieties at later proceedings.

However, when the persons accused is destitute to hire one of his choice and the state emerges under the legal duty to provide one on it's expense, the learned article of the constitution seems to have set up a conditional requirement to be met, before the state pays for a legal counsel to the accused person.³⁸ The requirement in the provision is the miscarriage of justice. Miscarriage of justice paves the way to an open legal argument among the people of law and hence the auspices of state funds.³⁹

2.2.9 The Right not to be compelled to confess/Inadmissibility of coerced confessions.

The Federal Democratic Republic of Ethiopian constitution provides that:- “persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible”.

In absence of counsel, the burden of inquiring into the circumstances under any person out of-court confession was made falls on the judge.⁴⁰ Judicial performance of the constitutionally required duty of protecting and enforcing the constitutional rights of the accused mandates such inquiry.⁴¹ A judge should inquire into the circumstances of a confession both when an accused person is produced before him to make a judicial confession and later at trial when the prosecution seeks to introduce either the out of court or the judicial confession in to evidence.⁴²

The police officer is violates the constitutional right of the individual persons during the process of interrogation by compelling them to collect evidence by incriminating themselves (arrested person).

2.4.8 The right to speedy Trial

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right. The right of Liberty is restricted by some reasonable ground and in accordance with such procedure as are established by law; however the constitution also provides that when the concerned authorities require to carry out the necessary investigation to the court, the court may be order the arrested person to remain in custody.

The law enforcement authorities or an investigating police officer request according to the Ethiopian Criminal procedure Code Article 59 Provides that as follows:

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5. Where the police investigation is not completed the investigating Police officer may apply for a sufficient time to enable the investigation to be completed.

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The remand shall not be granted excessive for fourteen days. The investigating police officer without any delay the must try to complete the investigation. Then the speedily police should report to gathered the collecting evidence for public persecutor. As soon as possible.

The Right to speedy trial is noticeable that a promote trial promotes three interests of the person in police custody.⁴³ It (1) prevents undue incarceration, (2) Minimizes the anxiety accompanying public accusation, and (3) prevents imprisonment of the defendants case due to delay. On the other hand, lengthy delays may lead to loss of exculpatory evidence, thus witnesses may die or third memories fade and tangible. Evidences may disappear on the process. ⁴⁴

“ Unjustified investigative delays cause material as well as spiritual damage to the person placed under police custody, in the dense that his reputation is spoiled and his financial and occupational interests are affected as an arrested person. On the contrary, it should be noted that

accused may suffer from a trial that takes place too quickly, this means the defendant must be given sufficient time to prepare his case. ‘ The essential ingredient is orderly expedition and not more speed’.⁴⁵

In addition, protected in the prompt adjudication is the society’s which in the majority of cases, outweigh the individual interest, in other words, society interests to see the prompt prosecution of those criminals, so that disability in the society wouldn’t continue any more. Thus society interest occasionally may run counter to the defendants.⁴⁶

The right to speedy trial, while the person is either in police detention or released on bail at waiting for trial is explicitly guaranteed under article 19 (4) of Federal Constⁿ. Hence, if a person is kept in police custody under the disguise of investigative delay while actually, intention is to” gain technical advantage over the detainee.⁴⁷

So, general I will try to discuss in chapter three the practical problems of police investigation and released on bond in the state of Oromia region .

CHAPTER THREE

Police Investigation and Release on bond under the Regional State of Oromia.

3.1 Practical Problems of police Investigation and the Law of Ethiopia

Investigation is a delicate process of gathering evidence¹. In Ethiopian Legal System, according to the criminal procedure code article 23 provided duty of police to investigate the crime. As the law provides, the arrested person's right must be protected and respected during the investigation. The police should carry out their duty to investigate the crime and interrogate the arrested person.

