

**ST.MARY, S UNIVERSTY COLLEGE L.L.B THESIS**

**CONSTITUTIONAL RIGHTS OF CRIMINALLY  
SUSPECTED INDIVIDUALS WITH A PARTICULAR  
REFERENCE TO PROCLAMATION NO. 60/1997: THE  
LAW AND THE PRACTICE**

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## **INTRODUCTION**

Customs play a significant role in international trade activities and in revenue generating. Many developing countries, including Ethiopia, are using import duties as a source of revenue. Moreover, customs play important role in protecting the society and ensuring national security by way of controlling cross-border movements of prohibited or restricted goods like counterfeit goods, endangered equipments or species and the like. Furthermore, it plays crucial role in protecting especially infant national industries by way of protecting fraudulent commercial activities including smuggled and other illegal trade activities. Accordingly, customs operation requires a solid or comprehensive; update and easily enforceable legal framework to achieve its duties. On the other hand, in doing so without having modern and effective legal framework and manpower, it is difficult to respect constitutional rights of individuals; especially the rights of customs suspects are under threat and also it creates problem to properly conduct national trade activities; to collect revenue effectively as well as run other related duties in fair and appropriate manner.

Furthermore, since customs duty mostly regulates international trade activities directly or indirectly, customs should be in harmony with the current international trade activities and compatible with international standards as much as possible. The customs police conduct crime investigation, as one of their most important duties to be accomplished. Customs police investigation involves a number of activities. As part of the public interest, individuals are interested in having their liberty not interfered by any other body. As far as society is there, it would be impossible to avoid crime and criminals totally, although the police are conferred upon with the power to investigate into crimes, such power should not be exercised by transgressing the individual liberty of the suspect, enshrined in the constitution and other criminal laws.

The main purpose of this paper is to pin point some basic discrepancies between the constitutional rights of suspected individuals and customs law practice and thereby indicate solutions to avert or at least minimize the problem of infringing basic human rights.

This research work is divided into three chapters. The first chapter deals with customs in general i.e working definition of the term “customs”, its historical background with some foreign and national development of customs and customs police.

The second chapter discusses constitutional rights of criminally suspected persons and the practice in Ethiopia, as well as rights of these arrested persons under the criminal procedure and the investigation practice of customs police.

The last chapter attempts to have a bird’s eye view of the application of customs police, and conclusion and recommendations follow.

## CHAPTRE ONE

### HITORICAL AND LEGAL DEVELOPMENT OF CUSTOMS IN GENERAL

#### 1.1 Definitions of Customs in Concepts

Customs is one of the governmental institution and it is defined on the different dictionaries as having almost, similar purpose In the long man dictionary the term customs defined as follows:-

*Customs is a place where travellers belongings are searched when leaving or entering a country, taxes paid on goods entering or leaving a country, and the government organization established to collect this taxes.<sup>1</sup>*

In the Blacks law dictionary defines the term customs as:-

*“This term [customs] is usually applied to those taxes which are payable upon goods and merchandises imported goods or exported the duties tool, tribute of tariff payable up merchandises exported or Imported. ”<sup>2</sup>*

This definition indicates that customs is a kind of tax which applies on the goods that cross the boundary of another country. Encyclopaedia Britannica also defines the term as follows:

*Custom is originally denoted all “customary ” Tolls or duties paid by merchants up on commodities on their way to or from market, not necessarily differentiated by the class oft good, for the benefit of the kind, lord, local or government or other authority.<sup>3</sup>*

In the course of time, as the national state become too dominant in economic as well as political might, the complex structure of multiple local and provincial

tolls on trade was substantially replaced by those levied only upon crossing the frontier of the country. <sup>4</sup> Hence, the term customs came to be restricted to taxes on the imported or exported goods across national territory. On the other hand, it means that, countries levied taxes on the imported and exported commodities, which are brought to their national boundaries. However, by the middle of 19<sup>th</sup> century, most industrial countries had curtailed or abolished their taxes on export. <sup>5</sup> Internal taxes, now levied on production or trade are most commonly termed excise duties or states taxes.<sup>6</sup> The glossary of international customs states customs as follows:-

*The government service, which is responsible for the administration of customs law and the collection of import and export duties and taxes and which also responsibility for the application of other laws and regulations relating, interlaid, to the importation, transit and exportation of goods. However, this does not define the term customs property, rather it indicates the responsibility of the governments in the administration of customs laws and regulations.*

Accordingly, we can say that customs duties are the duties laid down in the customs tariff, to which goods are liable on entering or leaving the customs territory. <sup>8</sup> In the Ethiopian case, the customs proclamation No, 60/1997 puts it as the “customs area” shall mean the territory of Ethiopia and “customs station” shall mean any place designated as customs office at the port of entry or exit of goods, transit routes or at customs area for the control of import and export goods, collection of duties and taxes.

Hence, we have to look for the definition of customs station in the same proclamation in order to grasp the full concept of customs; and we get it defined as any place designated as customs office at the part of entry or exit of



goods, transit routes or at customs area for the control of import and export goods, collection of duties and taxes.<sup>9</sup>

Since this customs proclamation defines the term customs as a mechanism or way of control merchandise imported and exported goods and collect of duties and taxes, this definition more or less goes with the definition given earlier. Generally, customs is very important for the economic life of any country. It is a way of collecting revenue for the state at the national and international level.<sup>10</sup> The international revenue service always aims at the prevention of illegal goods in order to protect the domestic industries.

