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VAGRANCY CONTROL PROCLAMATION NO. 384/2004 AND ITS EFFECTS ON INDIVIDUAL RIGHTS

BY: MITIKU TESSEMA

ADDIS ABABA, ETHIOPIA

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BY: MITIKU TESSEMA

ADVISOR: ELISE G. NALBANDIAN

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CHAPTER FIVE
CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In the contemporary world giving due regard for the respect and protection of human rights is a common phenomena. A government loses internal acceptance and international credibility if there is human right violation. Human right issues are no more the internal affair of any country. These rights are acquired from nature. As a result, they are accorded to any one regardless of nationality or other status.

One of ways states manifest their determination towards human rights is by willingly signing international or regional human rights instruments. Ethiopia has shown its commitment towards the protection of human rights by ratifying a multitude of international human right instruments.

Beside devoting one third of its portion to human rights respect and protection. The Federal Democratic Republic of Ethiopia constitution has recognized international human right instruments as an integral part of the law of the land and as regards human rights; the provisions of the constitution must be construed in line with human rights instruments at the international level.

Vagrancy laws of countries of the world are highly criticized for being repugnant to human rights. The common defining element of vagrancy is lack of means of income. Those having means of subsistence are automatically outside the coverage of vagrancy laws. The criticism lies in this discriminatory approach towards preventing crimes based on the economic status one has in a society. As a result with regard to vagrancy crimes, the modern trend is towards the direction of identifying

overt acts constituting a danger to a democratic society at large instead of punishing some one due to the mere fact of lack of income.

The distinguishing feature of vagrancy crimes are vagueness and wide discretionary powers given to law enforcement organs. The justification forwarded in favor of supporting vagrancy laws is based on assuring peace and stability.

Despite the controversies on the extent as to what the term vagrancy embraces, the statutes aimed at controlling vagrancy embraces, the statutes aimed at controlling vagrants and disorderly persons has been used a long period of time.

Unlike the experience seen in other countries Ethiopia used vagrancy statues since 1930, these laws which were enacted in the Feudal Regime can be said were good relatively with the current statute. Although the previous laws similarly with the existing laws, were aimed at economically weak category of the people, they were not gone to the extent of curtailing the bail right of the suspects.

The recently governing vagrancy crimes are Vagrancy Control Proclamation No. 384/2004 and the Revised Penal Code. The first is contested with some human right principles in some areas. It has violated the right to equality because it made discrimination on economic basis. The law subjected those who have no visible means of subsistence to the more stringent procedures. Where as those who have visible means of subsistence to relatively lenient procedures. For example, those who may involve in similar offenses but who have visible means of subsistence may be entitled to bail right where as those who means of subsistence prevented from exercising this right.

The proclamation is also beyond the principle of bail that has been seen in other countries as well as against the sprit of Article 19(6) of the Federal Democratic Republic of Ethiopia constitution. Bail in the other world most of this time prevented if the offense is capital or it is left to the discretion of the judge to consider different circumstances on individual basis to grant or to deny bail. The intention of Ethiopian Federal Democratic Republic constitution while it set a limitation on the right to bail was also anticipating such facts. In opposing such principles as well as the ambit of the Federal Democratic Republic of Ethiopia constitution, the proclamation denied the right to bail to vagrancy offenders.

The right to defense as well as the principle of presumption of innocence also falls under question. The proclamation doesn't set the means how such suspects will be assisted by defense lawyers in order to enable them to adduce their evidence.

5.2 Recommendation

The mere fact that a given law has its own specific purpose does not grant violation of Human rights of its subject; rather the ultimate objective should be serving justice without distributing the citizens. Deviance to this, the newly enacted vagrancy law created some problems. To avoid those problems the following solutions are recommended;

1. It has been stated that this law violates the right to bail and discriminates against those who have no visible means of support. This problem can only be solved if the suspected are granted their fundamental right to bail. And they should be governed by the same principles of criminal law as well as criminal procedure code like other suspects of any crime.

2. It has been also tried to show how the vagrancy law are vague because of the problem of the definition. This entails the law to be applied to the extent of arresting students, daily laborers, etc. because they are considered to be without visible means of subsistence. To avoid such problem and other possible problems, some provisions which are vague and widely open to interpretation should be amended because they can lead to arbitrariness.
3. Center for rehabilitation should be established in regional as soon as possible. Suspects should not stay in detention centers for their better convenience till they are convicted or otherwise. Their handling in the center should improve in a way that can achieve the purpose set by the proclamation. If not allowed to exercise their bail right, the proclamation should arrange a mechanism that can enable the suspects to be assisted by a defense lawyer.
4. Side by side with a fair law, other sociological measures such as policy provisions for most subjects of this law should not be forgotten in the name of economic capacity. Therefore, long-term mechanism directed at the cause of vagrancy such as projects to change the lives of street children, etc would be advisable.

CHAPTER FOUR
THE EFFECTS OF VAGRANCY CONTROL PROCLAMATION NO 384/2004 ON INDIVIDUAL RIGHTS

One of the effects of proclamation no 384/2004 can be seen in light of the principle of the rights to equality. The term equality is defined as "the conditions of possessing substantially the same rights, privileges and immunities and being liable to substantially the same duties".[1] It is not only referring to substantial equality in rights and privileges but it also refers to "equality under the same conditions and among persons similarly situated".[2]

In many constitutions the rights to equality embodied relatively two distinct concepts "equality before law" and "equal protection of the law". Equality before the law is an expression of the English common law, which means the absence of any special privilege in favor of any individual, an equal subjection of all classes of the law. On the other hand, an equal protection of the law is "a more positive concept implying equal treatment in equal circumstances"[3]. This idea traces back its origin from the American constitution.

The concept of equality before the law is that "among equals, the law should be equal and should be equally administered"[4]. And equal protection of the law simply means "similarly situated persons must receive similar treatment under the law".[5]

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[1] Henry Compbell Black, Black's Law Dictionary 6th ed. P. 536(1991)
[2] Ibid
[3] D. Baru Commentary on the constitution of India, 2nd ed. Vol. 5, P. 537 (1965)
[4] Ibid
[5] Black's Law Dictionary, Supra note 1, P. 537

In both circumstances, i.e. "equality before the law" and "equal protection of the law" what do we mean by "people in like circumstances" and "like treatment" require clarification. "People in like circumstances" mean people who are like to be entitled to equal treatment by the legislature of a given state on the constitutional basis of classification.[6] "Like treatment" could be understood to mean either ''uniformly granting or uniformly denying" of a certain treatment to all members of a certain class or group.[7] Thus, people who are grouped under a certain category has to be treated equally in both privilege conferred as well as liability imposed.

The issue that has to be raised here is that "can a legislature classify people in like circumstances in what ever it intends" the answer should be "no" there should have legitimate grounds to classify people, which are recognized by international, regional and domestic human rights laws. To know the legitimate grounds, it would be good to resort to such instruments.

The Universal Declaration of Human Rights (UDHR) under its Article 7 says: "all are equal before the law and all are entitled to equal protection of the law, all are entitled equal protection against any discrimination in violation of this declaration and against any incitement of such discrimination".[8] Those things which are said discrimination against the declaration can be seen if were sort to article 2 of the same instrument. This article states that: "every one is entitled to all rights and freedoms set forth in this declaration with out any distinction like: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[9] Here the phrase "… other status" could

[6] Baru, Supra note 3, P. 2
[7] Ibid
[8] Universal Declaration of Human Right (UDHR) Art. 7
[9] Id, Art 2

include economic status, such as "having no visible means of subsistence" that is the ground to accuse one as a vagrant under the proclamation.

Hence the above ground including what the writer latter try to emphasize are not legitimate grounds for a legislature to a country while it classifies persons in like circumstances. In violation of the ground stated above, the Ethiopian legislature enacted a Vagrancy Control Proclamation that discriminates based on status which is shown by the definition of vagrancy which takes having no visible subsistence as an element.[10] This entails that, there is unequal subjection to the law and the law unequally treats people. For those who have visible means of subsistence would not be governed by the vagrancy proclamation, for example a person who is found committing offenses which are similar but he is not a person who can be include under the definition of the Vagrancy Control Proclamation is subjected to the penal code. This means at least they are entitled to release on bail, were as, those who have no visible means of subsistence are denied the right to bail as pursuant to Art 6(3) of the proclamation.[11]

Art 26 of the International Covenant on civil and political rights (ICCPR) also adopted the right to equality. It provides: "all persons are equal before the law and are entitled with out discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as: color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".[12] Besides this convention also holds the phrase "... other status ..." prohibiting that it cannot be a ground for

[10] Vagrancy Control Proclamation No. 384/2004
[11] Id, Art 6(3)
[12] Internation Covenant on Civil and Political Rights (ICCPR) Art 6

discrimination. So, from the above facts one can say that, the law (the proclamation) which discriminates based on status subjects the accused to a more unfavorable situation. i.e., they will be denied the right to bail.

Moreover, African charter of human and peoples rights also incorporated the right to equality. Art 3 of this instrument stated that: "every individual shall be equal before the law" and "every individual shall be entitled to equal protection of the law".[13] Art 2 of the same charter also says: "every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter with out distinction of any kind such as: race, ethnic group, color, sex, language, religion, political or any other opinion, national or social origin, fortune, birth or other status".[14] In this instrument also discrimination based on "… other status" which can include economic status is not allowed.

All the above sated instruments i.e., Universal Declaration of Human Right (UDHR), International Convent of Civil and Political Right (ICCPR) and the African Charter of Human and Peoples Rights (ACHPR) are binding on Ethiopia because they are recognized as the integral part of the law of the land as per Art 9(4) of Federal Democratic Republic of Ethiopia constitution.

The Federal Democratic Republic of Ethiopia constitution also recognized the right to equality. It says:

> *All persons are equal before the law and are entitled with out any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection with out discrimination on grounds of race, nation, nationality or*

[13] African Charter of Human and Peoples Right (ACHPR) Art 3
[14] Id, Art 2

other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.[15]

As it has been stated above, the phrase "... other status" can include economic status. This is manifested by proclamation no 384/2004 by taking "having no visible means of subsistence" as an element of vagrancy. Because the proclamation mode persons in similar circumstances to be subjected to a substantially in and procedurally two different laws on illegitimate grounds, it will require revision in order to be consistent with Article 25 of Federal Democratic Republic of Ethiopia constitution as well as International Human Rights instruments.