Under Ethiopian Law, investigation is conducted on an arrested person and it is conducted by the police². Interrogation is an examination of the suspected person by the police with a view to eliciting reluctant information pertaining to the offence with which the person is suspected of .³

The criminal procedure code of 1961 is both common law and continental law legal system oriented.³ The Federal Democratic Republic of Ethiopia (FDRE) constitution provides that:- "right of persons arrested" and article 20 of FDRE Constitution provides that:- 'rights of persons accused. In some woreda police station, I will raise the problems of each some woreda police station for instance in the light of article 27 of criminal procedure code/ cr.p.c /and article 19 of FDRE constitution and also include another relevant provision. Art. 27 cr.p.c provides that, "any person summoned under Art. 25 or arrested under Art. 26, 50 and 51 shall after his identity and address have been established, be asked to answer the accusation or complaint made against him. "Art. 27(2) cr.p.c also provides that; "he shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence." Similarly article 19(2) of the

constitution:- says that, “persons arrested have the right to remain silent. Upon 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 in court. Article 19(3) of the constitution provided that:- “persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from 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.” And also article 19(5) of the constitution provides that, “person arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.”

In Oromia Regional State in west shawa zone, there are problems concerning with the interrogation and the right of an arrested person to be released from the jail and to be brought to the court within the specific time. Where the arrested person is interrogated by the police, the police won't inform the right of an arrested person according to the law. The police should carry out their duty to inform the arrestee / suspected/ person when they interrogate and the confession is give to the police.

I want to show the practical problems and their good performance (execution) of investigating police officers and I have conducted an interview with the police and an arrested person.

The police should carry out their duty to control the peace and security of the society. In the criminal procedure code article 9 provides that:-“the police shall in accordance with the provisions of this code assists the public prosecution department in;”

- a. “preserving the peace and preventing crime,
- b. Discovering the commission of offences; and
- c. Apprehending offender”.

In Dandi woreda police station, the polices have to know the right and duty of their activities.⁴ To respect and protect the right of an individual person in any crimstances. The right and duties of the police provide in the proclamation of Oromia police establishment No.32/95.⁵ For instance, the right of police, like the right to get annual leave, sick leave, the right to get clothes, etc.⁶

The police officer of Dandi woreda interrogated the suspected (arrested) person after he/she appear before the police officers. They interrogate such person according to the criminal procedure code of Ethiopia article 27(2).⁷ During the interrogation the police has a form on which they will write the confession of the arrested person. The paper form has one page and contains the provision of criminal procedure code article 27(2). It is annexed at the end of this paper. The form only contains the provision of criminal procedure, but, not includes the provision of the constitution. The FDRE constitution article 19 provides the right of an arrested person. According to the writer of this paper the police even have a form, the law provides that inform such right to an arrested person. Article 19(2) of constitution provides that:-“accused persons have the right to remain silent, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against in court”. The provision hased not expressed whether in oral or written form to inform the right of an arrested person. But, the acceptable way is an oral information to such suspected person to be informed his/her right.

The police officer of Dandi woreda when the suspected person interrogate (makes a confession) to the police, the police will not informed the right to remain silent and any statement he/she may make may be used in evidence before court intentionally.⁸ But the writer of this paper understand that the form of paper which above discussed that simple put in written form for sample. If the police not perform their duty intentionally, the right of an arrested/suspected/person being affected.

The criminal procedure code of Ethiopia article 27(2) provides that.-“an arrested /suspected/person shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he/she may make may be used in evidence”. The word ‘shall’ is refers to that the mandatory obligation of the policy to inform the right of an arrested or suspected person. Nevertheless the police forget their duty, not only the criminal procedure provides the right to inform such person but also the FDRE Constitution article 19(2) provides the right of an arrested person to mandatory to inform their right. It provides that:-“persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in language they understand that any informed promptly, in a language they understand that any statement they make may be used as evidence against them in court.”