## **1.2 Historical and Legal Background of Customs**

### **1.2.1 Historical background**

At the beginning, customs were simple means of raising money for the state. And as such, they were merely fiscal institution that followed the requirement of the authorities.<sup>11</sup>

The post World War I (1914-1918) period marked the opening of the age of international customs and tariffs. Prior to the First World War there was no obvious international co-operation concerning customs and tariffs at least on a world scale. In this period even though there was a development of capitalism and expansion of international trade, there were different trade barriers that were created by many countries due to different reasons like to generate more revenue and to protect their domestic industries etc . Accordingly, sovereign states levied high tariffs and applied very complication customs procedures freely without considering their relationship with other countries.<sup>13</sup>

Though these levying of high tariffs and designing complex procedures were gradually changing, since there was no international body to deal with customs and tariffs except for the Union International (pour la publication des tarifs deniers), established in Brussels in 1890 there was nothing to stop the trend towards tariff increasing and more complicated customs formalities.<sup>14</sup>

After the First World War, new states and borders arose in Europe and in the period of economic recession that followed, many nations took refuge in protectionism and self-sufficiency, bolstering this economic policy with the help of rigid customs barriers.<sup>15</sup> Also after the Second World War (1939-1945), there was again a change with the affirmation of principles of integration and worldwide economic co-operation.<sup>16</sup> accordingly; the customs was adapting, modernizing and liberalizing through time.

After the formal inauguration of the League of Nations in January 1920, we observe some progresses and the League of Nations took important measures so as to simplify and standardize customs formalities in international trade. The achievement of the League of Nations in the economic sector was the establishment of the International Convention for the Simplification of Customs and other formalities. This is considered as the first fruitful efforts of the League Nations.

Despite the fact that, attempts had been made to simplify and standardize customs and establish new societal formation in international trade since the beginning of the century, the first significant proposals for simplification were designed by the International Congresses of European Traders and submitted by the International Chamber of Commerce for consideration by the League of Nations. Thus, the first International Customs Convention, consisting of twenty-three articles, was established on 3 November 1923.<sup>18</sup> This convention had been the only independent international convention governing customs procedure and is considered as a condition or conducive situation, for the Kyoto Convention. However, such conventions were replaced by the Kyoto convention that was established in 1973.

Moreover, the world economic conference that was held in Geneva from 4 to 23 May 1927 is also considered as the most important context in history of customs and tariffs. In this world economic conference of nations, the following points were examined. This conference considered that states should

refrain from creating obstacles to development of international commerce by putting or levying unreasonable rate of tariff; there should be a fixed nomenclature for goods subject to customs duties which was essential condition of equity in their application and the conference recommended that states should refrain from making frequent or sudden changes in their customs duties. <sup>19</sup> Because sudden changes obviously affect the stability of trade relation and it may be a ground of conflict. Besides, the conference ordered that tariffs should be framed and administered with full regard for the business interests involved and for the maintenance of commercial good will among different nations by avoiding arbitrary methods of investigation and the simplification of customs and other formalities was also another important agenda of the conference. <sup>20</sup> There were also additional conventions that were concluded in different historical periods. A convention establishing a Customs Co-operation Council was signed in Brussels on 15 December 1950; together with the convention on nomenclature for goods in customs tariffs and the convention on the valuation of goods for customs purposes. This convention entered into force on 4 November 1952 with the deposit of instruments of ratification by seven signatories.

The Council of World Customs exercised its activities with the assistance of the general secretariat and other three committees that are set up under the 1950 convention, known as the Valuation, Interim Nomenclature and Permanent Technical Committees. Initially, the purpose of the establishment of customs union was to serve the European community with the particular aim of eliminating any possibilities of war in Europe in the future. <sup>22</sup> However, after a few years it has been extended to serve at international level and the number of its member states has constantly increased from time to time. Accordingly, at the end of the 1990s, it had attracted 150 member states from all over the globe. When we compare it with other international conventions or organizations regarding member states, it is the second largest organization

only next to the United Nations. Hence, this indicates that, the usefulness of being a member of the customs co-operation council either economically, or other direct benefits. Concerning the objectives of the council it has different objectives, the main one is harmonizing of the duties of customs avoiding technical problems through research, paving the way for developing laws and other important mechanisms to minimize trade barriers at large.

Ethiopia has on July 5, 1973 acceded to the Convention on Nomenclature for the Classification of Goods in Customs Tariffs signed on December 15<sup>th</sup> 1950.

### **1.2.2 Legal Development of Customs in General**

Customs is a very ancient fiscal mechanism and perhaps of the oldest ways of collecting money, though the origins of the customs are lost in obscurity. This indicates that, it is really difficult to know when and where the customs was born. In some regions of the world its activities can be traced back to remote antiquity. <sup>24</sup> These regions are highly related with basin of rivers such as Mesopotamia, Egypt, Indian-subcontinents, China, Greece etc. These areas are considered as the departure of the arousal of human civilization.

In these regions two important things met i.e the existence of commerce and administrator or leader. This is to mean that as far as customs duty is categorized under different kinds of tax, which is imposed on merchandises transported from place to place, one can strongly argue that customs can not exist without the existence of commerce. For this reason the customs is often said to be as old as commerce itself. <sup>25</sup>

However, the history of trade and exchange would seem to go back much than the history of customs since the existence of trade relations is considered as conducive environment for the existent of customs. Secondly, the existence of the customs duty is dependent on the existence of public authority or a ruler. Because, since customs duty is defined as a kind of tax, obviously, the public

authority would administer it. Therefore tax emerged as indispensable duties with the emergence of ruler, because governors can not administer their citizens with out collecting taxes. Accordingly the above stated events are considered as fundamental and conducive precondition for the existence of the ancient customs duty.

Despite the fact that there is a difficulty to prove by evidence where and when customs started, we can imagine the existence of customs duty based on different historical and archeological studies of researchers and by connecting fragmented information relating the field. For instance, diplomats were already being exempted from customs duty in Greece, Rome, and the Indian sub-continent at least as long as 2000 years ago. The first customs tariff was drawn in AD 36 in Palmyra and Oasis city in the Syrian Desert. <sup>26</sup> Accordingly, it is generally accepted that the earliest human civilization arose in Mesopotamia (the Basin Rivers Tigris and Euphrates), Egypt (the basins of the Nile), the Indian sub-continent (the basin of the river Indus) and China (the basin of the Yellow River of Hwang HO). <sup>27</sup> Hence, since customs is one of the oldest fiscal mechanisms, it would seem reasonable to assume that the customs also originated in these cradles of human civilization. <sup>28</sup> In spite of the facts that trade and exchange are as old as man; they did not become organized until the period of the beginning of the agricultural revolution. <sup>29</sup>

Agriculture developed in some areas thanks to adequate irrigation systems and the introduction of the plough, and this made possible the development of the village, freeing some of the populace of the need for agricultural labor. In this way they could devote themselves to manufacture, trade administration and military occupation, gradually transforming the village into a city and creating primitive urban population. <sup>31</sup>

This form of society, for which running water was essential both as the basis of an agricultural economy and as the easiest system of transport, gave rise to riverside civilization, which are the origin of the social history of

mankind. <sup>32</sup>All these historical events show that, the organization of the customs is basically related with the emergency of the human civilization both in the development of agriculture and trade or commercial activities as well as progression of human communication particularly in the irrigation system and of sea trade in the ancient time. Then a customs has been developed from the ancient time until the modern time by improving new and modern systems and techniques that are related with the field.