Generally, the proclamation is against all the instruments stated above which deal with the right to equality. On the other hand, it cannot be said that, the problem of vagrancy should be lift out. But this fact does not necessarily lead to or justifies the enactment of distinct law that is applicable only to a certain category of people. Rather, the solution would be, to define these offenses in the penal code and to punish those who are involved in the commission of such crimes with out distinction. In so far as the act is designated as a crime disturbs the peace and security of the peoples, making a deference as to persons who commit such offenses is not logical and reasonable.

4.1 Presumption of Innocence

In the process of administrating justice in cases involving criminal changes, there are various stages the person alleged to have committee the crime passes. These stages are handled by various institutions established to deal with the prevention, investigation, prosecution, trial, conviction, and lastly punishment of criminals. This means that, the accused person will be investigated by the police. He will be then

[15] The Constitution of the Federal Democratic Republic of Ethiopia, Art 25

changed by the public prosecutor who is there to represent the public interest that is affected by the crime committed detrimentally. And lastly, the accused is, if necessary, defend him self in a court of law having jurisdiction to try his case. It is in this respect that the rights of the accused in various stages come in to the picture. The question here is, what rights does the accused have in the pretrial stages? What is the nature of these rights?

This part of the paper deals with one of this right, which is the right to be presumed innocent until proven guilty by a court of law. A right to pretrial release drives from this principle. Here by, one could say that a denial of pretrial release infringes the presumption of innocence because it takes away the freedom to with an innocent person is entitled.[16]

The presumption of innocence is one of the fundamental constitutional right of the accused, for an accused is presumed innocent until proven guilty by a court of law, it is up to the prosecutor to prove beyond reasonable doubt that the accused committed an offense. So, until the accused person is proven to be guilty beyond reasonable doubt, he/she is presumed to be innocent. In principle, therefore, an accused person is presumed innocent until proven guilt: then he/she has to be released on bail.

When we try to see the definition of this fundamental right of the accused, black's law dictionary defines it as follows: "a hallowed principle of criminal law to the effective that the government has a burden of proving every element of a crime beyond reasonable doubt and the defendant has no burden of proving his innocence".[17] Similarly Collin's law dictionary defines it as: "assuming that some one is innocent, until

[16] Joshoua Dressler, Criminal Procedure; Principles, Policies and Perspectives, P. 678 (1999)
[17] Black's Law Dictionary, Supra note 1, P. 1186

he has been proven guilty".[18] Wikipedia encyclopedia also defines presumption of innocence as follows:

> *Presumption of innocence is an essential right that the accused enjoys in criminal trials in all countries respecting human rights; it states that the accused is innocence until he has been declared guilty by a court. The burden of proof is thus, on the prosecution which has to convince the court the guilt of the accused.*[19]

Conversely in many authoritarian regimes, the prosecution case is in practice, believed by default unless the accused can prove his innocence presumption of guilt.[20]

This right is so important in modern democracies that many have explicitly included it in their legal codes and constitutions for instances in France, Art 9 of the declaration of the right of man and of the citizens of constitutional value says: "every man is supposed to be innocent until having been declared guilty".[21] And the preliminary article of the code of criminal procedure says: "any suspected or prosecuted person is presumed to be innocent until his guilty has been established".[22] Although the constitution of the United States does not cite it explicitly, presumption of innocence is widely held to follow from the fifth, sixth and fourteenth amendments, and also the case between Coffin Vs Untied States.[23]

The Universal Declaration of Human Rights (UDHR) in its Art 11 also states: "every one charged with a penal offense has the right to be

[18] P. H. Collin, Law Dictionary, P. 214 (1994)
[19] http//www. Wikipedi Encyclopedia. html,as cited on Jan. 2005
[20] Ibid
[21] Declaration of the Rights of Man and Citizen of Constitutional Values, Art 9
[22] Criminal Procedure Code of France
[23] Wikipedia Encyclopedia, Supra note 19

presumed innocent until proven to be guilty according to law in a public trial at which he has had all the guarantees necessary for his defense".[24] Convention for the protection of human rights and fundamental freedoms of the council of Europe has also similar provision. Art 6(2) say: "every one charged with a criminal offense shall be presumed innocent until proven guilty according to law".[25]

Even though the presumption of innocence is guaranteed in many jurisdictions. It is not with out an exception. An accused might be detained before trial. Detention means that the suspect is deprived of his right to freedom of movement (out side his cell) for the duration of detention. Detention is not merely a violation of the right to liberty, but a temporary distraction of his right. As such special justification seen in terms of the presumption of innocence.[26]

If detention is an exception to the presumption of innocence, when every there is a detention, liberty must be the general rule and jail the exception. This is expressly stated under Art 9(3) line 2 of International Convent on Civil and Political Rights (ICCPR). It says, only under exceptional circumstances may a suspect be detained: other wise, he must remain free. This is the result of logical and consistent adoption of the principle of presumption of innocence to the trial stage.[27]

Some countries allow detention by refusing presumption of innocence. In these countries detention is allowed to guarantee that the suspect will present for prosecution. In other words, detention might legitimately be ordered if there are grounds for suspecting that the accused will try to abscond.[28]

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[24] Universal Declaration of Human Rights, Supra note 8
[25] Convention for Protection of Human Rights & Fundamental Freedoms of the Council of Europe, Art 6-2
[26] Dressler, Supra note 16, P. 768
[27] Cristoph J. M Safferling. Towards an International Criminal Procedure. P. 133 (2001)
[28] Ibid

For example, in Germany, there are 4 possible reasons for pretrial detention.[29]

1. If there is a risk of light and escape
2. If there is a risk of distraction or falsification of evidence.
3. If there is repetition of further offenses.
4. In individual cases involving particularly serious cases.

If one of several of these conditions exists, the judge will decide weather the principle of proportionality is observed. Detention would be unlawful if it were excessive in relation of the importance and seriousness of the offense and expected sentence.[30]

In England also, if the offender might

1. Abscond,
2. Commit a further offense if released,
3. Interfere with witnesses or otherwise abstract the course of justice, in relation to himself or any other person.

He/she will not be released even though there is presumption of innocence. In this case the court might be satisfied that there are substantial grounds for believing that one or several of the conditions are met.[31]

This fundamental human right principle also enshrined under the federal democratic republic of Ethiopia constitution. It states: "during proceedings accused persons have the right to be presumed innocent until proven guilty according to law …".[32] As stated above this principle is not absolute. A person may be detained even though he is presumed innocent until proven guilty. But the vagrancy control proclamation no

[29] Id-, P. 137
[30] Id-, P. 138
[31] Ibid
[32] Federal Democratic Republic of Ethiopia constitution, Art 20(3)

384/2004 does not recognize this principle. It absolutely takes away this right from the accused. The proclamation does not take the seriousness of the offense and expected sentence in to consideration while it denial pretrial release to the accused. Rather, it should have given the discretion to the court to analyze. If there are substantial grounds for believing that one or several of the conditions for detention are fulfilled.

4.2 The Right to Bail in General

Bail can be defined as "to procure the release of a person charged with an offense by insuring his future attendance in court and compelling to remain within the jurisdiction of a court".[33] This definition refers to the act, where as the term bail may also be applicable to the 'security' that procures the release of person in custody.[34] Bail can be said a mechanism installed to release an arrest of imprisoned person up an posting of security to ensure the person's appearance at designated time and place of tail pursuant to the person's promise to appear.[35] Thus bail in the first sense of definition is the concern of this paper.

When we see the history of bail, the general nation of bail pending trial dates back to the dates of medieval period England.[36]

In most jurisdiction including England and United States of America, the right of an accused person to bail admission is granted to some degree, for instance, in United States of America an accused has absolute right to bail in all except in capital cases.[37]

The justification for bail may be seen in different ways traditionally, it might have arisen from the self's desire to avoid the costly and burden

[33] Black's Law Dictionary, P. 140
[34] Ibid
[35] R. Cene Wright and John A. Marlo, The Police Officer and Criminal Justice, P. 189 (1970)
[36] "Bail" An Ancient Practice Re-examined, Yale Law Journal, Vol. 70, P. 966 (1960-61)
[37] Ibid

some personal responsibility for those in his charge. It has been stated by one writer as follows:

> *Many accused died because of unsanitary conditions in the prison since trial was delayed by the infrequent visit of the judges then the release of accused up on their or other person's posting bond was standardized when it was codified in to the English legal framework…*[38]

Thus, the classical reason may be explained in part on historical grounds of the early days of England criminal law enforcement that with out bail right, the accused might be confined for years waiting trial.[39] However, in modern criminal law there are compelling reasons that have relation with the accused's right and economic burden incurred up on the public.[40]

In addition to what has been stated above, there is also another justification based on justice demand, this reason asserts that, initial prejudice (preventing bail right of the accused) becomes compounded latter in the criminal justice system.[41]

Those who suggest this justification tried to ascertained there allegation by stating that, studies conducted in United States of America on defendants that compared between the fate of defendants in tail trial and those defendants who are free on bail have shown that, those of the former group, all are more likely to plead guilty, to be found guilty after trial and to be sentenced to prison and to be denied probation.[42]

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[38] Ibid
[39] Robert M. Anderson, Criminal Procedure, Forrest Cool Law Review. Vol. 2, P. 7 (1984)
[40] Ibid
[41] The Guide to America Law, Every one's Encyclopedia Vol. 2, P. 7 (1984)
[42] Ibid

As to the existence of prevalent justification based of the aforementioned reasons, there is also opposite view standing against it based on the assertion that government has an interest in protection of the community that warrants denying of bail right.[43] This would happen when the release of persons accused of violent or other crimes of dangerous character might involve a hazard which would out weight the advantage of release.

What ever the justification is, the ultimate purpose of bail in criminal cases is "to release the accused from imprisonment relieve the state of the burden of keeping him were as its object is to make certain the defendants appearance before the court when he wanted to be a bide by the judgment"[44].

