ANALYZING THE PRE-TRIAL DETENTION LAW AND THE JUDICIAL PRACTICE OF ETHIOPIA IN LIGHT OF HUMAN RIGHTS STANDARDS

Addisu Gulilat Teshama*
Alemeu Meheretu (Dr.) **
Andrew Botterell(Dr.)***

Abstract

In Ethiopia, Pre-trial detention is supposed to be conducted based on the rules stated in the 1961 criminal procedure code; anti-corruption proclamation No.882/2015; and the Federal Supreme Court Cassation Bench precedent. These laws and cassation court precedent together provide the rules on permissible justifications for pre-trial detention, exceptions on the right to bail; and limits on duration of pre-trial detention. On the other hand, the FDRE constitution, and treaties ratified by Ethiopia provide principles and rules on the limitations on the right to bail and duration of pre-trial detention. This article examines the compliance of the statutory rules and the cassation court precedent to the human rights principles on pre-trial detention in Ethiopia. Besides, this piece has examined the propriety of the judicial practice in Bahir Dar ena Akababiwa High Court and Bahir Dar town Woreda Court in their application and interpretation of pre-trial detention statutes as illustrations. As such, the work employs a legal doctrinal methodology. The empirical information is gained through the observation of the criminal benchs in Bahardar Ena Akababiwa High court, and Bahir Dar town District Court. Besides, we use human rights situations reports as source of empirical data. Consequently, the article argues that the statutory laws and the precedent of the cassation court don't comply to the human rights standards. And, the judicial practice regarding regulation of pre-trial detention is normatively dissatisfying.

Keywords: Pretrial detention, Right to personal liberty, Bail, Prolonged detention, Presumption of innocence

INTRODUCTION

According to the World Prison Brief report, as of February 2020, almost three million people are held in penal institutions throughout the world as pre-trial detainees/remand prisoners. [1]

* (corresponding author) (LL.B, LL.M in International Human Rights Law, LL.M in Global Criminal Law, PhD candidate), Lecturer in Law at Bahir Dar University school of law. The author can be reached at Email: addisujg@yahoo.com

** (LLB, LLM, PhD), Associate Professor of law, currently, Regional Director, Monitoring and Investigation (Ethiopian Human Rights Commission). The author can be reached at E-mail: alemeherete@gmail.com

*** (LLB, LLM, PhD), Associate Professor, Dept. of Philosophy and Faculty of Law, University of Western Ontario. The author can be reached at Email: abottere@uwo.va . The authors would like to thank anonymous reviewers for their genuine and constructive comments.

[1] ROY WALMSLEY, WORLD PRE-TRIAL/REMAND IMPRISONMENT LIST, (4TH ed., 2020), Institute for Crime and justice Policy Research, at1.

According to the report ,"taking into account also those in the other eight countries on which official information is unavailable and of the pre-trial detainees in police facilities who are omitted from national totals, there will be well over three million held in pre-trial detention and other forms of remand imprisonment throughout the world."[2] Out of this figure, as of 2010/11, 49,000 are from Ethiopia. This figure constitutes 36% of the total prison population of Ethiopia.[3] The pre-trial prison population in Ethiopia has been increasing by the rate of 47% in 2000/01, 26 % in 2005/06 and 17% in 2010/11.[4]

There are a lot of reasons why examination and discussion of pre-detention is needed.[5]First of all, there are the numbers: it is estimated that on any given day around 2.5 million people are being held in pre-trial detention and other forms of remand imprisonment throughout the world[6] and that in the course of a year approximately 10 million people will pass through pre-trial detention. [7] Second, the application of pre-trial detention is problematic in the context of universally recognized human rights norms. Particularly relevant in this respect are the right to liberty, the presumption of innocence, the right to humane treatment, and the prohibition of torture and ill treatment.[8] Third, pre-trial detention is a burden on society and the detainee's family: pre-trial detention is costly to the tax payer; it hinders the detainee from contributing to the economy and might, for instance, lead to loss of job and home.[9]Fourth, it must also be recognized that no adequately functioning criminal justice system that is able to effectively prevent and repress crime can presently do entirely without detaining any suspects. Fifth and finally, there are several relatively new developments related to international legal cooperation between States that merit attention from the aspect of pre-trial detention.

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[2] *Id*.
[3] *Id*.
[4] *Id*, at 4.
[5] Piet Hein van Kempen , Pre-trial detention in national and international law and practice: A Comparative Synthesis And Analyses, in PIET HEIN VAN KEMPEN, (ED), *HUMAN RIGHTS, CRIMINAL PROCEDURAL LAW AND PENITENTIARY LAW, COMPARATIVE LAW* , Cambridge, Antwerp, Portland: Intersentia, (2012), at 1.
[6] ROY WALMSLEY, supra note 1.
[7] See David Berry Et Al., *The Socioeconomic Impact Of Pretrial Detention*, New York: Open Society Foundations/United Nations Development Program, (2011), <Www.Soros.Org/Initiatives/ Justice/Articles_Publications/Publications/Socioeconomic-Impact-Detention-20110201>at 12.
[8] See MORITZ BIRK ET AL., PRETRIAL DETENTION AND TORTURE: WHY PRETRIAL DETAINEES FACE THE GREATEST RISK,(2011), New York: University Of Bristol/Ludwig Boltzmann Institute/Open Society Foundations,), at 18 .
[9] See David Berry Et Al, supra note 7.

Due to the above problematic nature of pre-trial detention, international human rights instruments ratified by Ethiopia and the FDRE constitution stipulate strong regularly framework on the use of pretrial detention with more or less similar terms. This article aims to assess the compliance of the pre-trial detention regime of Ethiopia as defined statutes and interpreted by the Federal Supreme Court cassation bench from human rights perspective. As such, it is a legal doctrinal research. The work incidentally encompasses commenting to the judicial interpretation and application practices of selected courts. As such, this article involves a two-step analysis enterprise. First, it outlines the normative framework on pre-trial detention drawing from international human rights supervision bodies, such as the Human Rights Committee (HRC) and scholarly works. The ultimate goal is to critically analyze the legal framework on pre-trial detention in Ethiopia as prescribed in the 1961 criminal procedure code (CrimPC), and the Revised Anti-Corruption Special Procedure and Rules of Evidence (Amendment) Proclamation No. 88212015. It focuses on the function of pre-trial detention; duration and frequency of pretrial detention, and the available conditions on bail/custody decisions.