### **1.2.3 The Development of Customs in Common Law Countries**

The first Constitution of the U.S.A which was issued in 1787 has put it that congress shall have power to lay and collect taxes, duties, imports and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imports, and excises shall be uniform throughout the United States ...to make all laws which shall be necessary and proper for carrying into execution of the foregoing powers. It was on 4 July 1789, just thirteen years after the declaration of independence, that George Washington signed the first U.S. Tariff Act in New York. The Tariff Act was implemented on 1 August of the same year and the nominations of fifty-nine collectors, thirty-three surveyors, and ten naval officers was conducted and the elected people were sent to the senate. <sup>34</sup>

Accordingly, by early August 1789 the U.S. customs administration was already taking shape. In this connection, it is interesting to note that the U.S. treasury department was established on 2 September 1789, about a month after the establishment of the U.S. Customs Service. <sup>36</sup> The customs service was the first federal government department of the United States followed by Treasury Department. <sup>37</sup> The present customs bureau was formed in 1927 in order to assess and collect duties and taxes on imported goods. <sup>38</sup>

Until the year 1816, the purpose of customs has been mainly revenue collecting whereas after 1816 the function of the bureau has been extended to

protection of American industries. When we see the customs suspects of U.S as stated on the sixth amendments. Thus are in the criminal prosecution, the suspected shall enjoy the right to speedy and public trial, to be informed of the nature and cases of suspecting, the right of released on bail and the right to be brought to court within 48 hours of the time of their arrest.<sup>39</sup> Nowadays the U.S. customs is under the U.S. Department of Homeland Security and it's also known as U.S. Customs and Border protection. When we see the customs suspect of U.S. there was special court (administrative court), it sees only the customs case. <sup>40</sup>

#### **1.2.4 The Development of Customs in Continental Law Countries**

From continental legal system countries, the practice of Thailand could be taken as exemplary. The Thailand customs department was established in 1874. It was formed to handle all kinds of collection. The task of collection customs duties was later transferred to the newly created customs house, <sup>41</sup> which become the foundation of the present customs department. Thailand's customs department is an agency under the Ministry of Finance and its function is the "...control of export and import to facilitate the collation of customs duties and taxes. <sup>43</sup> When we see the Thailand suspected individuals, first of all the employee of Thailand custom is known as "Custom Border Protection Officer" (C.B.P) and the selection is very strong. Which means, when the applicant was applying for the job he/she has to pass through different requirements? There are interviews, medical exam, fitness exam, drug test, and background investigation. Lastly the applicants should take the following trainings like, basic law enforcement skills, including anti-terrorism; detection of contraband; interviewing; cross-cultural communications; firearms handling and, qualification; immigration and naturalization laws; U.S. customs export and import laws, defensive tactics; arrest techniques; baton techniques; examination of cargo bags and merchandise; border search Exception; entry and control procedures; passenger processing; and officer safety and survival.

Candidate's selection for duty locations requiring Spanish may receive an additional 6 weeks of Spanish Language training. <sup>44</sup>

### **1.3 Developments of Customs and Customs Police in Ethiopia**

#### **1.3.1 Development of Customs in Ethiopia**

Ethiopia is categorized as one of the oldest countries that have a long history of civilization. Its historical development of trade goes back to ancient time of Aksumite civilization. For many centuries, Aksum was the center of administration and trade activities. Adulis was the main port in the Red Sea, which served as an important conduit of international trade. <sup>45</sup>

Through this port different goods particularly gold, ivory, amole (bar salt) and other natural products were exported and items like textiles, firearms and others were imported from abroad. With the decline of the Aksumite civilization, Ethiopia's International trade thoroughly weakened and after the 17<sup>th</sup> century we see revival of this trade. Accordingly different kinds of goods were imported from Egypt to Gonder and other Awrajas. Goods like coffee, butter, hide and livestock were exported to abroad. During the ancient Aksumite civilization "tax was collected by the rulers of the time with rudimentary manner which did not involve procedures, complicated paper work, standing rules and regulation." <sup>46</sup>

However, "though the Aksumite Empire had enjoyed a flourishing coastal civilization with considerable foreign trade and external connections, Ethiopia in the later days remained largely landlocked and divorced from the sea, much of the coastal strip falling under Arab and subsequently Turkish influence or control." Lig Iyasu in his short lived reign, had appointed persons in areas of the Red Sea and western Ethiopia as customs agents to control the external trade and customs collection on goods from Yemen and Sudan, and also proclaimed how the situation should be regulated. <sup>48</sup>

"There shall be only a single Kella for every Awraja. Tax shall be paid one amole for five packs of mule and eight packs of donkey; traders who live of



their labor shall not be taxed as well as trader of sheep's and goats around the area of Gonder also exempted from paying tax.<sup>49</sup>

Later on, during the reign of Emperor Menelik II we see strong efforts to introduce modernization in Ethiopia. In due course of time the way or mechanisms of collecting tax was also developed. Accordingly, there were different regulations and tariffs proclaimed in 1882 E.C. Consequently the Ethiopian customs authority was originally established in 1889 to administer and enforce tariff and other related laws and there by generate revenue for the government. During the regency of Ras Teferi Mekonnen, efforts were also made to affect a single control tax per mule and to abolish the local customs ports.<sup>50</sup>