When we see International Human Rights Instruments, they incorporated this right in their provisions. For example the Universal Declaration of Human Rights (UDHR) adopts the right to bail under Article 11(1) by standing that: "every one charged with a penal offence has the right to be presumed innocent until proven guilty according to law in public trial at which he has had all the guarantees necessary for his defense".[45] In this article the phrase "… at which he has had all the guarantees necessary for his defense" refers to bail and other means that enable the accused to prepare his defense.

International Covenant on Civil and Political Rights (ICCPR) also recognizes the right to bail in Article 9(3). It says: "… it shall not be the rule that persons awaiting trial shall be detained in custody … at any other stage of the judicial proceeding and should occasion arise, for the

[43] Stephen Saltzburg, American Criminal Procedure; Cases and Commentary 2nd ed, P. 7 (1999)
[44] "Bail" An Ancient Practice … Supra note 36, P. 967
[45] UDHR, Supra note 8, Art 11(2)

execution of judgment".[46] Thus, bail is a principle that holds very few exceptions only in the execution of judgment. As the general comment on the above article, the United Nation High Commissioner for Human Rights in its 8th comment provided that: "pretrial detention should be an exception as short as possible".[47]

The right to bail can be also inferred from the African Charter of Human and People's right in its Article 8(1)(c). This article stated to give the accused time to prepare his defense and to enable him to participate actively in the process of trial.[48] So from the practice of some countries one can conclude that, pretrial detention would be allowed for capital offenses and those offenders that will have the capacity to flee or to tamper with the evidence at hand.

4.2.1 The experiences of other countries as regards to bail in vagrancy offences

The bail system in many countries refers to the means of procuring the release of a person charged with an offence by insuring his attendance in court when required.[49] It refers to the release of a person up on his or other person's giving sufficient security for his appearance in court to answer the charge against him at the time and place appointed. This general notion of bail applies to all kinds of criminal conducts including vagrancy. For example San Francisco's criminal act does not prohibit the right to bail to any of the offenses described, rather denying or granting of bail is left to the judge.[50]

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[46] ICCPR, Supra note 12, Art 9(3)
[47] "Right to Liberty and Security of Persons" ICCPR General Comment 8, UN High Commissioner for Human Rights, Switzerland, Geneva, P. 1 (1982)
[48] African Charter of Human and Peoples Right, Supra 13 Article 7(1)(c)
[49] American Jurisprudence, Vol. 8, 2nd ed., P. 781 (1967)
[50] http//www. Kalabhavanshow. info. html. as cited on Feb. 2005

The New York vagrancy act also, in its Article 202 set the amount of bail that is required. For example for offenders who are engaged in the crime for the first time, the bail is fixed up to 200 Dollars, and for recidivists, it is 200 - 2,000 Dollars.[51]

In France[52], Ghana[53], Switzerland[54], and Turkey[55], bail for vagrancy offenses is not prohibited. As stated above it is granted in order to insure that the offenders will attend the court when required like San Francisco. These countries left the discretion to grant or deny bail to the judge or magistrate. In these countries, refusal of bail in violation of the law would constitute punishment before conviction. The refusal of bail is not to be used as a Weapon for the punishment of a person charged with a crime and neither is the manner in which the amount is set.[56] In most countries what is required in common is that, bail should not be excessive that while the rich gets to be released and the poor stays in prison because he could not furnish the amount fixed.[57]

From the above one can understand that, denial of bail is not fixed by legislation in cases of vagrancy offenses, it is left to the judge to consider different circumstances guided by law. These circumstances could be the risk of flight or escape, risk of repetition of further crimes or other. But the Ethiopian legislature absolutely ignored this fundamental right under Article 6(3) of Vagrancy Control Proclamation.[58] This law infringes one of the fundamental rights of the accused i.e. the right to be released on bail.

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[51] Ibid
[52] http//www. 11911 Encyclopedia. Org. VAEQUERIE, AUGUSTE Love to know article on VAEQUERIE, AUGUSTE, html, as cited on Dec. 2004
[53] http//www. Ghana Criminal Code and Courts, html. As cited on Dec. 2004
[54] http//www. Chamber Judgments concerning France, Switzerland and Turkey. html. As cited on Nov. 2004
[55] Ibid
[56] Dressler. Supra note 16
[57] Ibid
[58] Vagrancy Control Proclamation, Supra note 10 Article 6(3)

4.2.2 The bail system in Ethiopia

As in any country the important point that has to be noted when we consider the right to pretrial release in this country is that every one has the right to bail. The general presumption is that, the right to be released on bail. However, this presumption can be rebutted for there are exceptions to this general rules. This is to say that the right to bail is not absolute; it is conditioned up on the nature of offense, the character and antecedents of the suspect and his ability to produce adequate assurance to appear at the trial.[59]

In this regard, when we see some jurisdictions, for example the Unite States of America, the eighth amendment of the United States constitution states "excessive bail shall not be required". The eighth amendment prohibition against excessive bail meant that, bail may not be excessive in those cases were it is proper to permit bail.[60] However, one might argue that, the excessive bail clause guarantees the right to bail by necessary implication and that the provision for bidding excessive bail would be meaningless if bail is denied all together in all cases.[61]

When we see our country, the right to bail is clearly stated in our constitution. Apart from this, the criminal procedure code of Ethiopia has provisions on bail. In this code release on bail is provided as a principle but it has an exception. The exception is an arrested person will be denied bail when he is charged for an offense which can carry the death penalty or vigorous imprisonment for fifteen years or more and were there is a possibility of the person in respect of whom the offense was committed is dying.[62]

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[59] Jack and Brian English, Police training manual 7th ed., P. 136 (1992)
[60] http//www. Bail history. html. As cited on Dec. 2004
[61] Ibid
[62] Criminal Procedure Code of the Empire of Ethiopia, Proclamation No. 185/1961 Art. 63(2)

Under the Criminal Procedure Code to grant or to deny bail is left to the discretion of the court. An arrested person to be released on bail is required to enter in to bail bond it can be with or without sureties.[63] To determine the amount of bail is left to courts. The court will fix the bail amount which is sufficient to secure his attendance at the court when so required to appear.[64] Otherwise, he will not be released on bail. And if it is unlikely that the suspect will comply with the conditions laid down in the bail bond, or if the applicant is set at liberty, he/she is likely to commit other offenses or he is likely to interfere with witnesses or tamper with evidence, the court would not permit the release of the arrested person.[65]

When there is pretrial detention, there has be an acceptable purpose, the purpose of arrest may be;[66]

1. To bring the suspect before the bar of justice to answer for his unlawful action.
2. To prevent the immediate flight of the accused especially he is suspected of a serious offense.
3. To prevent the offenders from concealing, destroying or suppressing evidence that could be used against him; and
4. To prevent the suspect to additional harm to a person or property.

The purpose of arresting vagrancy offender would not be different from the above-mentioned purposes. These purposes can be achieved by the criminal procedure code.

The Federal Democratic Republic Ethiopia constitution also adopted the right to bail under Article 19(6). It reads as; "persons arrested have the

[63] Ibid
[64] Ibid
[65] Id … Art 67
[66] Kolbert Leroy M., Law of Arrest, Search and Seizure, P. 42 (1965)

right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail …".[67]

The question that has to be raised here is that, "what is considered to be exceptional circumstances by the drafters of the constitution?" there are two possibilities to answer this question. The first is to see the trend of other countries regarding such instance that may entail denying of the right to bail. The other is to resort to the intention of the framers of the constitution.

As regard to other countries trend, as stated before, in United States of America an accused has an absolute right to bail except in case of capital offenses. This is also in England and most countries in the world. Bail can also be denied when the dangerous character of the accused might involve further danger to the society. This dangerous character of accused persons should be determined based on individual basis the discretion given to the court rather than curtailing it entirely by law.

Regarding the question, what was the anticipation of the drafters of the constitution while they set the exceptional circumstances that causes the prevention of one's bail right, would be good to resort to the commentary of the constitution. The Amharic version of the commentary, after raising the question "what are these legally prescribed circumstances?" it provides Article 63 and Article 67 of the Criminal Procedure Code provisions as an illustration.[68]

Article 63(1) states that "whosoever has been arrested may be released on bail where the offence with which he charged does not carry death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offense

[67] FDRE Constitution, Art 19(6)
[68] ¾lÑ S"Óeƒ ›ß` Tw^]Á u}¨"Ä‹ U¡` u?ƒ ¾ìÅk (1997)

committed is dying".[69] According two article there are two reasons deny bail.

On the other hand, Article 6(3) of proclamation No. 384/2004 prevented the right to bail on the grounds that are not stated by the draft constitution commentary. The offenses provided under the proclamation are not those, which can entail death penalty or rigorous imprisonment of fifteen years. Therefore, it can be said that, the ground for denying bail in the proclamation does not go inline with the anticipation of the constitution.

When we see Art 67 of the criminal procedure code, the conditions are subjective in nature, in the sense that, they relate to personal character and integrity of the accused seeking release on bail. The conditions stated by Article 67 are those directed at testing the status of an individual accused rather than a given group of future offenders. These conditions seems to be left to the court to be analyzed based on the personal character of accused. It is true that there might be offenders that fulfill all the requirement stated under Article 67. But this cannot lead to the conclusion that, the elements are applicable on the entire suspects of vagrancy rather the yardstick should be applied individually on each suspect based on the character of the accused. Therefore, the proclamation as well does not go inline with the elements of Article 67 which is exemplified by the commentary of the draft constitution.

If we see the applicability Article 67 of the criminal procedure code on vagrancy offenses, by its nature the bail system discriminates against poor defendants. It is exercised by those who can afford bond, at least by those who have visible means of subsistence. For example in United States of America the poor do not exercise the right to bail because they

[69] Crime Procedure Code, Supra note 62 Art 63 (1)

cannot push the premium rate specified by the court.[70] This will remind us the saying "poor to jail rich to bail".[71] The possibility of having bond by itself is a problem for vagrants since most of them are presumed to come from poor family, so the question of having bond rather than non-compliance would be a problem to vagrants.

The likelihood of committing further offence depends up on the individual character of the suspect. As there other offenders who may have involved in committing further offense, there will be also vagrants who would involve in further commission of the crime. Weather they may or may not involve the whole vagrants do not presumed as to do so.