This article is organized into six sections. Section I makes the introductory remarks. And, section II is devoted to the discussion of the normative theoretical framework on pre-trial detention. The discussion in this section draws from the jurisprudence of the HRC, the soft human rights principles, and scholarly works. Sections III, IV, and V addresses the challenges on the pre-trial detention law of Ethiopia focusing on the policy justifications for pre-trial detention, the bail justice legal framework, and duration of pre-trial detention respectively as prescribed in Ethiopian relevant legislations and the Federal Supreme Court Cassation Bench jurisprudence. Finally, Section VI deals with the concluding remarks.

1. PERMISSIBLE GROUNDS, PROCEDURES AND CONDITIONS FOR DETENTION IN CRIMINAL PROCESS CONTEXT IN INTERNATIONAL HUMAN RIGHTS LAW

1.1 Permissible Grounds for Detention of the Suspect/Accused

Article 9(1) of the ICCPR provides that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. As to the principle of legality, the Human Rights Committee has held that "it is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation"; in other words,

the grounds for arrest and detention must be "established by law".[10] In a case where a person was arrested without a warrant, which was issued more than three days later, contrary to the domestic law that lays down that a warrant must be issued within 72 hours after arrest, the Committee concluded that "article 9(1) had been violated because the author had been deprived of his liberty in violation of a procedure as established by law".[11]

Besides, under Article 9(1) of the ICCPR, "no one shall be subjected to arbitrary arrest or detention." Hence, whether pre-trial detention is a permissible deprivation of liberty depends on whether it falls within the prohibition on arbitrary arrest and detention. The United Nations Human Rights Committee (1964) (HRC) has stated that '"arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law'.[12] In one case the African Commission on Human and Peoples Rights held that the "indefinite detention of persons can be interpreted as arbitrary as the detainee does not know the extent of his punishment"; article 6 of the African Charter had been violated in this case because the victims concerned were detained indefinitely after having protested against torture.[13] Furthermore, it constitutes an arbitrary deprivation of liberty within the meaning of article 6 of the African Charter to detain people without charges and without the possibility of bail; in this particular case against Nigeria the victims had been held in these conditions for over three years following elections.[14]

Detention before conviction is arguably in conflict with the right to presumption of innocence recognized in article 14 of the ICCPR. Yet, the right to presumption of innocence is not absolute. It can be limited to the effective operation of the criminal justice process. in this section aims to strike the balance between the two interests drawing from the jurisprudence of HRC and scholars works. As such, this section identifies the compelling public interests that justify pre-trial

[10] Communicaton No. 702/1996, C. McLawrence v. Jamaica (Views adopted on 18 July 1997), in UN doc. GAOR, A/52/40 (vol. II), pp. 230-231, para. 5.5.
[11] Communication No. 770/1997, Gridin v. Russian Federation (Views adopted on 20 July 2000), in UN doc. GAOR, A/55/40 (vol. II), at175, para. 8.1.
[12] Communication No 1134/2002 FongumGorji-Dinka v Cameroon (views adopted on 10 May 2005) U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para 5.1.
[13] ACHPR, World Organisation against Torture and Others v. Zaire, Communications Nos. 25/89, 47/90, 56/91 and 100/93, decision adopted during the 19th session, March 1996, para. 67; for the text see http://www.up.ac.za/chr/.
[14] ACHPR, Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Communication No. 102/93, decision adopted on 31 October 1998, para. 55 of the text published at the following web site: http://www1.umn.edu/humanrts/africa/comcases/102-93.html.

detention as articulated by international human rights law standard setters and authoritative scholars. In this regard, the HRC recognizes the purposes of pre-trial detention as to prevent flight, interference with evidence or the recurrence of crime stating "the detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime."[15]

Piet Hein, Van Kempen drawing from the jurisprudence of HRC, summarizes the grounds which represent acceptable functions of pre-trial detention, including the prevention of: absconding (the risk that the suspect will fail to appear for trial); interference with establishing the truth (the danger that the suspect will take action to prejudice the administration of justice); Immediate recidivism (the risk that the suspect will commit further offences); and, Threat of public disorder (the risk that public disorder will be caused if the suspect is not detained or if he were to be released).[16]

In addition to the binding case laws, there are some UN Level soft laws that outlines justified public interests for pretrial detention. The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[17]provides for "the investigation of the alleged offence", "protection of the victim,"[18]"the protection of society"[19] as justifications for pretrial detention. The UN Body of Principles endorses administration of justice[20] and crime prevention[21] as justified grounds for pretrial detention. The UN Human Right Council Principles on deprivation of liberty in article 3 it states detention is justified by prevention of the risk that the accused "evade the processes of the law or prejudice the results of the investigation."[22]

[15] Human Rights Committee (HRC), General Comment 35, CCPR/C/GC/35, para.38.
[16] Piet Hein van Kempen , supra note 5.
[17]United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), Adopted by General Assembly resolution 45/110 of 14 December 1990.
[18] *Id*., Section, 6.1.
[19] *Id*, 2.3.
[20]The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Adopted by General Assembly resolution 43/173 of 9 December 1988.Principle 39.
[21] *Id*, at 6.2.
[22] *Id*, at .3.

Similarly, the Principles and Guide lines on The Right to A Fair Trial and Legal Assistance stated that unless there is sufficient evidence that deems it necessary.[23]

Regarding the question, 'what ought to be the reasons that justify keeping a defendant in custody before his guilt has been formally adjudicated?' Packer argues that it varies depending on the criminal justice model one follows.[24] According to Packer's due process model "a person accused of crime is entitled to freedom except to the extent necessary to serve the legitimate ends of a legal system."[25] And "the only legitimate end that is threatened by an absolute right to be free pending trial is the assurance that a defendant will not subvert the orderly processes of criminal justice by deliberately absenting himself at the time and place appointed for trial.[26]

According to Packer, in a Due Process view of criminal justice, the suspect "is to be arrested so that he may be held to answer the case against him, not so that a case against him that does not exist at the time of his arrest can be developed.[27]

Duff is a leading opponent to the use of pretrial detention from presumption of innocent perspective.[28]According to Duff, "we cannot justify detention on the ground that the defendant might if left free commit offences other than absconding or obstructing justice."[29]For Andrew Ashworth "the justifications for this must be strong and pressing, in view of the deprivation of liberty involved."[30] For him, a low probability of a very serious offence ought to have more weight than a probability of less serious offence.[31]Victor Tadros dismissed the claim that in "assessing interference with the presumption of innocence it is important to strike a fair balance between 'the rights of the individual and the wider interests of the community."[32]He correctly