Gradually customs on external trade became indispensable source of revenue as of the beginning of 20<sup>th</sup> century. After the adoption of the 1931 constitution, scientific methods of taxation, with detailed schedules were introduced. Since the authority was established under the Ministry of Trade from 1924 to 1940 the ministry had ensured proper enforcement of tax laws to be able to administer customs duties. The imposition of customs duties had the aims of increasing revenues and protecting domestic producers. Moreover, the authority followed the regulations of the Brussels convention on the valuation of goods for customs purposes and the nomenclature for classification of goods in customs tariff. During this time certain commodities like “books, stationary, paper, and paper manufacture and musical instruments.”<sup>51</sup>

According to proclamation No 39/1943, hides and skins, civet, bee wax and coffee were goods on which export duties were imposed. Moreover, according to Article 2 of proclamation No 43/1943, it was prohibited to export gold, silver and platinum and later it extended to prohibition on oil-seeds, chat, ivory and butter. Generally during the reign of Emperor Hailelassie (1930-1974) there was only one proclamation and twenty-one legal notices were issued

successively amending the previous laws by increasing or decreasing the tariff rate or broadening the tax basis. During the Dergue regime (1974-1991) there were no fundamental changes in the progression of the field, though there were amendments of laws one following the other to increase the tax rate and expand the tax basis to collect revenue so as to generate money for the ongoing civil war.

The time of transitional government of Ethiopia was, at the beginning characterized by cancellation of taxes and duties on export goods, because there was a big imbalance between export and import trade and because of the result of depletion of the foreign currency reserve the country needed to purchase production machineries, spare parts and raw materials reducing the cost burden of export trade seemed idea. However, this was not applicable on coffee exportation. Furthermore, other efforts were made by the transitional government to revive the economy of the country by narrowing the gap between imports and export trade activities to reduce the problem of the balance of payment.

After all these historical processes the current proclamation No 60/1997 and its amendment proclamation No 368/2003 were adopted for the reestablishment and modernization of customs authority. Among the objectives of this proclamations are:- collecting duties and taxes on goods imported and exported, implement laws and international convention related to its objectives control the importation or exportation of prohibited or restricted goods.<sup>53</sup>

In the recent developments of the Ethiopia Customs Authority, as of the year 1998, the management of the authority is making attempts to set up new systems, procedures and to adopt new strategies aimed at enhancing the operational efficiency of the authority. For instance, the authority has recently begun to use machines such as x-rays instead of solely relying on human beings for inspecting and detecting fraudulent activities or contraband. This is being conducted by installing cargo-scanning equipment that is used for

inspecting containers, trucks and merchandises, while entering or leaving the country. Such new machines assist to improve the service particularly in relation to cargo transportation. Because it is minimizing the delay which was made as a result of backward manual inspection system. Moreover it helps to prevent illegal trafficking of goods. However, still there are different problems like the suspected individual's human rights and the facilitation of traders. That needs solution since information technology is not properly introduced in the authority.

The Ethiopian customs authority currently has five regional offices, two special branch offices as well as two offices of co-ordination with other smaller branch offices and checkpoints across the country. These offices have the power of detection contraband investigating suspected individuals. The offices are responsible to the main or Head office of Customs Authority and for the assessment and collection of customs and excise taxes; for the administrating the customs operation of the region.

### **1.3.2 Development of Customs Policing in Ethiopia**

In Ethiopia, customs police force has been operational since 1895, in order to control illegal trading (contraband).<sup>54</sup> Historically, this force has passed through different forms of establishment and was given different names at different time. During the years before 1938, this police force was administrated by the Ministry Finance; it was given a name customs guard or Yegumruk Zebegna (••••• • ••).<sup>55</sup> In the year 1943-1960, it was operational by the designation of the first name. In the years 1960-1968, the name of customs guard was changed into "finance guard". Since 1968 the force was made part of the police force and was organized and administered by it.<sup>56</sup> Nevertheless, it was responsible to the Finance Minister for its performance.

Later on, in the year 1969, it was also given a name "finance police" being responsible to the customs. subsequently, in the year 1982-1987, it was

separated from the police force and placed under the Ministry of State Administration. In the year, 1988-1992, it was totally made accountable to the Ministry of Finance. In the year, 1992-1994, it was accountable to the Department of Income under vice Minister of the Ministry of finance. From 1994 up to the present it is placed under the Ministry of Revenue.<sup>58</sup>

The customs authority was not having its own force to control illegal trading. Hence, it remained for long accountable to so many different administrative bodies for various times. Thus, it has become necessary to establish police force of its own and recently trained customs police forces are being used to control contraband trading.<sup>59</sup> what is the requirement to be customs police in Ethiopia? To answer this question, the federal police compose all the regional states of country; every regional state has its own quota and the criterion that they follow is not clear to the author. But, when they are in training they give consideration to personality, age, intelligence and education and that is why they always select among them, some police officers.

<sup>60</sup> There could be other criteria but the above-mentioned are main ones which should be met if a given society is to have a quality, efficient and responsible service from the policeman.

Bear in mind the customs police are from the federal regular police force, after they had finished their four (4) months of training in which they take at least five courses that include constitution, penal code, civil code, law of evidence and intelligence concerning in the customs matters. The customs police have the power of regular police in the criminal mater. This power is found from the proclamation No 60/1997 it provides that . in such away that it be vested with all the power and duties like that of the regular police have.” And also customs police force in enforcement customs laws shall have the power and duties vested to regular police force in the criminal procedure code.