On the other hand,the writter has conducted an interview with arrested persons in Dandi woreda police station. Ato shabera Teresa is one of the arrested person in Dandi woreda police station. He also arrested by police officers on 25/09/2000 E.C at 11:00 am (morning) and he appeared with the police before a court of Law on 27/09/2000 E.C at 9:00 am (morning) ⁹. This person has appeared before a court of law within the specified period of time. The law also provides that if the arrest, the arrestee must appear before a court of Law within 48 hours. Therefore, the criminal procedure code article 29(1) provides that:-“where the accused has been arrested by the police or a private person and handed over to the police (Art.58) the police shall bring him before the nearest court within 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.” Similarly article 19(2) of the FDRE Constitution provides that:-“persons arrested have the right to be brought before a court within 48 hours of their arrest.---” So the police of Dandi woreda bring Ato shabera Teresa before a court within

forty eight hours of his arrest. The right of such person to bring court is not affected by the police.

Ato shabera Teresa during interrogated by the police, the police has compelled him to make a confessions without his free will.¹⁰ According to the law any arrested person shall not be compelled to answer the question of police. The substantive law and procedural law forbidden to compel a suspect and make him incriminate himself. Article 27(2) of the criminal procedure code provides that: - “he shall not be compelled to answer and---“And similarly article 19(5) of the FDRE Constitution provides that:-“persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.” So, compelling an arrested person is an illegal procedure. He/she gives his/her confession to the police by an involuntary confession

Ato Magarsa Yadesa is another arrested persons in Dandi Woreda police station. He is placed arrested in custody on 11/09/2000 E.C. at 3:00 PM (after noon) and also he gives his confession to the police on that of he arrested day.¹¹ The criminal procedure code of Ethiopia article 37(1) provides that:-“every police investigation under this chapter shall be completed without unnecessary delay.” The police without unnecessary delay interrogate such suspected person. If the police do not delay to interrogate or investigate the commission of the crime, the liberty of such person not be affected by the police in case of delaying process.

Ato Magarsa Yedese arrested in jail on 11/09/2000 E.C at 3:00 P.M (afternoon) and the police didn't bring before a court of Law within the specific period of time.¹²

Even if he has stayed in jail (custody) for last three weeks, he did not appear before the court of law.¹³ This person right is clearly violated by the police officers. The Federal Democratic Republic of Ethiopian

constitution article 19(3) provides that;- “persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from 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.” similarly the criminal procedure code article 29(1) provides that:- “where the accused has been arrested by the police or a private person and handed over to the police (art. 58,) the police shall bring him before the nearest court within forty eight hours of his arrest or so soon thereafter as local circumstances and communication permit. The time taken in the journey to the court shall not be included.”

The provision of the law may be clearly violated by the police, without bringing the arrested person to the court of the law within the specific time. The police have a constitutional obligation to bring to the court within the specific period of time. The investigator is forget their obligation, the dignity of the individual (human being) become affected by the police. So, the human dignity of this individual person was affected. Regarding to the informed right an arrested person, the police not inform the right to remain silent.¹⁴ Simple the police asked the accusation or the complaint to admit the compliant or accusation is your job you must be admitted.”¹⁵ The police without any information ask to put his/her signature on the form of the recorded statement of papers. They didn’t read for the person, the police said to the suspected person that if you not get food, you admit the compliant or the charge.¹⁶

Ato Alamayo Gidilu is another arrested person in the Dandi Woreda police station custody. He arrested by police on 27/09/2000 E.C at 4:00 PM (afternoon) and he has to be makes his confession to the police on 4/10/2000 E.C at 9:30 AM (morning).¹⁷ The police interrogate such

suspected person after eight days. The police might be delay to interrogate without any reasonable ground. Article 37(1) of the criminal procedure code it provides that:- “every police investigation under this chapter shall be completed without unnecessary delay.” In many times the police of Dandi woreda unnecessary delay to investigate the commission of crime.