[23] African Commission on Human and People's Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Para. M(1)(E).
[24] Hebert L. Packer, Two Models Of The Criminal Process, UNIVERSITY OF PENNSYLVANIA LAW REVIEW, volume 113, No.1.(1964).
[25] Id.
[26] *Id*.
[27] *Id*., at 3.
[28]R. A. Duff, Pre-Trial Detention And The Presumption Of Innocence, in A.J. ASHWORTH, L. ZEDNER, P. TOMLIN, (ED), PREVENTION AND THE LIMITS OF THE CRIMINAL LAW,,(2013),Oxford University Press, at 5.
[29] *Id*., at 128.
[30] ANDREW ASHWORTH, *THE CRIMINAL PROCESS: AN EVALUATIVE STUDY*, 2ND ED.(1998),Oxford University Pressat .210-212.
[31] *Id*.
[32] Victor Tadros, Rethinking the presumption of innocence, CRIM LAW AND PHILOS,(2007), at .211.

argues that the wider interests of the community will be served by conviction on an insecure epistemic basis.[33]For Pamela R. Ferguson, for more invasive extended detentions it require a court warrant, with the grounds for suspicion being verified by a member of the judiciary.[34] In General, though there has been growing scholarly resistance to crime prevention policy of pretrial detention for allegedly being conflicting with the principle of presumption of innocence.

1.2 Right of Arrested Person to Be Brought Before A Court

Art. 19(3) of the Constitution provide that arrested persons have "the right to be brought before a court within 48 hours of their arrest". Likewise, under article 9(3) of the ICCPR "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power." The purpose of the review before a judicial or other authority includes to assess whether sufficient legal reason exists for the arrest; assess whether detention before trial is necessary; determine whether the detainee should be released from custody, and the conditions, if any, for such release; safeguard the well-being of the detainee; prevent violations of the detainee's fundamental rights; and, give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.[35]

In the case of Wolf v. Panama, the author was never brought before a judge after his arrest, and, the HRC concludes that article 9, paragraph 3, was violated because "the author was not brought promptly before a judge or other judicial officer authorized by law to exercise judicial power."[36]

The Constitution requires courts to take into consideration the right to speedy trial of arrested persons and the interests of justice when they order law enforcement agents to release arrested persons, or order the arrested person to remain in custody, or grant remand upon requests, which should be "for a time strictly required to carry out the necessary investigation," as stated under Art. 19(4). When the investigating police officer could not complete investigation and apply for remand to obtain sufficient time for investigation, the court may grant remand for not more than

[33] *Id*.
[34] Pamela R. Ferguson, the Presumption of Innocence and Its Role in the Criminal Process, CRIMINAL LAW FORUM 27, (2016), at 151.
[35]African Commission. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003. Available at <ccpr.pdf>
[36] CCPR/C/44/D/289/1988 (Wolf v. Panama),para.6.2.

14 days on each occasion as provided under Art. 59 of the Criminal Procedure Code. However, the Criminal Procedure does not limit the number of remands or the maximum time to be given for investigation.

The right to be brought before court is also guaranteed in international human rights treaties ratified by Ethiopia.[37] Courts should be empowered to review and assess whether sufficient legal reason exists for the arrest, assess whether detention before trial is necessary, determine whether the detainee should be released from custody, and the conditions, if any, for such release, safeguard the well-being of the detainee, prevent violations of the detainee's fundamental rights, give the detainee the opportunity to challenge the lawfulness of his or her detention and to secure release if the arrest or detention violates his or her rights.[38]

1.3 The Right to Release on Bail

1.3.1 Bail Must Be the Principle

The Constitution guarantees the right to bail because individuals should not be deprived of the right to liberty even when suspected of committing a crime unless the deprivation of liberty is absolutely necessary (Art. 19(6) of the Constitution). However, all arrested persons may not be granted bail as there are conditions to be met as laid down by the Criminal Procedure Code. Accordingly, article 63 indicates non-bailable crimes (e.g., when arrested person is suspected of committing serious crimes punishable with more than 15 years of rigorous imprisonment or death). The right to bail is also recognized in the international human rights treaties ratified by Ethiopia.(ICCPR, Art 9(3). States must ensure that it is not the general rule that individuals arrested, detained or charged with a criminal offense are held in custody pending investigation or trial. Persons charged for a criminal offence should not be kept in detention while their trial is pending unless there is sufficient evidence showing that it is necessary to prevent them from fleeing, interfering with witnesses or posing a clear and serious risk to others.

Article 9(3)of the ICCPR requires release from custody must be the principle and such release may be subject to guarantees of appearance, including appearance for trial, appearance at any

[37] ICCPR, Art. 9(3); ACHPR, Art. 7(1(d)).
[38] ACHPR Principles and Guidelines section M principle 3(b).

other stage of the judicial proceedings and (should occasion arise) appearance for execution of the judgment. In this case, for the HRC, detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.[39] The relevant factors should be specified in law and should not include vague and expansive standards such as "public security."[40]

The HRC rightly suggest that courts must examine whether alternatives to pretrial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case.[41] If the defendant is a foreigner, that fact must not be treated as sufficient to establish that the defendant may flee the jurisdiction.[42] With regard to article 9(3) of the Covenant, the Human Rights Committee has consistently held that "pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party".[43]Arrest and detention must be used "as an exceptional measure and a measure of last resort, only to be used if absolutely necessary, and if it is in proportion to the offence and reasonable."[44]In the determination of 'proportionality' and necessity' the considerations must "the suspect's behavior, the alleged offence (serious or minor), whether the offence has a custodial penalty, whether the suspect belongs to a vulnerable group, and whether an alternative is available."[45]

1.3.2 Judicial bail: consideration on bail proceedings

The type of the offence shall be taken into account in bail proceedings. In this case, pretrial detention should not be mandatory for all defendants charged with a particular crime, without

[39] 1502/2006, Marinich v. Belarus, para. 10.4; 1940/2010, Cedeño v. Bolivarian Republic of Venezuela, para. 7.10; 1547/2007, Torobekov v. Kyrgyzstan, para. 6.3.
[40] See concluding observations: Bosnia and Herzegovina (CCPR/C/BIH/CO/1, 2006), para. 18
[41] 1178/2003, Smantser v. Belarus, para. 10.3.
[42] 526/1993, Hill and Hill v. Spain, para. 12.3
[43] Communication No. 526/1993, M. and B. Hill v. Spain (Views adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), p. 17, para. 12.3.
[44] The Luanda Guidelines on the Conditions of Arrest, Police Custody and Pretrial Detention in Africa, adopted by the African Commission on Human and Peoples' Rights (ACHPR), In May 2014.
[45] *Id*.