When we look at to the last element stated under Article 67 of the criminal procedure code, through it is not sufficiently set, they appear to be referring to those suspects who might have economic and political capacity that enable them to intervene in the witness or tamper the evidence. Although it is undeniable that, there might be few vagrancy suspects that might intervene in the administration of justice by treating witnesses through their violent conduct, this does not guarantee the enactment of laws that prevent the right to bail based on very few samples.

Generally, it is not arguable that every human right provision and every Human Right Instrument has an exception to the right to bail. Similarly the Federal Democratic of Ethiopian constitution has exception that can prevent this right. The argument, there fore, is that, the exception stated in constitution was not intended to curtail the right to bail by enacting laws, rather it is left to the discretion of the court as stated under Article 67 and this right is completely denied to some kinds of offenses as pursuant to Article 63. Therefore, it would not be a mistake to say that,

[70] Anderson, Supra note 39, P. 58
[71] Ibid

the Vagrancy Control Proclamation No. 384/2004 is beyond the spirit of Article 19(6) of the Federal Democratic Republic of Ethiopian constitution.

The effect of pre-trial detention on the accused

Pre-trial detention involves the apprehending of the person accused with a certain offense before trial is set in motion. The time coverage of pre-trial detention extends from the time of arrest to trial. Hence it implies the deprivation of liberty before the detainee appears to the court of trial. In most circumstances pretrial detention has been imposed not for a proven transgression of legal procedures, but rather as a precautionary measure based on the presumption of actual or future criminal conducts.[72]

However, such presumption of future criminal conduct creates a disagreement between the proponents and opponents of pretrial detention. For the opponents, pretrial detention on the basis of presumption of one's future conduct will adversely affect the detainee's right.[73] For them, it is hardly possible to predict one's future act because of man's dynamic nature and for the world he lives in full of an expected occurrences.[74] They further state that man's event in the world is so rare, and it is really difficult to predict these year events. This assumes the seldom accuracy of one's prediction on persons future acts. But the predictors can only spot crimes. If they detain a considerable number of persons who would not actually commit crimes if released.[75]

On the other hand, proponents of pretrial detention argue that pretrial detention may not affect individual rights if the predictor uses proper

[72] S. Z. Fisher, Ethiopian Criminal Procedure; A source book, (Faculty of Law, Addis Ababa University)
[73] Abraham S. Goldstein, Crime, Law and Society. P. 313 (1971)
[74] Ibid
[75] Ibid

mechanisms. According to them, it is possible to point out one's future conduct based on his previous criminal records.[76] As they have clearly stated if ones previous criminal record shows that he has been prosecuted and convicted with several crimes, the prediction of his future conduct will not be impossible.[77] Thus, for the proponents, pretrial detention on presumption basis is justifiable.

But pretrial detention is not less than punishing and such infliction of punishment before conviction defeats many of the basic rights of the accused. The accused may not always be found guilty and even if he be so, he enjoys his legal presumption and is given the opportunity to defend himself. Bail is primarily intended for the benefit of the accused in that. His liberty will be reserved.[78]

One of the major rights which will be affected by pre-trial detention is the right to defense. This right is recognized in many countries constitutions and International Human Right instruments. The concept of the right to defense includes the expectation that the government has to provide assistance like appointing defense council for the accused who cannot afford it in his own expense. It also includes, the expectation that the government to restrain from intervening the accused's right to defense by any means. This can be manifested by limiting the access of the accused to evidence in his or her own defense. The government is prohibited from intervening because it is presumed that government has greater capacity by any means than an individual.

When we see international instrument, Article 11(1) of Universal Declaration of Human Right stated that a person changed with offenses

[76] Ibid
[77] Id … P. 314
[78] Lester Bernhard Orfild, Criminal Procedure from Arrest to Appeal. P. 105 (1955)

has all the guarantees necessary for his defense.[79] Clearly this indicates that the accused has the right to defense. Similarly, African charter of Human and peoples' right in its Art 17(1)(c) says: "every individual shall have the right to defense including the right to be defended by the council of his own choice".[80] This provision provides not only the right to defense, but to choose a council is also left to the accused.

In Ethiopia also, that right is stated under Article 20(4) of the Ethiopian Federal Democratic Republic constitution. It reads as, "accused persons have the right … to adduce or to have evidence produced in their own defense …".[81] Such right involve the previous stated expectations from the side of the government including individuals. So, if accused's of vagrancy offenses prohibited the right to bail, this fact initials miscarriage of justice because it will be difficult for them to prepare their defense. The same is true for those accused's whose access of evidence is prevented either by interfering in their access to communicate the relevant personnel that could produce their evidence or by denying bail right.

Unlike the above stated human rights instruments, the vagrancy control proclamation affects the right to defense by denying the right to bail without setting a mechanism that enable the accused to be assisted by defense lawyers that can help them to produce their evidence. Therefore the proclamation again, is beyond the ambit of the right to defense stated in the international human rights instruments including Ethiopian Federal Democratic Republic constitution.

[79] UDHR, Supra note 8
[80] ACHPR, Supra note 13
[81] FDRE Constitution, Article 20(4)

CHAPTER ONE
INTRODUCTION

1.1 Background of the study in Brief

The government of Ethiopia has undertaken some positive steps to promote and protect the rights of citizens. Among the various measures taken some of the legal ones are the ratification of the Universal Declaration of Human Right (UDHR), International Covenant Civil and Political Rights (ICCPR) and amendment of the 1957 Penal Code. On top of this, the constitution, which comes into force in 1995 has recognized international human right standards, and it makes all international instruments ratified by Ethiopia an integral part of the domestic laws of the land (Art 9(4)) such recognition is further strengthened by making those human rights instruments adopted by the country standards for the interpretation of chapter three of the constitution which deals about fundamental rights and freedoms (Art 13(2)).

This doesn't however, mean that there are detailed rules set to realize those standards and it should not be construed to mean that they are fully implemented. What is more, though the domestic laws on the administration of justice are more or less in accord with international human rights principles, it does not in any way imply that all of them are to be applied for. There are some that are not basically in agreement with those principles.

As many legal scholars argue, many laws on vagrancy have provisions that are in direct contradiction with some of the basic guidelines set under, for example the Universal Declaration of Human Rights (UDHR) and International Covenants of Civil and Political Rights (ICCPR). They say, as these laws are there to punish status a large number of

individuals especially those who are living in the streets are highly prone to qualify as vagrants and be punished accordingly. As such a sizeable section of vulnerable groups of individuals be criminalized by virtue of their status. This problem is further aggravated by the extensive power of arrest with out warrant and detention without bail given to the police, etc.

Having the aforementioned opinion in mind, the research tries to explain or make clear whether the situation is really worrying the specific problems and magnitudes which especially such individuals have faced. The Ethiopian laws on vagrancy vis-à-vis the Universal declaration of Human Right (UDHR) and International Covenant of Civil and Political Rights (ICCPR); and recommends possible solutions that best fit their interest.

1.2 Objective and Methodology of the Study

While the study in general at analyzing laws that are proclaimed to control the crime of dangerous vagrancy and their impact on the rights of the individuals the ultimate objective is to enhance the protection afforded to individuals (specially to those who come in conflict with the law) by the Universal Declaration of Human Right (UDHR) and International Covenant of Civil and Political Rights (ICCPR).

To attain the goals of the research it was found necessary to employee several methods in the gathering relevant information. These include; looking into different legal text that deal with vagrancy and the rights of individuals as well as literature reviews.

1.3 Scope and Limitations of the Study

The primary motive of the research is to focus on the vagrancy control proclamation No 384/2004 its effect on individuals rights, it assess the legal and practical aspects in relation to those conventions, the constitution, other working laws of the country and relevant international human right instruments are made subjects of the same.

This being the case, the research doesn't pretend to be an exhaustive and final work on the issue under consideration it is by no means comprehensive.

CHAPTER TWO
DEFINITION AND HISTORICAL BACKGROUND REGARDING VAGRANCY

2.1 Definition of Vagrancy

Crimes are traditionally defined in terms of act or failure to act and it is usually stated that an act or failure to act is an essential element of crime. However, there are several crimes that the essential elements of which consist not in prescribed action or inaction but in accused's having a certain personal condition or being a person of a specified character[1]. In conformity with one of the basic principle of criminal law, that means only the acts of persons can be covered by criminal law and not conduct[2], the current penal code of Ethiopia directs it self only human action or in action. The crime of vagrancy is however, contra to this principle. That means, it is the principal crime in which the offense consists of 'being' a certain kind of person rather than in having done or failed to do certain acts[3].

The definition given to vagrancy is varies from country to country but is defined in more or less similar fashions to include a wide range of proscribed conducts.

According to Britannica, vagrancy is defined as follow:-

> *State or action of one who has no essential home and drifts from place to place with out visible or law full means of support traditionally a vagrant was thought to be one who was able to work for his maintenance but preferred in stead to live idely often as a beggar …[4].*

[1] Harvard review, (1953), vol. 66, p.1203
[2] John M. Schep; criminal law and procedure (2002) 4th ed, p. 294
[3] Wayne and Austin, criminal law (1986) 2nd ed, p. 200
[4] Britannica – Micropaedia ready reference, V-12, p.231

As per to this definition vagrancy is the act of going from place to place by a person without visible means of support, who is idle, and who thought able to work for his or her maintenance, refuses to do so but lives without labor or on the charity of others.[5]

If we briefly examine the definitions attached to the crime of vagrancy in U.S.A. its scope differs from one state to another. In New York, for example, a vagrant is a person who has his face painted, discolored, covered or concealed or being other wise disguised in a manner calculated to prevent his being identified.[6]

The state of the district of Colombia …… on the other hand, defines a vagrant as any person known to be a pick pocket thief either by his own confession or his having been convicted in the district of Colombia and having no means of support realized from a lawful occupation or source and not giving a good account of himself when found loitering around … any building, public place … those who lead an immoral … life and found at unusual hours on the streets with out lawful purpose are also under the category of vagrants[7].