Ato Alamayo Gidilu is not appeared before a court of law after he arrest. He arrest on 27/09/2000 E.C at 9:30 Am (morning) he has stayed present for a week in jail without justifiable cause. The police didn't bring to the court of law within 48 hours until an interview conducted with him, he simple exist in custody.¹⁸ The liberty of an individual person being affected by the police. Article 29(1) of the criminal procedure code provides that:- “...the police shall bring the accused before the nearest court within forty eight hours of his arrest”. Similarly the Federal Democratic Republic of Ethiopian (FDRE) constitution article 19(3) provides that: - “persons arrested have the right to be brought before a court within 48 hours of their arrest ...” The police violate the constitutional and procedural obligation bringing an arrested person to the court of law

In the police station of Dandi woreda also affect the right of the individual person. The police didn't informed the information about the right of the suspected person.¹⁹ The police investigate the commission of crimes, During the interrogation of suspected person, the police has a constitutional and procedural obligation to respected the right of such person. The police not perform their duty according to the law. For instance the criminal procedure code of Ethiopia article 27(2) provides that:- “he shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make be used in evidence.”

The police station of Amobo Woreda is one of the part of the west shawa zone. It has a woreda police station. So, I will try to discuss as follow how the police interrogate an arrested persons. The police of Ambo woreda interrogate the suspected person before bringing such person before a court of law according to the law.²⁰ The arrested person not be compelled to answer and they shall be inform the right not to answer and that any statement he may be used in evidence in court²¹. The police officers has a paper form which is recorded on it the statement of an arrested person²².

In Ambo woreda police officer, interrogated the suspected person by asking a question cross-examination²³. According to the Ethiopian criminal procedure code the cross examination is for an accused person or advocate or for public persecutor. But, the police can ask any type of question for an accused if he/she is willing to answer.

An interview conducted with other police investigating officers and arrested person who is present in jail of an Ejere woreda police station. The police an interview conducted with the police that an assistance inspector Abera Raji, who is General inspector of crime investigator bureau.

The police officer of Ejere woreda for the first time the accusation or complaint against him was read for arrestee, then he/she not compelled to make a confession or the admit the crime, the right he/she has inform according to the criminal procedure code art. 27(2).²⁴ It is a form who he/she gives his/her admission or confession about the accusation or the compliant against suspected person to police record on the form paper. The form is content the provision of procedure art.27 (2). There are two mechanisms the peoples report the information to the police, these are 'erruu' in ormiffa which means accusation and by individual person called compliant."²⁵

Ato Girma Gade is one of an arrested person in Ejere woreda police station. He is arrested on 5/10/2000 at 6:30pm (afternoon) and he makes a confession to the police on 6/10/2000 E.C at 7:00 Am (morning) ²⁶. He committed a crime theft. The law provides that to complete speedily the investigation the crime and report to the public prosecutor without unnecessary delay. So, the police interrogate such person speedily.

A suspected /summoned/ person has to be compelled to make a confession to the police, by the police investigating officers²⁷. During the interrogation the police have constitutional obligation to enforce their activities.

Arrested person compelled where he/she gives their confession to the police and do not informed by the police, you have the right not to answer any statement of the police question and the confession you admit is considered as evidence in court. The police compelled a suspected person, without any freely will and he/she not inform any right what he/she has²⁸. This is a big problems to compelled an arrested person where the screen out the crime by the police. The law is strictly forbidden the compelling of an individual person. Article 27(2) of criminal procedure code and the FDRE constitution article 19(5) are prohibit the arrested persons to compelled to make confession or admissions which could be used in evidence against them. So, the police investigating officers are violating the provision of law.

3.2. Problem of law and practice in releasing of an arrested person with the criminal procedure and the FDRE constitution.

3.2.1. By police: - Police has power to arrest suspected person. The police may arrest with warrant or arrest without warrant. Arrest with

warrant is effective where the crime was flagrant offence. The police has also a discretionary power to release an arrested person from the jail. According to the criminal procedure code article 28(1) provides that, “where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an 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 bond with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.”²⁹

After the police summoned or arrested such person or the offence has been committed or complained of the investigating police officer may in his discretion power release such person. Where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful the police release from the jail. Especially, during the petty offences the investigating police officers released on his executing bond with or without securities the summoned or arrested person.

The police release a summoned or arrested person according to the criminal procedure code art.28(1) when that offence is petty offence, not punishable rigorous imprisonment of doubtful they release such arrested person.³⁰ As the police’s power if the offence may be robbery, rape, homicidal, burning of house, etc they can’t release on bond such person.³¹ But, in offence of insult; petty offence and etc they release such summoned or arrested person by their discretion power on such person on his executing bond with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.