regard to individual circumstances.[46] Neither should pretrial detention be ordered for a period based on the potential sentence for the crime charged, rather than on a determination of necessity. After an initial determination has been made that pretrial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives.[47] If the length of time that the defendant has been detained reaches the length of the longest sentence that could be imposed for the crimes charged, the defendant should be released.[48]

The Committee is also of the opinion that "the mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial".[49] Furthermore, "the mere conjecture of a State party that a foreigner might leave its jurisdiction if released on bail does not justify an exception to the rule laid down in" article 9(3); consequently, in a case where the State party provided no information to substantiate its concern that the accused would leave the country and as to "why it could not be addressed by setting an appropriate sum of bail and other conditions of release", the Committee concluded that article 9(3) had been violated.[50]

The criminal justice system should provide "a wide range of noncustodial measures, from pre-trial to post-sentencing dispositions."[51] The number and types of noncustodial measures available should be determined in such a way in order to provide "greater flexibility consistent with the nature and gravity of the offence."[52]arrest/detention except on "a serious offence for which a penalty involving loss of liberty is prescribed by law" is prohibited. In cases where "an offence does not carry a custodial penalty, the offender should not be held in pre-trial detention."[53]

The committee on the Study of the right of everyone to be free from arbitrary arrest, detention and exile notes that "it has become global practice that detention should not be made mandatory;

[46] See HRC, concluding observations: Argentina (CCPR/CO/70/ARG, 2000), para. 10; Sri Lanka (CCPR/CO/79/LKA, 2003), para. 13.
[47]Communication No. 1085/2002, Taright v. Algeria, paras. 8.3–8.4.
[48] General comment No. 32, para. 42; see Committee on the Rights of the Child, general comment No. 10, para. 80.
[49] Communication No. 526/1993, M. and B. Hill v. Spain (Views adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), at 17, para. 12.3.
[50]Communication No. 526/1993, M. and B. Hill v. Spain (Views adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), at 17, para. 12.3.
[51] Tokyo rules(1990), supra note 17, Section, 2.3
[52] *Id*.
[53]The Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial (Luanda Guidelines).

even in those cases in which the circumstances may legally justify detention."[54] In this regard, the committee urges states that the competent authority concerned should be able to take into consideration "the personal circumstances of the suspect or accused, such as his age, health, occupation and family status".[55]

It requires "sufficient evidence" to arrest or detention.[56] preventive pretrial detention should not be based on mere anticipation of criminal behavior;[57] that to allow deprivation of liberty, without trial, on mere anticipation of future criminality can lead to arbitrary action of all kinds".[58] Detention from the outset must be grounded on "sufficient cause" of action; and what constitutes sufficient cause for arrest may depend, to a large degree, on the view that is taken regarding the legitimate purposes of pretrial custody: If arrest is permitted for the purpose of holding a suspect for questioning, almost any circumstance of suspicion may suffice; If on the other hand the suspect cannot be subjected to questioning upon arrest, he should not be taken into custody until the evidence available constitutes a substantial prima facie case against him.[59]

Reported behavior of the defendant implicates judicial bail release/ detention decision. The criminal justice system should provide "a wide range of noncustodial measures, from pre-trial to post-sentencing dispositions."[60] The number and types of noncustodial measures available should be determined in such a way in order to provide "greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment." [61]

Status of the investigation is another factor in bail/remand decisions. According to the HRC, the right to bail release recognized in the ICCPR "applies to persons awaiting trial on criminal charges, that is, after the defendant has been charged, but a similar requirement prior to charging

[54] United Nations Department of Economie and Social Affairs (UNECOSOC) , Study of the right of everyone to be free from arbitrary arrest, detention and exile,(1964) E/CN. 4/826/Rev.1, UNITED NATIONS PUBLICATION, Sales No : 65. XIV. 2.para.223.
[55] *Id*.
[56] Principles And Guidelines On ,supra note 23.
[57]UNECOSOC(1964),supra note 60.
[58] *Id*.
[59] *Id*, para.217.
[60] The Tokyo Rules(1990), supra note 17,Section, 2.3
[61] *Id*.

results from the prohibition of arbitrary detention in paragraph 1."[62]This interpretation of the committee gives an insight that there is a separate treatment of detention before charge and after charge, the right to unconditional or conditional release pending investigation is not recognized expressly in the convention. It is derived by interpretation of prohibition of 'arbitrary detention' in general. The permissibility of pre-charge detention in the ICCPR itself is controversial, that no one will expect standards on its use, like release with/without bail. In this regard, the Tokyo rules suggest that alternatives to pre-trial detention shall be employed at "as early stage as possible.

1.4 The Right to Trial within A Reasonable Time Or To Release

The second requirement expressed in the first sentence of paragraph 3 of article 9 of the ICCPR is that the person detained is entitled to trial within a reasonable time or to release.[63]According to the HRC, that requirement applies specifically "to periods of pretrial detention that is, detention between the time of arrest and the time of judgment at first instance."[64]

According to the HRC, extremely prolonged pretrial detention endangers the presumption of innocence under article 14, paragraph 2.[65]Due to this reason, the HRC rightly argues that Persons who are not released pending trial "must be tried as expeditiously as possible", to the "extent consistent with their rights of defence."[66] The reasonableness of any delay in bringing the case to trial has to be assessed "in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the preceding and the manner in which the matter was dealt with by the executive and judicial authorities."[67] Impediments to the completion of the investigation may "justify additional time," but "general conditions of understaffing or budgetary constraint do not."[68] When delays become necessary, the judge must reconsider "alternatives to pretrial detention."[69]

The right of all persons charged with a criminal offence to (c) To be tried without undue delay enshrined in article 14 (3 (c)), is among the minimum guarantees in criminal proceedings of

[62] HRC, supra note 15,para.38.
[63] HRC, supra note 41, para.37.
[64] *Id*.
[65] *Id*.
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id*.

article. The HRC makes nexus between article 14 (3 (c)), and article 9 of the Covenant (pre-trial detention). According to the HRC, "The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice."[70]