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## CHAPTER TWO

### 2. RIGHTS OF CRIMINALLY SUSPECTED PERSONS UNDER THE F.D.R.E CONSTITUTION AND OTHER LAWS

#### 2.1 Constitutional Rights of Criminally Suspected Persons.

Constitutional recognition of human rights, in Ethiopia, is only a recent phenomenon. The constitution grants the respect for the basic human rights through two of its principles namely the principles that officials on the power have to comply with the due process of law and the prevalence of the rule of law. Fairness in the law enforcement is guaranteed through the due process of law. The importance in due process of law rests in the rights, which a citizen has naturally as a human being, not the rights that a statute says he should receive. The constitutional laws make more specific requirements, in the protection of the rights, to criminal cases than terrifying. The protection of the individuals by the government is indispensable for the assurance of the citizen's personality that it is necessary for him to remain an accepted member of the society.<sup>2</sup>

As it is well known a constitution is the supreme law of a given state that define the powers and functions of government and its various organs, i.e. the legislative, executive and judiciary of the state and their authority. According to a certain Greek political philosopher, thought that the constitution has normative content, which is intended to guide and control political power and government activities.<sup>4</sup>

Furthermore, constitution is higher form of the statutory law through which the will and aspiration of people are expressed by the people of a given land who were anxious to insure for themselves a government of people, by the people.<sup>3</sup> Regarding constitution Tomas Paine, too enumerated the characteristic, which define a constitution. According to him a "constitution is not the act of government but of people constituting a government and government without

constitution is power without right.”<sup>4</sup> A constitution also serves as guardian of fundamental rights of citizens. The concern of the researcher of this particular study is not a constitutional right of all citizens, but the constitutional rights of suspected or arrested individuals with a particular reference to proclamation No 60/1997.

The constitution, of the Federal Democratic Republic of Ethiopia under article 19 (1-6) mentions the following basic principles and rights of arrested individuals.

- 1. Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.*
- 2. Persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.*
- 3. Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before a court, they have the right to be given prompt and specific explanation of the reasons for their arrest due to the alleged crime committed.*
- 4. All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest where the interest of justice requires, the court may order the arrested person to remain in custody or,*

*when requested, remand him for a time strictly required to carry out the necessary investigation, in determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested persons right to a speedy trial.*

5. *Persons arrested shall not be compelled to make confession or admissions which could be used in evidence against them any evidence obtained under coercion shall not be admissible.*
6. *Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.*

Article 40(1) of the same constitution has the following to say with regard to the right of property. Every Ethiopian citizen has the right to the ownership of private property, unless prescribed otherwise by law on account of public interest. This right shall include the right to acquire and to use in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

Article 21 (1 and 2) of the F.D.R.E Constitution deals with the right of persons held in custody and convicted prisoners and declares the following;

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

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

Though there are some human rights protection institutions in Ethiopia like Human Right commission, Ombudsman and other related human right defending institution these institutions are too young and they need to be strengthened both institutionally and in skilled manpower so that they could effectively discharge their great responsibilities and safeguard the constitutionally recognized human rights and citizens including those who are suspected or convicted.

### **Rights of Arrested Persons under the Criminal Procedure**

In the criminal procedure there are different articles provided for the protection the right of criminally suspected individuals, these are:-

1. *Where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained of, the investigating police officer may in his discretion release such person on his executing a bond with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police.*
2. *Where the accused is not released on bond under this article, he may apply to the court to be released on bail in accordance with the provisions of Article 64. Their practice is regularly observed in the regular police but not common among the customs police.*



Article 29 (1) dealing with procedure after arrest stipulates where the accused has been arrested by the police or a private person and handed over to the police.

Article (58) the police shall bring him before the nearest court within forty-eight hours of his arrest or so soon thereafter as local circumstances and communications permit. The time taken in the journey to the court shall not be included.

Article 32 (1) in searches and seizures mentioned no arrested person shall be searched except where it is reasonably suspect that he has about his person any articles which may be material as evidence in respect of the offence with which he is accused or it suspected to have committed. A person of the same sex as the arrested person shall make a search. Article 49-51 (1 and 2) is the suspect person has how arrest with warrant and without warrant this is the right of the arrest person. Generally the suspected person has the rights. The aforementioned rights of suspected people are uncontroversial and recognized by the present day constitution of Ethiopia. Nevertheless, we see problems amongst the customs police in implementing the above provisions of the country's supreme document.

## **2.3 THE CONSTITUTIONALITY OF THE LAW OF CUSTOMS**

### **2.3.1 Arrest and Investigation by Customs Police: the practice**

The customs police have a considerable role in the enforcement of the customs control. They are responsible for the enforcement of those provisions of the criminal law including customs offences which violate the customs law. They have power vested or them under the Proclamation No. 60/1997 to seize goods, detain person, investigate and use of force where there is contravention of customs law. But, the customs police usual treatment of the subject is limited to detention and investigation. The custom police investigators are staffs of the customs police. But they do not have the special

and relevant training on how to examine suspected individuals; they are simply nominated by their commitment in police.

Detention by the custom police refers to the post arrest custody of a person who is alleged to be offender of suspect, where detention by the customs police lasts the first appearance of the accused before the court, which may order a further custody or detention or release the suspect executing bail or discharge him if the court finds him innocent. <sup>25</sup>

The customs police investigators exercise detention where they do not have a power to detain a person and seize goods which are not “moving in contravention of customs” for indefinite period but it is their duty to bring the suspect before the court which has jurisdiction; because this right is a constitutional right, as the constitution provides that “...Persons arrested have the right to be brought before the court with in 48 hours of their arrest. ”<sup>26</sup> Also Article 29(1) of the criminal procedure code has a very similar statement with that of the constitution. But, the customs police are not usually much concerned regarding these rights that are enshrined in our constitution. Although the constitution of F.D.R.E requires suspects should be brought before the curt within 48 hours of their arrest, the customs police are not strictly observing this time limit and some are detained for many days against what is declared in the constitution.

Moreover, Article 49 of the criminal procedure code lays down the principle related to detention and provides that, “save as is other wise expressly provided.. no person may be detained in custody except by the court.” <sup>27</sup>

Thus, detention of persons must be ordered only by the competent court except where some other provision of some other laws provided in express terms.

Even though police has a right to arrest a suspect under Article 51, they mostly use their own arbitrary methods which are indeed illegal.