On the other hand, the police may release a summoned or arrested person unconditional.³² Before the investigating police officer unconditional release of an arrested person is effectively applicable. As I get information from the police officers, the police can release such summoned or arrested person unconditional from the jail (custody) if no more reasonable ground to arrest such person. This is a problem to release such arrested person unconditional. The law of criminal procedure code and the Federal Democratic Republic of Ethiopia constitution are silent releasing a summoned or arrested person unconditional. The law does not say anything about unconditional release. It is silent unless providing the conditional release.

An interviews conducted with an inspector Gutan Lelisa, the general inspector of crime prevention Dandi woreda police station, head of the crime prevention inspector Abera Raji of Ejere woreda and General inspector Tesfaye Abdata of Ambo woreda police station. The writer of this paper raised different issues regarding to the types of bonds the police can release an arrested /summoned/ person according to the criminal procedure code art. 28(1). There are different types of bonds or mechanism are used the police to release such person.³³ They can release a summoned or arrested person from jail (custody) by using a mechanisms three major groups of bond.³⁴ These are:_

1. “personal guarantee
 2. guarantee by third party.
 3. Unconditional release.”
1. personal guarantee is a situation whereby summoned /arrested/ person declared his/her properties by confirming (putting) his/her signature before investigating police officers to discharged from the jail. Then he/she describe all the necessary information and his/her

address or residence after that the investigating police officer release on bond such cynical.

2. Guarantee by third party:- is a third party who came to the police station and describe his/her identity then he/she put their signature before the police on behalf of the arrested person or to the guarantee of an arrested person.
3. Unconditional release is neither personal guarantee or guarantee by third party. It is without any guarantee, the police release such arrestee from the custody. The main ground to release unconditionally is the absence of the evidence.

The financial security or cash payment is not applicable or effective in police officer. Cash bond is only the power of court to fixe the money and releases such person. So, I will try to discuss in the next section the court how to release an arrested person from the custody.

By Court:- Court is one of the organ of government which interpret the law. It has jurisdiction power either release or deny an arrested person from the custody to release such person.

According to the criminal procedure code art. 63(1) provides that:- “whosoever 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 were there is no possibility of the person in respect of whom the offence was committed dying.” Article 63(2) provides also that:- “no person shall be released on bail unless he has entered into a bail bond with or without sureties, which in the opinion of the court, is sufficient to secure his attendance at court when so required to appear.”

There is requirements to release such person. The requirement is a cumulative not alternative. These are:-

1. If the charge does not carry death penalty or rigorous imprisonment for fifteen years or more, and;
2. where there is no possibility of the person in respect of whom the offence was committed dying.

Bail may be allowed or not allowed, before the court. An application for bail shall be made in written form and signed by the applicant article 64(2) of criminal procedure code. As the criminal procedure code provide article 67 bail is not allowed. An application for bail shall not be allowed where:-

- a. “the applicant is of such nature that it is unlikely that he will comply with the conditions laid down in the bail bond;
- b. the applicant, if set at liberty, is likely to commit other offence;
- c. the applicant is likely to interfere with witness of temper with the evidence. Additional the applicant charged by the corruption offence.”

Where the application is allowed, the court shall fix the conditions or which bail is granted, article 68 CR.P.C. When the bail bond has been entered into and all formalities complied with, the accused shall be released from custody (art. 72) of the CR.P.C.

The court can release an arrested /accused/person with fixing of the condition from the custody (jail). The FDRE constitution also provides that the release on bail is by the conditional release.

Article 19(6) provides that:- “persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.”

There is a conditional release providing in the criminal procedure code and FDRE constitution. No unconditional release is permit (provide) in the law. This is the problems of law. The law is silent regarding to unconditional release.