On the relationship between article 14(2)(presumption of innocence) and article 9 of the Covenant (pre-trial detention), The HRC reiterates its concern that the maximum period for preventive detention set by reference to the penalty for the offence of which the person stands accused. In the view of the Committee, this may constitute an infringement of the presumption of innocence and of the right to a fair trial within a reasonable time or to release (arts. 9 and 14). According to the committee "It should restrict the grounds for preventive detention to those cases in which such detention is essential to protect legitimate interests, such as the appearance of the accused at the trial."[71]

The African commission on human and people's rights concurs with the HRC regarding the negative repercussion of prolong pretrial detention on the right to presumption of innocence. According to the commission, "the prolonged imprisonment without conviction of the Victims for a period of about 16 years clearly violates their right to be presumed innocent in that it was meant as a sanction prior to the delivery of the judgment."[72]

2. JUSTIFICATIONS FOR PRE-TRIAL DETENTION IN ETHIOPIA

The FDRE constitution in article 19(4) authorizes the court to remand the arrested person to police custody, when requested, to "carry out the necessary investigation." For the FDRE constitution, "where the interest of justice requires, the court may order the arrested person to remain in custody." The constitution leaves for the court to define "the interest of justice." In article 67, the 1961 criminal procedure code lists three purposes of pre-trial detention. It states: "an application for bail shall not be allowed where: (a) the applicant is of such nature that it is

[70] HRC's General Comment 32,para.35.
[71] Concluding observations, Italy, CCPR/C/ITA/CO/5 (2006), para. 14 ,
[72] Communication 301/O5 – Haregewoin Gabre-Selassie And IHRDA (On Behalf Of Former Dergue Officials/Ethiopia),Para. 209. available at <AFRICAN UNION>

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 offences; (c) the applicant is likely to interfere with witnesses or tamper with the evidence."

The foregoing three functions of pre-trial detention are reproduced in Article 4 of the Revised Anti-Corruption Special Procedure and Rules Proclamation No. 434/2005. In this regard, Article 4(4) reads:

> Without prejudice to the provision in sub article 1 of this Article, the court may not allow an application to be released on bail of the accused or the suspect as per sub-article 3 of this article, where;
>
> a) The suspect or the accused, if released on bail, is likely to abscond
>
> b) The suspect or the accused, if released on bail, is likely to tamper with evidence or commit other offences.

The existing criminal procedure code recognizes preventive pre-trial detention policy in article 67(b).The other two policies that are provided in article 67(a), ensuring appearance of the defendant before court, and 67(c) preventing tampering with evidence are legitimate grounds in international law and democratic states. The crime prevention function of pretrial detention law adopted the criminal procedure of Ethiopia is against the existing scholarly recommendations. Although international law doesn't expressly object to the crime prevention policy of pretrial detention, international law sets out the minimum standards on the protection of human rights. And, nothing prevents states from adopting human standards that are more favorable than those stated in the international law.

As Laura Whitehorn and Alan Berkman rightly argue that "more frightening still is the prospect that our society is moving one more step toward bartering its most important liberties for a "law and order" non-solution to its problems and injustices."[73] It is worth noting, however, that it is not plausible from the perspective of the genuine peace concerns of the society to remove crime

[73] Laura Whitehorn *And Alan Berkman, Preventive Detention. Prevention Of Human Rights*? ,<https://openyls.law.yale.edu/bitstream/handle/20.500.13051/7727/07_2YaleJL_Lib29_1991_.pdf?sequence=2&isAllowed=y>

prevention policy of pretrial detention altogether. So, the authors argue that crime preventive pre-trial detention could be at least maintained for terrorism offences. The reason for this is that terrorism by its nature is committed consecutively over a range of time unless law-enforcement agencies interrupt its consummation. Besides, the cost of terrorism is high and the damage that results from terrorism is irreparable. . If the accused is released, and if the probability is high that he/she will pursue the crime to further his/he goal. In conclusion, it is undisputed that there should be a balance between the liberty interests of the accused and the public interest regarding preventive pre-trial detention in Ethiopia. And, we argue that the right balance is that preventive pre-trial detention shall not be altogether eliminated. But, its use must be restricted to the prevention of offences that naturally are susceptible to repetition. It must be applicable to recidivists with a clear definition of recidivism in advance.

3. THE RIGHT TO RELEASE ON BAIL IN ETHIOPIA

3.1 Scope of Application of the Right to Bail Release

The Constitution guarantees the right to bail because individuals should not be deprived of the right to liberty even when suspected of committing a crime unless the deprivation of liberty is absolutely necessary (Art. 19(6) of the Constitution). The right to bail is also recognized in the international human rights treaties ratified by Ethiopia. However, all arrested persons may not be granted bail as there are conditions to be met as laid down by the Criminal Procedure Code.

In this regard, article 28 of the code authorizes the police to release the suspect on bail 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 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.

Article 28 is problematic. This is due to the fact that article 28 narrows the constitutionally guaranteed right to bail of the suspect with the discretion of the police. The issue becomes more

contentious when we consider the crimes are simple. If the crimes are punishable with simple punishment (not rigorous punishment) i.e. the public interest is less, the right to bail must be obligatory to the police. The other critique concerns the criteria: "where it is doubtful that an offence has been committed. "In this case, the benefit of the doubt must be to the accused not to the police. Due to this, we argue that the discretion given to the police in article 28 is unconstitutional.

Article 63 of the 1961 criminal procedure code distinguishes between bailable and, non bailable offences from the outset. Accordingly, article 63 of the 1961 criminal procedure code denies bail right to persons "charged with an offence that carry the death penalty or rigorous imprisonment for fifteen years or more and where there is possibility of the person in respect of whom the offence was committed dying."[74] We argue that classification of charges into bailable and non-bailable is not contemplated in the constitution and in the international law.

The problem of identified in article 63 of the code, is exacerbated in the anti-corruption proclamation No. 882/2015. According to article 3 of the anti-corruption proclamation No. 882/2015:

> a person charged or suspected with corruption offence punishable for more than 10 years will not be released on bail; where there are concurrent crimes punishable with more than 4 years and less than ten years and the punishment of the two crimes is more than ten years, the arrested person shall not be released on bail.[75]

The seriousness of the offence requirement is broadened in the anti-corruption proclamation No. 882/2015. The threshold of severity of punishment is lowered to 10 years and concurrent crimes. Even though the offences in isolation are minor, their concurrent occurrence will be aggravating ground not only to enhance punishment, but also to be ground to deny release on bail opportunity.

[74] Art. 63(1) States that in principle ' (I) 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 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.