The customs police are one of the bodies that have a power to detain persons with authorization of court. Furthermore, Article 59(1) Proclamation No 60/1997, states that police shall have the power to “seize goods and detain persons moving in contravention of customs or any other laws that are enforced by the authority.”<sup>28</sup> However, the procedural requirements for regular police investigation and customs police investigation are almost the same. Therefore, the regular police force and customs police must abide by the provisions of the Constitution Article 19(3) as well as the Article 29(1) and Article 59(2) of the Criminal Procedure Code.<sup>29</sup>

Investigation is a means by which the police in the performance of their duty as law enforcement officers can discover whether a suspect has committed a certain alleged offence or not through gathering evidence which may be conducted prior to contemporaneous with or subsequent to the initial stage of information, summons and arrest. This investigation is such wide term that gives every means that the police use to detect the crime committed. Nevertheless, the main concern here is the freedom of individuals on the one hand and, the power of the customs police investigation. On the other hand Proclamation No 60/1997 declares, “Where an offence is said to illegally committed against the provisions of the customs laws...customs police shall investigate in accordance with the provisions of the criminal procedure code.” Thus, the customs police is under strict duty to discharge his detention and investigation process as indicated in the provision stipulated in the criminal procedure code.

After the investigator has obtained all the relevant evidences, which may make strong his case, he “shall forward the investigation report.. to the customs procedure or in case of serious offences to the attorney general.” 31

Also, this indicates that the customs authorities have their own prosecutor but the problem is they are always delayed; since their cases are to be submitted to the public prosecutor. This also affects the rights of suspected individuals.

According to Article 32(1) of the Criminal Procedure Code “the arrested person shall be searched only where it is reasonable suspected.”<sup>32</sup> Reasonable suspicions is an exception of the principle. The question is who is going to determine what is reasonable suspect and who is not? It is the police who determine what reasonable suspicion is, and that is an indication of the discretionary power of the police. Therefore, the outcome of this discretionary power will always constitute abuse of power

### **2.3.2 The Application of law by the Customs Police**

When we see how the customs suspects are arrested and the implementation of the law, defects are observed in the customs police, checked against the rights given to citizens by the constitution and criminal procedure code of Ethiopia. As I have stated in the previous chapters, the customs police, in accordance with proclamation 60/1997 Articles 58,59,60,61, has duties to seize individuals suspected of contravening customs law and investigating them.<sup>1</sup> As the seizing and investigating procedures against the suspects are not free from prejudice, let us investigate the problems from arresting up to bringing them to the court. Article 19, sub Articles 1-9 of the constitution states that those who are accused of a crime and who are under arrest should be informed immediately the charges brought against them with the language they can understand. But, when we come to its implementation in customs police we find the practice to be different. Most of the arrested suspects come from the eastern part of Ethiopia and they have no command the working language of the federal state i.e Amharic. Instead they speak Somali and Afari languages. As a result during investigation they do not understand what the police are saying. So during the investigation they will be asked to bring a translator who can speak Amharic. The customs police are not employing translator and the reasons of their arrest or charges against them are not explained to them in a language they can understand. This is a clear violation

of the constitutional rights of the suspects and against Article 19/2/ of our constitution.<sup>3</sup>

Furthermore, when we see what is stated in Article 19/3/ of the constitution, the arrested should be brought to court within 48 hours of the time of their arrest.<sup>4</sup> Contrary to this, the process takes more than 4 days for the suspect to be presented to court in the case of the customs police. In branch offices outside Addis Ababa the process takes more than 5 days, what is surprising is the fact that the arrested individuals who stayed longer in prison do not usually complain about the denial of their right to be brought to justice within 48 hours after arrest, in this way the rights of many suspects are being contravened by the customs police. And these police investigators are not questioned by their supervisors and the court. In general there is no accountability as no measure is taken against those who violate the law regarding human rights of suspected and arrested people. The customs police seem to have considered this practice as a normal and legal procedure of doing things.

In accordance with Article 40/1/ of the constitution, any citizen can own property as far as it is not prohibited by law and it is not against the rights of other citizens, to own, use and transfer a property to a third party is allowed by the presently Constitution of the Federal Democratic Republic of Ethiopia.<sup>5</sup> But when we see the case of the customs police, many suspect loose their property illegally. Let's see this in the case of car forfeitures. Customs police seize cars which are said to be imported without payment of duties. And when the owner of the car is investigated, he explains that he bought the car after he has got confirmation about the legality of the car from Roads Transport Authority and he would show the change of title form given to him by the concerned authorities. The buyer does not know whether the seller is legal or not except that he has certificate of ownership in his hand. Therefore, the buyer has no means of knowing whether the seller has paid the duty or not. So whose responsibility is to verify the legality of the certificate? Is not that Road and

Transport Office a governmental body? When the buyer requests the road transport civil servants to confirm the legality of the car to be purchased they tell him that the car is legal and this gives the buyer confidence to enter into contract. Then the customs police will seize the car and the buyer will expose the seller. The seller may be released on bail by the order of court. But the car in most cases shall be forfeited to the customs office by pretext of import without payment of duty. In this way the third innocent party loses his property.

When we see the practice of the customs police department, instead of ensuring the third parties rights, it focuses on conflating cars and properties seized /bought or got in a legal transaction. These undoubtedly negatively affect the country's marketing system. It is creating doubt to enter into a contract through acts and civil status registration office. Moreover, if these third parties are to defend their case, it will take them longer period of time at courts; their cars are to be damaged by being exposed to harsh weather condition like extreme sun or rain. Eventually, the court will decide for third party to pay the duty and take the car but the property could be damaged or become worthless because it is not handled properly by the customs office. And the public and state wealth is damaged in this way. Even those properties confiscated by the customs office are not usually sold on bid on time. After they had been kept under bad condition for longer period of time without use they will be presented for sell. And this has a detrimental effect on the economy of the country and the society at large. Let's see one example (cases):-

The cassation petition submitted under the files listed below were presented, based on the cassation petition file No.23523, 24021, 23533, 23532, 23522, 23527, 24020, 23531, 25334, 23530, 23820, 23710, 27500, 23529, 23528,thus defendants were similar legal and substantive argument advanced and the cases were submitted on the Federal First Instance Court. The Federal First Instance

Court, staying that the respondents have been criminally charged, under various criminal files, by possessing vehicles, in violation of the provision indicated in proclamation No. 60/1997, article 74, without any customs clearance, and without payment of government duty. Therefore, since they were found possessing illegal goods, they have been charged forth with. The court has heard the evidence of the plaintiff submitted on each criminal file. The court however, has ruled that it has not been substantiated by the plaintiff, which the accused, as it has been indicated in the law, have possessed the vehicles they have been alleged to have possessed. Therefore, it has given a judgment in accordance with the criminal procedure code No.141, that the defendants without the necessity of defending themselves should be released from the lawsuit. The cases were appealed to the Federal High Court .However, the appeal did not find acceptance by the Federal High Court. Lastly the petitioner stating that a basic legal error has been committed has submitted a reservation to the Cassation bench. The Federal Democratic Republic of Ethiopia Federal Supreme Court gives the following decision.