Besides the above definition the state of Kansas criminal code defined vagrancy as: -

> *Engaging in an unlawful occupation; or being the age of 18 years or over and able to work and with out lawful means of support and failing or refusing to seek employment; or loitering in any community with out visible means of support or loitering on the streets or in a place open to the public with intent to solicit for immoral purposes or driving support in whole or in a part from begging[8].*

[5] Black's law dictionary (1991), p.1075
[6] Joseph G. Cook and Paul Marcus, Criminal Law (1999) 4th ed, p. 109
[7] John Kaplan and Robert Weisberg, Criminal Law, cases and materials (1991) p. 974
[8] Supra note 5

What is worth mentioning to this code concerning vagrancy is that it has made a person vagrant if he or she is found being engaged in an occupation that is declared unlawful and this means that not only status but also an act is punishable. Further more, the code has partially defined its scope of application as far as age is concerned that means only those who are 18 and above years of age that could be declared a vagrant if found with out lawful means of support and failing or refusing to seek job, being able bodied. Accordingly, children below this age are immuned from being prosecuted though the other elements constituting the crime of vacancy are fulfilled.

Moreover, in the 16th and 17th century in England, a vagrant a person who could work, but brefered not or one who begs for a living and is different from impotent poor, who were unable to support themselves because of age or sickness[9].

Generally by seeing the aforementioned definitions, one could generally conclude that vagrancy is a status offence that is it is a crime or delinquency that can only be committed by people occupying a particular status[10]. It is because of these that courts in America frequently say that the essential elements of the crime of vagrancy is that the accused having the status designated by the statute[11].

Before closing this section is important to note that vagrancy is frequently used by police and prosecutors as a tool for proscribing a wide range of behaviors and this fluid application of a vage statute or ordinance has been heavily criticized by legal scholars[12]. That is why in some countries of Europe where vagrancy is a crime and in the USA.

[9] "http://en.winkipedia.org/wiki/vagrancy (people)
[10] http://bituckett-iccap-org
[11] Supra note 1
[12] Britannica v. 12, p. 231

Those vagrancy laws have largely been invalidated or abandoned because they purport (claim) to punish conduct, which is not criminal, or are worded too vaguely to inform persons of the nature of the act declared criminal. In 1972 for instance the us supreme court ruled that a Florida vagrancy law was un-constitutional because it was too vague to be understood. Since then, the status of being a vagrant is punished by the vagrancy laws. While other actions are punished under other laws. And when courts such as this strike down those laws, vagrancy becomes mostly legal[13].

2.2 Historical Background of the Laws of Vagrancy

Since vagrancy statuses developed in common law countries. i.e. England and USA the part of the discussion emphasis on the historical development of the laws of vagrancy in these countries.

2.2.1 The History of the law of vagrancy in England

England has relatively longer experience on vagrancy laws than other countries and there is a general agreement among scholar that the first full-fledged vagrancy statute was passed in England in 1349. This statute made a crime to give alms to any person who is unemployed while being a sound mind and body[14].

In 1348 the first poor law for public assistance for the poor was enacted. Initially this law was designed to prevent vagrancy and begging by providing assistance to the poor[15]. But later the poor laws were changed into legal measures and local government were empowered to enact

[13] supra notes 5 and 9
[14] William J. Chambliss. Crime and delinquency; a sociological analysis of the law of vagrancy (1970), p.44
[15] http//www.cc.colmbia.education

vagrancy laws that allowed removing vagrants to the place where they come[16].

The early vagrancy acts came in to being under peculiar conditions complete or absolute different from the present time. From the time of the Black Death in the middle of the 14th century tile the middle of the 17th century. The roads of England were crowded with master-less men and their families. Who had lost their former employment through a variety of causes had no means of livelihood and had taken a vagrant life.

Due to the labour shortage caused by this Block Death (plague) in England. Vagrancy laws arose in order to prevent laborers from migrating from their respective feudal estates. This resulted in a fixed work force and low wages. As the feudal system break or fall into small fragments, however, these vagrancy laws shifted from controlling labour to controlling the potentially criminal behaviour of those persons deemed to be suspicious or vaguely undesirables, including the poor and unemployed[17]. The first statue which indicated this shift was made in 1530 and it says: "If a person being … might in body and able to labour be taken in begging being a vagrant and can give no reckoning how he law fully gets his living …… and all other idle persons going about some of them using …… subtle crafty and unlawful games and plays …… shall be punished …"[18]

During this period, then, the focal concern of vagrancy statutes become a concern for the control of a criminals and is no longer primarily concerned with the movement of labourers. Persons who had committed no serious felony (a crime) but who were suspected of being capable of

[16] Ibid
[17] http//law review. Kent law.edu./articles/
[18] supra, at not 14, p. 49

doing so could be apprehended and incapacitated through the application of vagrancy laws[19].

However, vagrancy had always been a concern in 16th century England, resulting in the passing of flour anti-vagrancy bills in 1547 along this resulted in legislation that a person charged with vagrancy could be sentenced to two years enslavement (force someone into slavery) which could be extended to life enslavement if they tried to escape. When these bills did not seem to prevent the occurrence of beggars on the streets, the vagrancy and poor relief act of 1572 was instated. This act called for a "three strikes and you are out" policy. Where on a person's third vagrancy offense he could be right fully put to death. This legislation was the policy for over 20 years until it was repeated in 1593 for being too strict. In 1597, the new vagrancy act authorized the government to punish anyone caught offending the vagrancy laws. After a 1598 statute reestablished slavery as a proper punishment for vagrancy. There were a number of years where periods of leniency and harshness of punishments alternated. It is important to note the history of these laws, since many of them were never entirely repealed[20].

Eventually England enacted statue-defining vagrancy; the law relating to this subject is contained principally in the vagrancy act of 1824. According to this act, vagrants are of three classes, namely[21].

i) Idle and disorderly persons such as those who practice begging in public place, common prostitutes behaving indecently … and may be arrested by any person without warrant if found committing on of the offences, the punishment is either imprisonment extending 14 days to one month or fine of 1 pound to 5 pound.

[19] Ibid
[20] Sara Byrnes; vagrancy in sixteenth century England, p.3
[21] Kenny's out line of criminal law, 19th ed. P. 448-452.

ii) A dishonest persons and vagabonds - these included those who are found committing any of the offences listed under no. 1 a person found in a building … for unlawful purpose, repeated thief, procuring alms by exposing wounds … and may be arrested with out warrant. The punishment is imprisonment extending from 14 days to 3 months or a fine up to 25 pound.

iii) In corrigible rogues consisted chiefly of those twice convicted, or who had register arrest when apprehended on even a first charge of any offence of the second series. The punishment may intend to a year and plus.

To sum up in England more than 200 (two hundred) statutes punishing vagrancy existed from the time between 16th century and the beginning of 20th century and most of them were directed at vagrants, beggars and displaced persons after the demise or death of feudalism[22].

2.2.2 The History of Vagrancy Laws in U.S.A.

Where we see the vagrancy statutes of America they were a copy of the 18th century vagrancy laws of England. But there were some exceptions to this trend. For example Maryland restricted the application of its vagrancy laws to Free Negroes[23]. In addition to this, the statues were more explicitly concerned with the control of criminals and undesirables than England[24].

During the 1800s, virtually all the states and most cities enacted statutes and ordinances punishing a wide variety of conduct and the statutory language was intentionally rather vague, presumably to allow police broad discretion to arrest persons they deemed undesirable to the

[22] Medlin R. Stoner. The civil rights of Homeless people (1996), p. 155
[23] Irwin Dtscher, the petty offender (1955), p. 280
[24] Ibid

community[25]. And as Caleb Foote's analysis, the vagrancy laws were used in the U.S.A as a mechanism for cleaning the streets[26].

Vagrancy laws in this country proscribed such acts as disorderly conduct begging, loitering, the condition of being poor, idle, of bad reputation or simply wandering around without any lawful purpose. And by 1865, Alabama's vagrancy statute included run way and stubborn servants. By making a person's status an offence, these laws ran counter to the historical concept that a crime consisted of the commission of an unlawful act or the failure to perform a required act frequently. Vagrancy laws were directed against persons without the means to contest their validity or to challenge the application of such laws to them[27].

In the first half of the 1900s' arrests and convictions for vagrancy were common, as were appellate court decisions up holding conviction in variety of circumstances. For example, in Minnesota a defendant's conviction was affirmed for wondering about the streets with no place of abode and without giving a good account of himself (state Vs woods, 1917). In Virginia, an appellate court held that a defendant's conduct in consorting with gamblers and idlers constituting the offence of vagrancy.

The wide range of vaguely proscribed conduct in vagrancy laws made them susceptible to arbitrary enforcement by law enforcement agencies. In their effort to prevent crime and control 'undesirables', these laws becomes somewhat of a catchall of the criminal justice system. Policy commonly used them as a basis to arrest a suspect and they become basis for the police to justify a search incident to arrest as an exception to the warrant requirement of the fourth amendment.

[25] John M. Scheb; criminal law and procedure (4th ed) 2002, p. 294
[26] Pennsylvania law review (1955), p. 613
[27] Supra note 25, p. 294

By the 1950s, the vagrancy laws were enforced primarily against loafers (idles), alcoholics, derelicts, and tramps when they left the surrounding place and ventured in to the more 'respectable' neighbor hoods, where residents found their presence offensive[28]. That is why Caleb described the administration of vagrancy laws in Philadelphia the 'garbage pail' of the criminal law where magistrates could 'clean up' a district by incarcerating 'loafers' in the city center, 'drunkards in the skid raw', and mentally ill who disturbed the community or their relatives, and he sees the arrestees, one the whole, as sick rather than criminal and hence need help not punishment[29].

As time went on, however, the constitutionality of such laws was frequently being challenged on grounds that they were vague, violated due process of law requirements, and exceeded the policy power of the states. But such challenges were rejected by state and federal courts. Which generally upheld the right of the legislature to define what constitutes being a vagrant. Nevertheless, in the 1960s a number of statutes defining a vagrant 'as a person without visible means of support or who wanders around the streets at late hours' or who fails to give account of himself were declared unconstitutional and in 1972, the US supreme court issued an opinion that had a profound effect on the enforcement of vagrancy laws in the USA. The court unanimously declared unconstitutional the vagrancy ordinance of the city of Jacksonville, Florida for its vagueness both in the sense that is fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statutes and because it encourages arbitrary or irregular arrest and conviction[30]. The ordinance makes criminal activities, which by modern standards are normally innocent. After the courts decision in 1972, many lower states and federal courts were

[28] Ibid 295
[29] Caleb Foots; vagrancy type law and its administration penn. Law. Rew. - 1956
[30] supra note 28

striking down vagrancy laws under a number of theories, including violation of the fourth Amendment for punishing economic status[31].