[75] The Revised Anti-Corruption Special Procedure And Rules Of Evidence (Amendment) Proclamation No.882/2015.

3.1 Clarity of the Rules on Bail Release

3.2.1 The Meaning of 'The Person In Respect Of Whom the Offence Was Committed Dying'

Art. 63(1) of the 1961 criminal procedure code states that:

> (I) 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 where there is no possibility of the person in respect of whom the offence was committed dying.

In this provision the meaning of the bail exception 'where there is no possibility the person in respect of whom the offence was committed dying' is not self-evident." It requires scientific evidence to verify the possibility of death or otherwise of a wounded victim of crime. The first author is a practicing lawyer in Bahir Dar and has had the chance to observe the practice in Bahir Dar *ena Akababiwa* High Court. According to the author's observation, in this court, the judges rely on the opinion of medical doctors to assess the legally required 'possibility of death'. The problem with this technique is that the doctors usually only describe the sustained injury instead of stating the threshold. In other cases the doctors state it only in statistical percentage without interpretation what the numbers means. They are reluctant to conclusively say that the victim is possibly dying or the contrary. So, this vague evidence in practice leads judges to inconsistent inferences. The other problem is the doctors are willing to respond promptly impinging on the rule that "the court shall make its decision within 48 hours" decision on application for bail stated in article 66 of the criminal procedure code.

3.2.2 The Interpretation of 'Unlikely/Likely' In Article 67 of the Criminal Procedure Code

According to article 67 of the criminal procedure code, an application for bail shall not be allowed where:

> (a) The applicant is of such nature that it is unlikely he will comply with the conditions laid down in the bail bond; (b) the applicant, if set at liberty, is likely to

commit other offences; (c) the applicant is likely to interfere with witnesses or tamper with the evidence.

As it can be seen from the wordings of the provision the chance of grant for bail or denial of bail hangs on the interpretation of the words 'likely' or 'unlikely.' As we have discussed earlier, the international human rights law has introduced a bundle of considerations in interpreting risk in general. These are, among others, the seriousness of the offence; the 'Personal circumstances of the suspect or accused; and, the Status of investigation. International human rights law recommends states to adopt the above guidelines through domestic legislations. However, Ethiopia has not incorporated these guidelines in laws. So, ordinary courts are tasked with the assessment of risk in article 67.

According to proclamation No.1234/2021, the Federal Supreme has the power of cassation over cases when they contain basic or fundamental error of law.[76]Based on article 10/2/ of this proclamation "interpretation of law rendered by the Cassation Division of the Federal Supreme Court with not less than five judges shall be binding from the date the decision is rendered." Therefore the decisions of this court are treated as one source of law on pre-trial detention and treated accordingly in this section.

The Federal Supreme Court Cassation Bench[77] has been called in a number of cases to interpret article 67 of the 1967 criminal procedure code pertaining to the appropriate considerations that the lower court shall take into account in the determination of risk. In all of the cases the court do not adopt comprehensive criteria that help to determine the test of ' unlikely' or 'likely' enshrined in article 67 of the 1961 criminal procedure code to adjudicate bail. The practice of cassation court is full of wrongful cases that its jurisprudence can't be relied on to guide the lower courts. I will show the wrongs the court made in the following discussion.

In *Asnake Bekelle vs. Prosecutor*[78] - instead of discharging the legally mandated obligations to interpret such type of vague rule, the court held that it is the discretion of every lower court to

[76] Proclamation No.1234/2021 Federal Courts Proclamation, Federal *Negarit Gazette* of the Federal Democratic Republic of Ethiopia,2021, Art. 10(1).
[77] Based on Art. 10/2/ Interpretation of law rendered by the Cassation Division of the Federal Supreme Court with not less than five judges shall be binding from the date the decision is rendered.
[78] *Asnake Bekelle vs. Prosecutor*, Federal Supreme Court Cassation Bench Decisions Journal, Vol.7, file No. 31734, at .283,

interpret what amounts to be a risk of abscond. The court rightly noted that there must be sufficient reasons to predict abscond under article 67(a) of the 1961 criminal procedure code. And, for the court; the determination of what is sufficient is the discretion of the court which is entertaining the case. Contrary to the above reasoning the court overruled the lower court's decision arguing that the fact that the accused has possessed foreign passports and different country's visas are not sufficient grounds to deny bail. The court argues that this risk can be averted by other means. We argue that there is incoherence between the arguments and the conclusion of the court in this case. Merit wise, the court's argument that it is the discretion of the lower courts is to asses risk is unsound. Because, the cassation bench has the obligation to interpret such type of vague laws to ensure uniformity and certainty of the meaning of the rule, article 67(a) in this case.

In Mr. *Ayalew Tessema et al vs. Prosecutor*[79] the federal supreme court cassation bench upheld the lower court's interpretation of article 67(a) of the 1961 criminal procedure code arguing that the concurrence of the charged offences and the gravity of the offence are sufficient grounds to predict risk of abscond under article 67(a) of the 1961 criminal procedure code and deny bail accordingly. My comment in this case is that it is not the concurrence of offences but the seriousness of the offence that shall be a justified ground to detention before wrongful conviction.

In W/ro *Liwiza Forbeta vs Prosecutor*[80] the Federal supreme court ruled that threatening the witnesses of the prosecutor is sufficient ground to revoke the bail right based on article 67(b,c) and 74 of the criminal procedure code. In Mr. *Elias Geremew vs. Prosecutor*[81] the court revokes the bail grant due to the alleged act of threatening the witness of the prosecutor. However, the court do not substantiate its argument that threatening a witness triggers the application of article 67(b)i.e. refusing release on bail grounding on risk of reoffending.

[79] Mr. *Ayalew Tessema et al vs. Prosecutor*, Federal Supreme Court Cassation Bench Decisions Journal, Vol. 12, file No. ,59304. At .171.
[80] W/ro *Liwiza Forbeta vs Prosecutor*, Federal Supreme Court Cassation Bench Decisions Journal, volume 12, File No., 59855 , 28/03/2003 e/c, at 174
[81] *Elias Geremew vs. Prosecutor*, Federal Supreme Court Cassation Bench Decisions Journal, Vol. 12, file No. 61275 ,at .226 miyazia 18 2003 e/c.