1. *Since, the decision rendered by the Federal First Instance Court under file No. 34003, 52056, 51818, 33863,33867, 33868, 33864, 34000, 34007, 34001, 33937, 34008, 33862, 33933, 33858, 33865, as well as the decision rendered by the Federal High Court, under file No. 31745, 31625, 31104, 31063, 31698, 31619, 31068, 31621, 31101, 3777, 31623, 31103, 31624, 31776, 42070, and 45618 have a basic legal error, it has been rejected, in accordance with the civil procedure code No. 348(1)*
2. *As it has been confirmed with the evidence presented by the petitioner that no customs formality has been effected on the vehicles, the vehicles which were under the possession of the respondents, the respondents should receive the vehicles by paying the customs duty and tax which should be paid to the government, and that if they have not paid customs*

*duty and tax, it has been decided that the vehicles should be confiscated, in accordance with proclamation No.388/2003,Article 80(3) (A) and (B).<sup>6</sup>*

Even today a number of cars are available in each customs branch offices with out any court decision. For instance, we can find in the head customs office 43, Nazrat 7, Awash 7, Eastern branch office 11, Jijiga 27, and North West 18cars. In general, we can count a total of 103 cars that are kept in the customs office and are being exposed to damage caused by the problem of improper handling and delay of decision.<sup>7</sup>

In accordance with Article 21 and Article 15/2/ of the constitution, those who are under custody and imprisoned by law should be treated properly. Their human rights should be respected. They have also the right to meet with their relatives, partners, spouse's, spiritual fathers, doctors and lawyers. The customs suspects even if they should not stay for longer period of time after the courts decisions, there are suspects who stay for months in jail, because of court adjournments until the completion of the investigation by way of remand. Nevertheless, the prisons where these suspects are staying don't provide the basic necessitates for the prisoners; especially, there is no food to be provided for the suspects. Of those who are staying in customs prison, some buy their own food, some others are fed by their relatives, but there are those who do have neither money nor relatives. In such cases, money may be contributed by the customs police members to provide them with food. Let me give you an example on 25/04/2007 at 2:00 pm, a certain woman from Jijiga, suspected of holding a cloth with no duty paid, was seized at Kalitti Customs Station at the suburb of Addis and imprisoned at the customs main head office. She was not having any single coin in her hand at that time. Moreover, she had no relative in Addis Ababa to provide her with food. Even the cloth she was wearing at night was given to her from a woman customs police on duty that day. Money was contributed by police members on duty to provide this woman food for



three days. But after three days the court released her on bail. Therefore, the customs office has responsibility of feeding the arrested suspects in every station but in practice this is not being implemented.

When we see some prison that the suspects are staying in they provide what is needed for the prisoners. For example, the researcher has confirmed that in all sub cities police stations in Addis Ababa food is readily available for the arrested. It is clear that the problem of improper treatment to the suspect by the customs police is undeniable. And those police stations without proper provision of food or other facilities for the suspects did not have warding rooms for the suspects because of lack of budget. What should be underlined here is that the customs office as a federal organ is given power to do work of investigators and prosecutors to seize the suspects, investigate them and bring them to court and get them punished if they are found guilty. But, it is clear that the suspects are arrested without having basic necessities to be provided there.

With regard to the rights of suspects, in the criminal procedure code Articles 28 sub Article 1 and 2 it is stated that the offences committed entail serious imprisonment or other alternative punishment, or if there is doubt whether the suspect has committed a crime or not, then the accused may be fined pay and sign as his own guarantee or he can bring somebody to sign for the money to be paid as surety, and the suspect may be released with the condition to come to the place and the time decided by the investigating police.<sup>9</sup> This kind of procedure is normal in many regular police investigators cases. Nevertheless, in the case of the customs police, even if the matters are petty, the normal legal procedures (when the matter is petty the police investigator is mostly released on bail) are not practiced. If the accused individual of petty offences is brought before court he will be released on bail. At this time suspects with petty cases that would have been released by the police, after three days they appear before a court and

get released. In this case suspected ones will sustain moral and financial damages and also they would lose a valuable time of work in vain. The criminal procedure code Article 32/1/ states about examination and seizing. A person is going to be examined, if there are enough reasons to assume that the suspect is holding a material he used to commit crime in his body or not, it is impossible to examine any one.<sup>10</sup> In such customs cases, thus, the provision of Article 32/1/ of the criminal code procedure is not observed. Any customs police examines any body as he wishes by his power. Most of the examinations are done by the customs police who are neither efficient nor qualified. But, a lot of people suffer because of this. At custom stations every body has to be examined everywhere by the established procedure called "Berera" (this is sudden and informal) customs police numbering from 4-6 will come out of the examining stations and they will stop every car on their way and do their examination.<sup>11</sup> In this process, a lot of people suffer. Therefore, sufficient reasons stated by the Article should be written in detail to avoid this ambiguity /problem/.

Article 49 and Article 51/1-2/ of the criminal procedure code states about the right not to be seized or arrested without court order or the conditions of seizing may be done without court order. But, in the case of customs police, there are implementation defects related with the above Article. For example, a person may be arrested without court order if he is prepared to commit or committed a crime that will entail an imprisonment not less than a year. When we see the customs case, a person is arrested not because he is well suspected but because of the desire of the police to arrest him. This kind of measure will propagate fear and pose threat to the citizens. Such practices should be corrected. It should be well stated in the working policy of the customs authority that no one would be arrested without enough reasons to do so. The concerned officials should write this

regulation for anyone not to be seized without sufficient reasons. If so, prompt corrective measures could be taken upon the police who seized a citizen without enough reason. Other wise, the citizen's human and democratic rights are exposed to violations contrary to the country's constitution and other relevant laws. Nowadays, in each branch of customs office there are too many suspects who are under custody. The following branches have the number of detainees listed here under;- Head office (Addis Ababa) men 5,women 2; at Nazreat 3 men; at Dire Dawa, men 6, women 3;at Jijiga, men 6, women 1, North-eastern men 5, North- western, men 4. This shows that the criminally suspected individuals of the customs are arrested every day with out any reasonable reasons.