Despite the supreme courts ruling, the effects of the vagrancy ordinances lingered on state legislatures and local governments. Continued to enact ordinance in an attempt to control conduct they deemed objectionable; however, courts invalidate such laws, when they criminalized a person's status (for example, homelessness) as opposed to proscribing a person's actions frequently on the ground that such laws are vague and lead to arbitrary enforcement[32].

2.2.3 History of Vagrancy law in Ethiopia

The law of vagrancy becomes part and parcel of the criminal legal system of Ethiopia since 1930[33]. When the government enacted its penal code. This penal code had three articles that dealt with the crime of vagrancy and the first of them, i.e. Art 265 reads as follows;

> *"Who so ever has no occupation chief or fixed abode and not married, who are testified to be idle is punishable with compulsory labor of not less than one month and not greater than one year in subjecting to the agent of the rent worker if he does not have got a bond after he served his one month punishment the chief should set free him after he gave his fruit of labour which is deducted from his maintenance fee"*

As clearly seen from this law of vagrancy. It is designed in such away to criminalize mere status of a person, not act and its scope of application is as long as a person had no occupation or fixed abode and found to be unmarried cumulative with a proof or idleness. He would be criminalized and be punished accordingly.

[31] California law review (1960), vol. 48, p. 560
[32] Supra note 30, p. 296
[33] The penal code of 1930

It is interesting to note that those individual who were married did not covered by this law though they had no job or fixed dwelling place and were idle. Professional beggars were also liable to the some punishment provided for idle persons, (Art 267). Regarding punishment, a person who was declared criminal as per this article would be punished with compulsory labour that extends from one month to one year provided that he did not a bond. However, as per article 266 of the code. If he was arrested for the second time, the punishment set forth under article 265 would be imposed with out conditions.

But just after 17 years, a separate law come into force, which dealing with vagrancy, that referred as vagrancy and vagabondage proclamation No. 89/47. This law had expressly repealed these provisions of the 1930 penal code mentioned above and it had two broad sections;

i) Interpretation section and
ii) Arrest and penalty section

Under the first part, the term "vagrant, idle and disorderly person, vagabond, and juvenile" where defined. Hence, according to article 2(a) of the proclamation the word 'vagrant' ([2a]) was defined as:-

> *"Any person asking for alms or wondering abroad without employment or visible means of subsistence and shall include any person found without employment and fixed abode and unable to render a satisfactory account of himself at such distance from his ordinary place of abode as to make it impossible for him to proceed there without assistance; provided that this definition shall not apply to priest student priest, or pilgrim in performance of his religions vows"*

And as per Art 2(b) of the same idle and disorderly person (x²”}— ¨ÃU QÑ ¨Ö<) was defined as broadly as to include a great variety of proscribed conducts such as prostituting in a disorderly manner in public places, begging by exposing wonds or encouraging any juvenile to do so, playing any game on streets lurinating in streets, etc. And any person convicted previously being idle or disorderly, or who wonders abroad collecting alms under false pretences; or who is found wandering in … any place at such time and circumstances which leads to the conclusion that the person is there for an illegal purpose was adjudged being a vagabond (¨auL) pursuant to Art 2(c) of the proclamation.

When one examine the contents of this section of the proclamation he/she can get two important elements, on top of others. One is that concerning its scope of application, despite the fact that the elements constituting the crime of vagrancy were fulfilled. Priests, student's priests, or pilgrims in performance of his religions vows would not be treated as vagrants. Another is it classified offenders based on the degree of the offence they committed and attached punishment accordingly.

In the 'arrest and penalty' section, and policy officer was given the discretion to make arrest without warrant any one who is (of course in the eyes of the police) a vagrant or an idle or disorderly person, or a vagabond and take him before a court of law (Art 3). The court before which the person so charged is produced inquire the … character of him and if satisfied that such person is a vagrant, it may commit him to prison as a vagrant for a period not exceeding six months and for the idle or disorderly person or a vagabond. The punishment extend up to a year provided that he is not certified by a medical officer to be physically unfit to be committed to prison owing to illness, … old age or insanity. If certified how ever, the court may order the person to be taken to an

asylum or hospital for medication (Art 4). And as per Art 8 a juvelenile found wondering a broad without being in regular employment and not resident with his parent or guardians shall be taken before a court which may issue an order for his return to the custody of his parent or grandian but if he is again found wandering with out employment having left such custody, he shall be committed to a reformatory school until he attains the age of 18 years. However, if the juvenile is an orphan the court may send him to an orphanage.

Anyway, this vagrancy and vagabondage proclamation was in effect only until 1957 when a new penal code was promulgated. The provision of this code that deals with dangerous vagrancy is Art 471 which defined it as: -

> *Who so ever having no fixed abode or occupation and no regular or visible means of support and being able bodies, habitually and of set purpose leads a life of vagrancy or disorderly behavior, or lives by his wits or by mendicancy, refusing to take honest, paid work which he is capable of doing, there by constituting a threat to law and order is punishable with compulsory labor with restriction of personal liberty or with simple imprisonment not exceeding six month.*

Here the definition given to dangerous vagrancy is broad. Besides, the existence of various elements constituting the crime had to be provide before adjudging (giving decision) some one a dangerous vagrant. On top of this, the definition incorporated terms or phrases that are vague and require further definition. What is more, according to this article one was charged and convicted being a dangerous vagrant, if and only if inte a lia, he/she is found … refusing to take honest and paid work which is capable of being done … and as per the commentary made by the drafter of proclamation No. 384/2004. This phrase implies the existence of an

organ to offer him/her a work and as such it become difficult to make it practical as the country's economic development is too low.

Despite this to the police had been given the power to arrest without warrant any person, reasonably suspected being a dangerous vagrant based on Article 51(1)(h) criminal procedure code, Nevertheless, for a suspect had the right to be released on bail and the punishment to be imposed if found guilty was not sever, it could be said that this law of vagrancy was not a serious threat for the implementation of the rights of the individuals.

However, this 1957 penal code is not totally repealed and replaced by the revised penal code of 2005 and vagrancy control proclamation No. 384/2004. Article 477 of the revised penal code and vagrancy control proclamation No. 834/2004 are the authoritative laws of the country enacted to control the crime of vagrancy presently. This being the case, I will try to examine the content of vagrancy control proclamation and revised penal code and this will be followed by the analysis of the compatibility of these laws with international and regional human rights instruments enacted to promote and protect the rights of individuals.

CHAPTER THREE
CURRENT LAWS OF VAGRANCY IN ETHIOPIA

This chapter is devoted to the analysis of the present applicable vagrancy laws of our country. These laws dealing with the crime of vagrancy are the Vagrancy Control Proclamation[1] and the Revised Penal Code[2].

In Ethiopia criminal matters are governed basically by the revised Penal Code. But it is not the exclusive law dealing with the subject. There are also other special legislations. Such as the Ethics and Anti-Corruption Proclamation, the Vagrancy Control Proclamation, the Value Added Tax Proclamation, etc. Thus, criminal law is said to be the sum total of the Revised Penal Code and those proclamations and regulations dealing with penal issues.

Such proliferation of laws sometimes raises the problem of identifying applicable laws. To solve this issue, the revised penal code adopts the maxim "the special law prevails over the general". As such, in cases of conflict, the first law to be resorted to should be the special proclamation or regulation dealing with criminal maters. Anything not covered by special rules will be dealt by penal code as provided under Art 3 of the Revised Penal Code[3].

As regards vagrancy, there is another problem that is not clearly solved by the above rule of interpretation. That special law enacted to govern this offence is Vagrancy Control Proclamation. But the Revised Penal Code also has a special provision governing vagrancy[4]. The query to be invoked here is which law is applicable in a given vagrancy case? It may

[1] Vagrancy Control Proclamation No. 384/2004, Federal Negarit Gazeta, 10th year, No. 19
[2] The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004, Negarit Gazeta, 9th year
[3] Ibid, Art 3
[4] Ibid, Art 477

be argued that as the two laws are special another mechanism should be found to select the appropriate law. One is that of looking in to the time when they are enacted, that is the Revised Penal Code is promulgated after the Vagrancy Control Proclamation. Based on the interpretation rule, which says 'the latter prevails over the former', it may be said that the revised penal code should be applicable instead of Vagrancy Control Proclamation.

The other argument forwarded emphasizes the difference between the two laws. These laws, even if related, are not the same and they do have different contents. Had the legislature wanted to repeal the special proclamation during the promulgation of the code, it would have repealed it explicitly and get did not do so. This argument goes on to say that the lawmaker seems very cautious of saving special criminal legislations. It has shown its position repeatedly in the code. As part of the preliminary section, immediately followed the preface of the code in the miscellaneous part not only states the repealed laws but also to avoid any possible assumption of tacit repealing of existing criminal legislations, has explicitly saved special penal laws and regulations.[5] They are treated as special cases. In addition to this provision in the preliminary parts in the body of the substantive rules of the revised penal code, Article 3 expressly states the continuity of special laws and regulations of a criminal nature. As such, it could be argued with reservation, that the Vagrancy Control Proclamation is the proper law to govern the crime of vagrancy than the Revised Penal Code.

Given the above Revised Penal Code provisions, some argue that having related laws can't be a justification to repeal one by the other, if the two laws have a different content and spirit, they should be applied on a case by case basis. Some say the new Revised Penal Code has rectified the

[5] Supra note 2

inconsistency envisaged in the 1957 Penal Code as regards the criminal laws repealed. The present Revised Penal Code is taken to avoid such a problem.