In *Tsigiebirhane Tesera et al vs. Ethiopian Revenue and Customs authority Prosecutor*[82], the Supreme Court unwisely took the economic status of the defendant into consideration to predict risk of tampering with the criminal process under article 67. In another case[83], the Supreme Court upheld the lower court's denial of bail decision basing the severity of punishment and the prospect of tampering evidence such as bribing and hiding prosecutor's witnesses. The grounds for believing that the accused will bribe the witnesses are that the accused is economically powerful.

In the case *W/ro Wulta Desalign vs Oromia Regional State Anti-Corruption Commission*[84] the applicant invokes her health condition to allow release on bail. In one case the court was called to grant bail on the ground of the health condition of the defendant and refused to do so. the defendant requests release on bail arguing that she is a cancer patient that she has to be granted bail so that to be able to look for medical treatment. The court rejected the applicant's application arguing that the defendant is charged with non-bailable offence according to the anticorruption procedure and evidence law. In this case, the Supreme Court should have noted the HRC's ruling that the consideration on bail/detention decisions shall not be solely the gravity of the offence. Plus, the Supreme Court should have noted that national law will not be an excuse to violate the international laws. The court disregarded such higher norms and denied the applicant the right to release on bail due to her health conditions.

In *Ahmeded Derbachew vs. Federal Prosecutor,*[85] the court is called to judge on the aptness of the lower court's refusal of bail on the ground of previous convictions. The court overruled the bail refusal on previous conviction grounds. It bases its decision on article 138 of the criminal procedure code which states "Unless otherwise expressly provided by law, the previous convictions of an accused person shall not be disclosed to the court until after he has been convicted." We argue that this argument of the court is unsound. The forgoing rule is applicable to the determination of the guilt of the defendant as it is stated under the section, 'evidence and judgments of guilt/not guilty' at the trial stage. This rule is not intended to govern pre-trial

[82]W/ro *Wulta Desalign Vs Oromia Regional State Anti-Corruption Commission, Tsigiebirhane Tesera et al vs. Ethiopian Revenue and Customs authority prosecutor*, no. 67874, *Supreme Court Cassation Decisions Journal*, Vol. 13, at.243 23/2/2003 e/c.
[83] Case no. 67874 , at .243 23/2/2003 e/c.
[84] File no. 68407, Vol. 12, p.273 ,
[85]*Ahmeded Derbachew vs. Federal Prosecutor*, Journal of Cassation Cases, Vol. 23, October 8/2009 e/c,at. 473.

detention which is one of the pre-trial legal areas. The rules on determination of refusal/daunting bail are different.

In *Semachew Abyu vs Federal Prosecutor*[86] the prosecutor requested for pretrial detention /refusal bail on the grounds of 'concurrence of charges, the amount of the money that become reason for charge, The type of the offence, and seriousness of the charge. The cassation court accepted the reason made by the prosecutor arguing that "there is no legal prevention to raise these grounds for refusal of bail." this argument is unsound. Because, the court should have assessed in the first place the probability of risk of failure to appear on the alleged grounds. In another case[87], the court ruled that holding foreigners passport is not sufficient ground to refuse bail without reasoning. This is contrary to the position of international law treaty bodies.

In the *Habtamu Deju vs. Prosecutor*[88] the Federal Supreme Court interprets article 75(1) in a way that allows the right to the prosecutor against bail grant. Article 75(1) provides the right to appeal to the defendant stating - "where bail has been refused by a court, the accused may apply in writing within twenty days against such refusal to the court having appellate jurisdiction." The court earlier in file no. 113436 argued that the fact that article 75 expressly provides the right to appeal to the defendant and its silence about the prosecutor need not have be interpreted to mean the prosecutor has no the right to appeal. This interpretation of the court is unconstitutional and against the intention of the drafters of the code. If that was the intention of the drafters they would expressly provide such right.

In general, the meaning of the words 'likely'/'unlikely' in article 67 of the 1961 criminal procedure code are not self-evident. This is against the legal certainty requirement envisaged by the HRC jurisprudence. And, the jurisprudence of the Federal Supreme court cassation bench precedent is not reliable to ensure certainty on the interpretation and application of the provision.

[86] Ato *Semachew abyu vs Federal Prosecutor*, file No. 134228 , journal of cassation cases ,Vol. 20, 08/6/2009 e/c.
[87] See Federal Supreme Court Cassation Case no. 31734, Journal of Cassation Cases, Vol. 20, .at 398.
[88] *Habtamu Deju vs. Prosecutor* (File No. 110969), Journal of Federal Supreme Court cassation decisions, Vol..18, 2008, at.309.

4. DURATION OF PRE-TRIAL DETENTION IN ETHIOPIA

4.1 Article 59(2) Of the 1961 Criminal Procedure Code

According to article 59(2) of the 1961 Criminal Procedure code 'where the investigation is not completed', the investigating police officer may apply for a 'remand' for a sufficient time to enable the investigation to be completed.[89] This provision requires that "no remand shall be granted for more than fourteen days on each occasion."[90] This law allows the indefinite detention as long as the investigation requires. This is contrary to the HRC's statement that "Persons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence."[91]While the article 59(2) implies the indiscriminate application of the law, the HRC rightly recommends that "the reasonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the preceding and the manner in which the matter was dealt with by the executive and judicial authorities."[92] In practice, some governments authorities acknowledge the practice of prolong pretrial detention in some prisons and attribute it to "lack of logistics in police detention centers, particularly during the 'law enforcement operation."[93] This is not an excusable practice as "general conditions of understaffing or budgetary constraint do not."[94]

Another problem that originates from the application of article 59(2) is that the court suspends temporally the right to release on bail to suspects who are on remand according to article 59(2) of the code. This is the practice in Bahardar Ena Akababiwa High Court and Bahir Dar Woreda District court according to the author's long time observation. This issue has been entertained by the HRC. The Committee noted that the right to bail recognized in article 9(3) is applicable to only persons who are already charged. In this interpretation persons who are on remand

[89] The 1961 Criminal Procedure Code ,article 59.
[90] *Id*., art. 59(3).
[91] General comment No. 32, para. 35; 818/1998, Sextus v. Trinidad and Tobago, para. 7.2.
[92] 1085/2002, Taright v. Algeria, paras. 8.2–8.4; 386/1989, Koné v. Senegal, para. 8.6; see also 677/1996, *Teesdale v. Trinidad and Tobago*, para. 9.3 (delay of seventeen months violated paragraph 3); 614/1995, Thomas v. Jamaica, para. 9.6 (delay of nearly fourteen months did not violate paragraph 3); general comment No. 32, para. 35 (discussing factors relevant to reasonableness of delay in criminal proceedings).
[93] Ethiopian Human Rights Commission, National Inquiry into deprivation of Liberty, (2024), p.74, available at <www.ehrc.org. >
[94] 336/1988, *Fillastre and Bizouarn vs. Bolivia*, para. 6.5; 818/1998, *Sextus vs Trinidad and Tobago*, paras. 4.2 and 7.2.

detention based on article 59(20) of the code are not yet charged so can't avail themselves to the enjoyment of the right. However, the committee adds "a similar requirement (due to t release on bail) prior to charging results from the prohibition of arbitrary detention in paragraph 1.[95] the FDRE constitution guarantees the right to bail in article 19(6) starting from the moment of arrest i.e. prior to formal charge is made based on article based on 42 (1A) and 94 of the criminal procedure code. The reading of article 28 that empowers police bail supports this interpretation. Due to these reasons we argue that the practice on the contrary is unacceptable.