An interview conduct with the president of Lamesa Gutama Dandi woreda court. The court is the state first- instance court. There is no prove the legality of law when the police interrogate the arrested person, the person make a confession to police. There is no legal prove to protect or not when the person makes a confession to the police, the only measure is inadmissibility of the confession to give the police and inadmissibility of the coerced confession³⁵. This is performed or applicable when the suspected person refuse he/she admit in police officers³⁶. The measures take before the court, when the police can't inform the right of summoned /arrested/ person. There is no measure take a court, the only measure is an exclusion of the evidence the confession given to the police by such suspected person ³⁷.

Bail before the court of law is used different types to release an arrested /accused/ person from the custody. There are three major groups of bail to release an arrested /accused/ person used in the court³⁸. These are:-

1. "personal guarantee
2. cash bail (by model 85)
3. guarantee of third party."

During criminal pre-trial proceedings unconditional release is not effective before the court. But, in criminal trial proceedings if the evidence is gathered either by the police or by the public persecutor is not beyond reasonably doubt, the court can close the file and release the suspected person unconditionally.³⁹

Therefore, I understand from the president unconditional release is absent before the trial proceeding. But is it applicable at the end of trial criminal proceedings. The law is also not provides unconditional release.

Conclusion and Recommendation

3.3.1 Conclusion

The writer of this paper has observed different issues in the practice and laws. The investigation is the gathering of evidence. The evidence is gathered from police first and then from public prosecutor. Where the police gathered the evidence they make different illegal activities. The same happens according to an interview conducted with different investigating police officer and the arrested person. For instance, in Ambo woreda police station a suspected person when makes his/her confession to the police, the police ask the cross-examination question to admit the accusation or compliant in systematical way.

In Dandi woreda police station, according to an interview conducted with police, they do not intentionally inform the right of an arrested person, such as the right to remain silent , the right not to answer and the statement makes may be considered as in evidence in court. That means if the police do not perform their duty intentionally, there is negligence. So, the liberty of an arrested person is affected. The law imposed duty on police to inform all the right of an arrested person.

According to the research the case, the police officers release an arrested person unconditionally. The police investigating officer has reason to believe that a person has committed an offence he may be written summons require such person to appear before him art. 25). If it is fail to appear according to the criminal procedure art. 26 the police arrest such person. So, after reason to believe that a person has committed an offence, releasing unconditional is a problem.

The police informed that when interrogate the suspected person do not compelled to admit the accusation or complaint in the side of police. But according to the arrested person, different arrestees tell that the police compelled to admit the accusation or complaint. And not appear

before the court of law, there are many arrestees who do not appear before the court of law until three weeks.

When the police interrogate the suspected person if they violate the law or the right of an arrested person, there is no measure take against the police before the court unless the inadmissibility of the evidence.

The court can't release an arrested person unconditional because the law do not provides the unconditional release. The law is silent regarding to the unconditional release. But it provides the conditional release only.

3.3.2. Recommendation

Based on the writer's readings and interviews with the police, arrested person and with judges for the purposes of this senior thesis, I have got some basic understanding of the problem. So deriving from this understanding I recommend that some basic measures should be taken in order to have a solution for the different problems.

Educating the police by law professions such as how to raise questions to the arrested person. The police must be liable regarding to the negligence of their duty. Particularly, the legislator enact law to liable exceptional to breach of the law provisions and the violation of an arrested person right.

The police have a discretionary power to release an arrested person from the custody according to art. 28(1) criminal procedure code. The laws provide release an arrested person conditional, but the police sometimes release unconditional. The legislator must enact in addition to conditional suspected person release, unconditional release for future. Without the providing of the law doing something is illegal.

As I mentioned in the conclusion, there are two side raise for my interview, on the side of an arrested person and on the side of police. In the side of the police, they police done without the violation of the arrested person, but, on the side of arrested person said our right is

violated and compelled to admit the accusation or complaint against him/her. So, to solve these problems in addition to inadmissibility of evidence before court, it should be needs another neutral third person in the interrogated room.

In the criminal procedure code and the FDRE constitution the court release, an arrested person conditional. In my opinion there is necessary enact unconditional release as I discussed previously. The legislator should be draft the law to permit unconditional release by amending the criminal procedure code of the Ethiopia.