The former Criminal Code of 1957 had repealed the 1930 Penal Code and all subsequent special penal amendments in its preliminary part. However, at the same time, it saved complimentary special criminal legislations in the body of the substantive provisions. This had created the implication that special criminal legislations were repealed. And it means that the 1947 vagrancy and vagabond proclamation made in applicable as a result. As it is known 1957 criminal code is not sufficient to control vagrants because of holding vague elements to constitute vagrancy crime. This has led to the exacerbation of the problem and it has become one of the causes for the enactment of the present strict vagrancy control proclamation. So, it is argued that to prevent the same problem not to happen again, the Vagrancy Control Proclamation and Revised Penal Code should be both applicable depending on the cases which confront the justice sector. Since both laws dealt with vagrancy offence. Concerning the crime of vagrancy, Vagrancy Control Proclamation is more specific and detailed than Revised Penal Code. The latter has only one article dealing directly with the subject. As we shall going to see both laws separately, Vagrancy Control Proclamation is more special than Article 477 of the Revised Penal Code. And in practice, Vagrancy Control Proclamation is being implemented, if we take the above interpretation as valid, the first law to be discussed for application in relation to vagrancy is the Vagrancy Control Proclamation. The direction will be from the Vagrancy Control Proclamation to Revised Penal Code. Hence, based on their legal order of applicability for the purpose of this chapter, the writer will examine Vagrancy Control Proclamation and then Revised Penal Code is a general fashion.

3.1 Vagrancy Control Proclamation No. 384/2004

This Vagrancy Control Proclamation like the 1947 Vagrancy and Vagabondage Proclamation contains both substantive and procedural criminal rules. The law deals with particular section of the society. This necessarily calls for the scope of application of Vagrancy Control Proclamation. Since its scope is crucial and controversial. It will be separately treated. Other substantive and procedural rules of Vagrancy Control Proclamation will also be examined independently in order to better understand Vagrancy Control Proclamation. But before directly indulging in to the discussion of this point. It will be of use to see first the reasons that lead for the proclamation of a separate law that governs the crime of vagrancy.

3.1.1 Rational for enacting a separate law of vagrancy

It is obvious that a responsibility for maintaining peace and security of citizens in a certain country rests with the government. Now a day, almost in all countries, legislations are the best mechanisms to achieve this obligation. The criminal law is one way the government performs these functions by criminalizing acts.

This being the general rational to enact laws, the legislative body of the Federal Democratic Republic, that is the House of People's Representatives, has promulgated a new law concerning the crime of vagrancy. This law which is approved by majority vote on the 27 of January 2004 is referred to as Vagrancy Control Proclamation No. 384/2004.[6]

As briefly stated in the preamble part of this proclamation, the underlying reasons for the enactment of this law are: -

[6] Supra note 1, Art 15

i. To dispel permanently the threat posed on the tranquility and order of the people as the result of the increasing of vagrancy and

ii. To bring to justice those who are found committing the crime of vagrancy and to create conditions favorable for their social rehabilitation.

But when we see the minute of the parliament on the draft proclamation to control dangerous vagrancy, there were additional reasons that lead to the proclamation of such a law. One is because Article 471 of Penal Code of 1949 which governs the crime of vagrancy is vague (despite the fact that all of us have the right to be informed as to what the state commands or for bids). It has created difficulties in its implementation. Besides, the aim of this Penal Code was not to rehabilitate those who committed the offence and sentenced accordingly. Therefore, the promulgation of a new law that defines in clear terms the elements constituting vagrancy with the objectives of reforming so called 'vagrants' and at the end of the day to transform them into law-abiding and productive citizenry become imperative.[7] What is more, for the crime of dangerous vagrancy was seen as any other ordinary offences and the non-existent of special procedure and bench that enables to dispose the case of vagrants as speedy as possible contributed to the increasing and wide-spreading of this and other crimes.

On top of these, the fact that suspected vagrants had the right to be released on bail and the punishment imposed if convicted was low[8], when they were set-free either on bail or after finishing their term of

[7] u›=ƒÄåÁ ôÅ^L© Ç=V¡^c=Á©]øwK=¡ G<K}—¨< ¾Q′w }¨"Ä‹ U¡` u?ƒ ›^}—¨< ¯Sƒ ¾e^ ²S" 1996 ¯.U ¾ìÅl ›ªÐ‹ ¾Q′w Ãó ¨<ÃÃ„‹" ¾¨<d'@ Gdx‹ Ø^′ 3, 1996 ¯.U

[8] Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957, Negarit Gazeta, 16th year, No. 1, Art 471

sentences. They either be apprehended while committing another similar offence or threatening witnesses who were about to testify or had already testified against them. Hence the commentary stated. For this kind of criminal justice administration had posed a serious danger on the order tranquility of the people, 'no other alternative to look for' but promulgate a law that deprive a suspect of his or her right of bail and imposed a server penalty on the convict (though it is a bone of contention so far unless and other wise it is agreed that the end justifies the means). These were some of the rationales that initiated the government to proclaim a special and new law to control the acts of dangerous vagrants.

3.1.2 Scope of the Vagrancy Control Proclamation

As far as the scope of application is concerned, Vagrancy Control Proclamation targets, as said above, a certain section of the society. As per Article 4, those people who are without visible means of income. However, those having known visible means of income are outside the ambit of the law. Because of this, some argue that differential treatment of citizens is discriminatory and it is rather better for the government to work hard to eradicate poverty instead of using the law to takle the problem of vagrancy.

Article 4 is a prominent, provision of vagrancy control proclamation. It defines the scope and constituent elements of the crime vagrancy. It beings by providing the following.

"Unless it entails a heavier penalty under the penal code who so ever, being able-bodied, having no visible means of subsistence, and … "[9]

It continues to mention overt acts criminalized by the law in 12 sub articles.

[9] Supra note 1, Art 4

This Article begins with a save clause, if the act violates both Vagrancy Control Proclamation and Revised Penal Code, the applicable law must be determined based on the extent of the penalty provided under this laws. For instance, assuming that other elements of Vagrancy Control Proclamation, which are being able bodies and having means of subsistence are fulfilled, a person is found at night in the house of another to steal. This act falls under Article 4/3/ of Vagrancy Control Proclamation and Article 665 of Revised Penal Code. Violation of penal code entails 3 years, simply imprisonment and 5 years rigorous imprisonment as the case may be respectively.[10] On the other hand violation of Vagrancy Control Proclamation entails from 1 year and 6 months to 3 years imprisonment.[11] In this case the specific law to charge the suspect is clear. As the penalty for committing theft is heavier than violating Vagrancy Control Proclamation, the suspect must be charged based on Revised Penal Code. Deciding the applicable law is not left to the discretion of law enforcement organs. In this regard, the possible issue that may arise in the above kind of cases is if the public prosecutor improperly framed a charge under Vagrancy Control Proclamation instead of the appropriate Revised Penal Code provision. The public prosecutor may prefer Vagrancy Control Proclamation to deny right of the suspect. A court cannot reject the charge on this ground; it should hear the case to find out whether the accursed is guilty or not for committing the crime of vagrancy.

As it is provided under article 4 of Vagrancy Control Proclamation, the legal elements constituting the crime of vagrancy are mainly grouped into three.

[10] Supra note 2, Art 477
[11] Supra note 9

These are "being able-bodied", "having no visible means of subsistence" and infringing one or more of the specific acts mentioned under the 12 sub articles of Article 4 of Vagrancy Control Proclamation. These are cumulative elements to be fulfilled before convicting some one for vagrancy.

The first element 'being able-bodied' is not clear. Vagrancy Control Proclamation does not define it in the definition part. There is also no other law other law, which satisfactorily defines it. As a criminal law, Vagrancy Control Proclamation should explicitly inform the people the fact constituting the crime. One of the basic aspects of rule of law is the presence of clear legal rules. Criminal law should not be vague. The vagueness of the law necessarily leads to interpretation. And one approach to the problem is identifying the intent of the legislator. One source of setting this intent is resorting to documents, as they were not made in depth; do not given an answer for this and other clarity problems of the law. So, we should resort to another way of looking in to the case.

To determine as to what able-bodied mean, one approach to ascertain this is age. There must be a minimum age for any person to have the capacity to do. A law dealing with this minimum is relevant laws of a country are supposed to complement each other. For interpretation, we should start from the constitution and search for other relevant laws. Since the phrase 'able-bodied' is related to work, the labour proclamation is applicable in such instance.

According to Labour Proclamation No. 377/2003 Article 89/2/ the minimum age for labour is 14 years. It is prohibited to work below this age. Now, at least we can reasonably say that a child below the age of 14 cannot be treated under Vagrancy Control Proclamation in any way.

However, this identification of minimum age for labour brings another issue. One of the problems is determining the purpose of the law in setting the minimum age. Is it right to oblige children starting from the age of 14 and above to work?

The other pillar of Vagrancy Control Proclamation is vagueness of the clause that 'visible means of subsistence'. This phrase can create a confusion among those institutions involved in prosecuting the offenders and it is susceptible to interpretation. Because one may consider a person has 'visible means of subsistence' if he is hired in a governmental or non-governmental organizations, and pays taxes for his/her income. Accordingly other income generating works like daily laborers, 'listros' (shoe shiners), etc are not included. On other hand, other may interpretate it in a different way. Because most of the employers of the accused do not keep documents about their employees, it is impossible to prove whether the accused is paying taxes or not. Paying taxes should not be the concern of Vagrancy Control Proclamation. It can be governed by other relevant laws. So what need to be proved is whether the accused has a job or not.

To conclude for the scope of application of Vagrancy Control Proclamation is vague. This does not warrant unjustified and arbitrary interpretation of the law, Vagrancy Control Proclamation should be interpreted in light of Federal Democratic Republic of Ethiopian Constitution and International Human Right instruments ratified by Ethiopia.