While arrested or detained persons have constitutional right for their criminal investigation to be completed without unnecessary delay, the Criminal Procedure Code (Cr. Pro. C.) does not provide a hard and fast rule on the period of criminal investigation. I share Wondwossen's concern that the law regulating the duration of police investigation is susceptible to abuse.[96] However, I do not agree with his recommended solution i.e. advising the courts to avert it. We argue that the Courts in Ethiopia are part of the problem[97] and the solution is to redraft the law.

4.2 Article 109 of the 1961 Criminal Procedure

The criminal procedure code in article 37 directs that when the police officer finishes its investigation, he/she shall hand over the file to the public e prosecutor. And, according to article 109 (1) "the public prosecutor shall within fifteen days of the receipt of the police report (article 37) or the record of a preliminary inquiry (article 91) frame such charge as he thinks fit, having regard to the police investigation or preliminary inquiry, and shall file it in the court having jurisdiction."

The law is silent on the effect of this provision on the remand detention decision made according to article 59(2) of the criminal procedure code. From the strict reading of article 59(2), it can be argued that since the crime investigation, which caused the remand, is over, the detainee must be released. Others can also argue that the duration of the remand detention ordered in article 59(2) shall extend beyond the complementation of the investigation and the expiry of the fifteen day

[95] 1128/2002, *Marques de Morais v. Angola*, paras. 6.1 and 6.4.
[96] Wondwossen (PhD), Commentary: The government's massive law enforcement response: a litmus test for the courts, August 3, 2020, https://addisstandard.com/?p=16339
[97] That is the case for instance, in practice, in Bahir Dar ena Akababiwa High Court I observed.

requirement stated in article 109 of the criminal procedure code. This is the practice, for instance, in Bahir Dar town District Court. We argue that the latter interpretation is unsound.

Because the very reason why the remand detention in article 59(2) is ordered is to enable the investigating police officer complete the crime investigation. So, the investigation is over and the detainee is not anymore necessary for the investigation under article 109 since the police admitted that the investigation is over and handed over the file to the prosecutor. Therefore, the court shall review its detention decision immediately after the detention is completed without waiting for the expiry of the fifteen days period stated in article 109.

The fifteen days delay of the trial in article 109 is caused by impediments out of the control of the defendant. This can be due to caseloads, budgetary issues and the like. And, according to the HRC, "general conditions of understaffing or budgetary constraint do not justify continued detention."

If we connect the interpretation of article 59(2) with article 109, the problem gets worse if the prosecutor breaches the fifteen days requirement under article 109. This unintended consequence supports the interpretation that we have to treat the two provisions above independently.

Hence, we argue that the practice in Ethiopia which supports the former interpretation is unlawful under the criminal procedure code, the constitution and the ICCPR.

4.3 Article 94 of the 1961 Criminal Procedure Code

In Ethiopia, the law doesn't regulate the duration detention time pending trial. It is left for the mercy of the judge. Its length depends on external factors such as the length of the trial. There are many grounds for adjourning hearing the trial in Ethiopia without due regard for the length of detention. According to article 94 of the 1961 criminal procedure code ,the court may of its own motion or on the application of the prosecution or the defence adjourn any hearing at any stage thereof where the interests of justice so require.[98]The law says nothing about the fate of liberty interest of the defendant whose case is under adjournment now and again for the above reasons.

[98] Art. 94(1) of the 1961 Criminal Procedure Code. The conditions for granting an adjournment are stated in this article from (a) - (I)

The law doesn't prioritize between the timely ordering of the adjournments when the defendant is in custody and when he/she is on bail.

While in theory, "no adjournment under paragraphs (a) and (f)- (h) inclusive shall be granted for more than one week,"[99] in practice due to caseloads, in Ethiopia courts, adjournments last for weeks, months, and years. In fact the practice is characterized by "Delay in investigation and extended time for investigation; Detention based on inadequate evidence and incomplete charges; Denying bail, refusing to release detainees on bail, and demanding payment by police officers to release a detainee on bail (corruption); Detention based on political opinion, or identity of a person."[100]

These prolong detention, as HRC rightly says "jeopardize the presumption of innocence." These prolong adjournments have no legal grounds for reviewing the proportionality/necessity of the continued pre-trial detention decision in Ethiopia/ this is against the HRC's position that "general conditions of understaffing or budgetary constraint do not justify detention" that when delays become necessary, the judge must reconsider "alternatives to pretrial detention."

COCLUDING REMARKS

We have established that there are a bundle of standards on the use of pre-trial detention in the FDRE constitution and the international treaties Ethiopia is party to. This piece has examined the compliance of the statutorily laws and Federal Supreme Court cassation cases to these standards. Particularly, the authors have examined the permissibility of the grounds for pre-trial detention, the legality of the restrictions on the right to bail, and the legality of the duration of pre-trial detention as found in the statutes and cassation laws. In this research it is argued that crime prevention grounds for pre-trial detention violates the right to presumption of innocence; the legal exceptions stated in the code and the anti-corruption proclamation are unlawful in the constitution and the treaties ratified by Ethiopia; the judicial considerations in bail/detentions decisions are vague violating the requirement of legal certainty; and the law duration of detention is unlawful both in the constitution and in the treaties. Finally, the paper has examined the

[99] Art. 94(3) of the 1961 Criminal Procedure Code.
[100] Ethiopian Human Rights Commission, National Inquiry into persons deprived of liberty, 2024, available at <www.ehrc.org.>

practice of the judiciary in the interpretation of pre-trial detention laws and we argue that the practice has flaws.