3.1.3 Substantive laws of Vagrancy Control Proclamation

Besides the elements of able-bodied and visible means of subsistence discussed in the preceding section, one or more of the elements listed under Article 4(1-12) of Vagrancy Control Proclamation should be

fulfilled for convicting someone as a vagrant. The conditions are more of objective overt acts though some of them are criticized for being vague. To understand their essence, these provisions [art 4(1-12)] are provided as follows;

1. *Is found, in a public place or a public utility area or a place open to the public, betting or gambling or playing other unlawful similar games involving money or material benefits.*
2. *Is found to have in his possession a firearm without lawful authorization or a danger for attacking humans or animals or a sharp-edged instrument or other similar instrument without good cause in a pubic place, a place for public gathering or recreation or in or around a school compound or in any other similar place;*
3. *Is found in or up on a premise under private owner ship or possession, with out the permission of its owner or possessor or a person with authority on the property;*
4. *Is found attempting to enter in to a school compound by threatening or using force or deceiving or is found inside a school compound or on the street or disturbing the process of schooling by loitering around the school or attempting to gain benefits by forcing or threatening students;*
5. *Intentionally alarms the public or people in vicinity by intoxicating himself with alcohol or psychotropic or narcotic substance;*
6. *Is found loitering growing at a phase, at a time, or in manner not usual for a law-abiding citizen under circumstances that warrant alarm for the safety of persons or property in vicinity and takes flight upon*

appearance of police force, refuses to identify himself or manifestly endeavors to conceal himself.

7. *Attempts, at any place, to sexually harass or force a women to gratify his sexual feeling.*
8. *Demands payment for a service he has rendered without being authorized or demands more than what he has agreed to be paid or refuses to leave the property when asked by a person with authority.*
9. *Disturbs the tranquility of residents in vicinity by participating in organized gang brawls;*
10. *Is a theft recidivist who is found preparing himself to commit another theft or loitering at a place where theft is committed or alarms the public in vicinity;*
11. *Directly or indirectly receives or lets himself to be given money or other similar benefits by using his reputation for violent behaviour or brutality in his community or taking advantage of the fear he has caused to the community in vicinity due to such reputation;*
12. *Is found having in his possession keys or similar implements which are not his own or entrusted to him, of any house, vehicle, or other similar thing.*

"Is punishable with imprisonment not less than one year and half. And not exceeding two years. In cases of exceptional gravity the maximum penalty may be extended to three years imprisonment".

For it will not be prudent to discuss all the provisions. The writer will be restricted to the examination of two of the sub articles, which are vague and susceptible to interpretation. These are Article 4(6) and Article 4(10).

The mere reading of articles shows the difficulty of ascertaining the fact that the offender has done that specific art.

Sub article 6 states a vagrant is a person who "found loitering at a place, at a time or in manner not usual for a law abiding citizen …". This phrase is not clear and is susceptible to an open interpretation. This is to say that a subjective claim for time, place and manner that is unusual may lead to controversy since there is no guiding rule as to time limit or a guide to restricted area. Due to this there is possibility for infringement right to movement. The right to liberty and other fundamental right.

On the other hand sub article 10 provides a vagrant is "a theft recidivist and found preparing him self or her self to commit another theft or loitering at a place where theft is committed …" when we see this sub article it also lacks clarity on whom "a theft recidivist …" is and on how "loitering at a place where theft is committed …" is interpreted. As far as the interpretation of a theft recidivist is concerned there may be two kinds of views among practitioners. One is that the person should be convicted at least two times for theft before the vagrancy case. This view goes in line with articles 67 and 188 of the criminal code which provides for the meaning of recidivism. The second view is that the word "theft recidivist" includes persons who are known as thief among the society but have not been convicted by court.

Bringing eyewitnesses to ascertain his/her habitual act on theft among the society is sufficient. The other clause "… a place where theft is committed …" is also vague because it seems as there is a place where specified for stealing. Therefore, from the foregoing discussions, it could be understand that some of the elements constituting the crime of vagrancy are vague.

3.1.4 Procedural law of Vagrancy Control Proclamation

The special procedural rules found in the Vagrancy Control Proclamation pertain to the Police, Prosecution, Courts and Prison. The writer deals with only the police, prosecution and court.

3.1.4.1 Police

Like the 1947 Vagrancy and Vagabond Proclamation and Criminal Procedure Code, Vagrancy Control Proclamation allows the police to arrest any person reasonably suspected of violating Vagrancy Control Proclamation with out court warrant.[12] The term 'reasonable' is not clear and it is difficult to give clear-cut meaning. It should be measured on a case-by-case basis by the police. And once a person is reasonably suspected of being a vagrant and arrested accordingly, there will be no bail right pursuant to Article 6(3) of Vagrancy Control Proclamation. However, after arrest the police are immediately expected to bring the arrestee within 48 hours to the nearest court.[13] Reasonable time taken to bring the suspect to the nearest court will not be counted. Unless we imagine a suspect escaping from Addis Ababa, it is difficult not to respect the 48 hours time limit.

Beside there is a time limit set for completing vagrancy investigation. After arresting the suspect, the police must finish its investigation within 28 days.[14]

The investigation includes, among other thing, the age, ability to work, means of life, where and with whom the suspect lives, and the fame of the suspect in his/her local community.[15] It could be argued that one of

[12] Ibid, Art 6(1)
[13] Ibid, Art 6(2)
[14] Ibid, Art 7(1)
[15] Ibid, Art 7(3)

the rational of these provisions is to identify the dangerous disposition of the suspect. What is worth mentioning here is that the lawmaker has made it a duty on the side of the investigation police officer to investigate the age of the suspect. If this is strictly observed, the police could not detain a child below age of 15 for a long period of time, though the absence of childbirth registration makes the task difficult.[16]

The other possible argument is strictly applying Vagrancy Control Proclamation. When ever Article 4 of Vagrancy Control Proclamation is violated without the need for ascertaining the requirements of Article 7(3). This contradicts the purpose of the law.

What is more, investigating police officer is expected to complete his/her investigation within five days, if a public prosecutor after receiving the earlier completed investigation file orders further investigation pursuant to Article 38(c) Criminal Procedure Code.[17]

It can be conclude that the total number of days allowed for a police investigation is case there is further investigation order must be 33 days; But on the other hand one can say that police should not necessarily wait for 28 days given for investigation. It is set simply to regulate the maximum time to be taken for police to carry out investigation.

Therefore, in this respect it seems that police is given greater discretion to implement Vagrancy Control Proclamation but unless there is a strong control from prosecution and court, there is a possibility of abuse. To enhance compliance with the law, the police must be made aware of the Human Right provisions enshrined under Federal Democratic Republic of Ethiopia Constitution and International Human Right Instruments ratified by our country.

[16] Supra note 1, Art 52
[17] Supra note 15, Art 7(4)

3.1.4.2 Prosecution

After receiving police investigation file, the prosecution is expected to decide on the file to determine either to charge the suspect or release the suspect by closing the file or may order further investigation to be made.[18] The ground for closing the file mentioned by Vagrancy Control Proclamation is Article 42(1)(a) of Criminal Procedure Code.[19] But there are other grounds under Article 39 and Article 42 of Criminal Procedure Code. There is no reason for not applying those provisions. It is also possible to order further investigation. As the suspect is under custody, Vagrancy Control Proclamation reduces the 15-day given for public prosecutors under Criminal Procedure Code to institute proceedings to 10 days.[20]

So, to respect the right of the suspect, the prosecution should decide on the police investigation file as soon as possible. It should examine the file carefully to check any possible misinterpretation of Vagrancy Control Proclamation.

3.1.4.3 Court

A person suspected and arrested of being violating the Vagrancy Control Proclamation appears before a court of law at two stages. The first is immediately after arrest within 48 hours.[21] The rational of this appearance is necessarily to supervise the legality of the arrest. Even if the law does not state it expressly, some argue that the remand court should ensure that the suspect is arrested in accordance with the law. Nothing prohibits a court from ordering the release of a suspect arrested

[18] Ibid, Art 8
[19] Ibid, Art 8(2)
[20] Ibid, Art 8(1)
[21] Criminal Procedure Code of the Empire of Ethiopia, Proclamation No. 185/1961, Negarit Gazeta, 21st year, No. 7, Art 21

as vagrant. At this stage, for instance, if the suspect claims that he has a paid job and the police being given the chance to ascertain this fact, the court should consider the possibility of releasing the suspect on bail.[22] The mere fact of starting investigation as a vagrant should not restrict the court. It should act in such kind of clear cases. Courts could release any person arrested by the police without gathering sufficient evidence. So, one can reasonably argue that remade benches have the duty to ensure the observance of the rights of a suspect at the pre-trial stage.

Other wise, bringing the suspect immediately before the nearest court does not make sense. The law should be interpreted positively so as to enable the court to decide in favor of protecting human rights. This is one way to comply with the duty imposed upon the court, as one organ of the government, under Federal Democratic Republic of Ethiopia Constitution Article 9(2) in to protect and respect the constitution and fundamental freedoms and rights. The constitution devotes one third of its part to the protection of Human Rights. Its preamble and body shows that the driving force of the constitution is protecting and respecting human rights. Hence, courts are expected to function with the view to achieve the objective of the constitution concerning rights.

The second stage where a suspect appears before a court of law is when a charge is instituted against him/her. At this stage once the prosecution has framed and filed vagrancy charge, the court is absolutely prohibited from releasing the accused on bail.[23] The only thing the court can do is holding trial as soon as possible. The court is supposed to try the case with in 4 months.[24] Of course, the law has no sanction for failure to meet this time limit. It is a sort of time standard, if the accused

[22] Ibid, Art 59
[23] Supra note 20, Art 6(3)
[24] Ibid, Art 9(1)

is convicted. The special prison in which he/she is going to serve the sentence is determined by the court.[25]

3.2 The Revised Penal Code of 2005

The Revised Penal Code has special provision regarding vagrancy. Article 477(1) of it states as follows.

> *Whosever, having no fixed abode or occupation and no regular or visible means of support, and being able bodied, habitually and of set purpose lead a life of vagrancy or disorderly behavior, or lives by his wits there by constituting a threat to public security is punishable with compulsory labour with restriction of personal liberty (Article 104), or with simple imprisonment not exceeding six months.*

This provision has incorporated elements that are vague and focuses one status. For example, it is not clear how one become a threat to public security for not having fixed residence or means of income. As the writer observes by attending trial, only Vagrancy Control Proclamation is applied though the Revised Penal Code could also be applicable. Vagrancy Control Proclamation as compared to this provision of Revised Penal Code is clearer. Because it provides the constituting elements of vagrancy crime in a clear manner. But even if the code is not clear, it does not goes up to denying of bail right as the proclamation. No clear act is required as the constituting element of the offence.

[25] Ibid, Art 9(2)