## CHAPTER THREE

### CONCLUSION AND RECOMMENDATIONS

#### Conclusion

The problems of the customs police in performing their duties are explained hereinabove. However, these problems are arising not because of lack of a written law, but they arise because of the lack of proper follow up and supervision to execute those written laws as they are intended to. The problems shown in executing the duties of the customs police and their solution are recommended as follows. One of the problems seen in executing the customs police duties is breaching the rights of the suspected citizens recognized by the constitution and other laws.

When we see Article 19, 1-6 of the Ethiopian constitution, especially in sub Article 1, it is stated that those people under arrest (custody) who are suspected of committing a crime, should be notified the charges brought against them and the detail with a language they can understand and immediately.<sup>14</sup> Contrary to this, the suspects are usually required by the customs police to bring some body who can speak Amharic. Hence, the rights of the suspects that are given to citizens by the constitution are not respected. The police officers, the customs authority's officials and customs prosecutors have to work together, as the nature of the work demands to assign somebody permanently who can speak the language of the people living in the eastern part of our country (i.e. Somali, Afar and Afan Oromo). Otherwise it has to employ translators who can help while speaking with the suspects. In accordance with Article 19 Sub Article 2 of the constitution for the words of the suspects to be brought to witness, the over all nature of the charges against them should be explained to them in the language they can understand.<sup>15</sup>

As it is stated in Article 19 Sub Article 3 of the constitution of Ethiopia, and in Article 19 Sub Article 1 of the Criminal Procedure Code of Ethiopia, the

suspect has the right to be brought to court within 48 hours of his arrest.<sup>16</sup> But, in the case of customs arrest it takes 3-4 days for the suspects to be brought to the court of law. Even though this is a constitutional right of suspects it's getting obstacles because of the lack of the executing ability of the customs police. Because of this obstacle citizens are staying in prison for unnecessary additional times. So as to avert or minimize the problem, the concerned bodies i.e. customs prosecutor, customs office higher officials and human right protection institutions e.t.c have to examine such cases of customs and check how it's handled by the customs police. The concerned bodies should also conduct visits to observed the conditions of the detainees and solve some of the problems by conducting occasional visits and deciding the time of their arrest, by confirming whether they are brought to court or not, asking those who do not come to court within 48 hours their investigator and take measures against such members for delaying to bring the suspect to court on time. A lot of citizens are suffering from lack of proper follow up.

On the other hand, in Article 40, sub Article 1 of the constitution it is stated that every citizen has the right to own/use property. But it has got a problem of execution in the cases customs. Therefore, cars which are bought by citizens after proper procedures are fulfilled, that is, after the Road and Transport Authority confirms that the seller is the owner of the car who has fulfilled all the legal documents should not be confiscated. So, for the customs to confiscate these cars bought by the third parties after following all the legal procedures is illegal. There are two solutions to solve this problem.

First, the suspects arrested of holding a car whose duty is not paid, if they have been investigated by the Road and Transport Authority the condition of their buying, and if they have got ownership certificate /Librea / after concluding a contract agreement through acts and civil status registration office; before their car is forfeited, they can hold the seller to be questioned for civil crime because those who are holding the car have bought it without any

price reduction believing that the car was legal after all, they have a contract. The Road and Transport Authority has to confirm whether the car has passed the customs process or not, by asking the needed information from the customs itself. Moreover, for every car coming with transferring forms from any regions, by building working relationship with the customs, the Road and Transport Authority can confirm the legal procedure it has passed while it is imported to the country. If the Road and Transport Authority did it this, the people who bought the cars would not be liable for the consequences; rather the road and transport should take full responsibility.

Secondly there are cars which have been forfeited by not paying duties, without prejudice and should be sold by auction and putting the sales money into the government's treasury, however, mostly such properties sold on bids are damaged to the level of costing nothing even after reaching to the level of inability to render full service. Therefore, the following should be done with regards to properties forfeited by the customs office. When the properties are seized till decision by the management and the regular court is given; it should be told to the customs police how they have to be handled to protect from damage. Next to that a department that will make follow up and contrasted with responsibility should be identified and assigned. Because it would be possible to save the property of the people and the state before being damaged. The following two measures should also be taken. The first one is selling them on bids and the second one is selling them to wholesome trading import organization as it has access and power to provide the goods to the people. It collects the money of the sales too.

Article 21 and Article 15 Sub Article 2 of the Constitution state that how suspected persons under custody and prison should be handled.<sup>18</sup> But the customs police defects to implement this provision. The condition of staying rooms, the way the suspects have to be handled is provided in the above articles. Nevertheless, the law and the practice have big deference in the

customs police on handling of suspected individuals. In order for the customs police to arrest and put the suspects in prison and investigate them, in the first place it has to prepare standard staying rooms. It should also be the responsibility of the customs police to avail food for the suspects. So as to materialize this, enough budgets should be earmarked by the government to provide the necessities of those suspects seized or detained in staying rooms. Otherwise, the duty of seizing the suspect and investigating them should be given to other police institute.

The constitutional rights of the suspects, the implementation defects of the customs police and their solutions, matters related with criminal code and the implementation problems of the customs police and its solutions are stated below:-

In accordance with Article 28 sub Article 1 and 2 of the Ethiopian Criminal Code procedure, if the committed offends observes no serious imprisonment or other alternative punishment, <sup>19</sup> the customs police can release the suspects either on self guarantee or by getting the other guarantee signed to furnish the surety. But the customs police are not doing this. Even, when it is possible to release the seized suspect on bail staying them under custody till they are presented to court should stop and this problem can be solved as follows;

The customs officers have to make regular follow up, ask the customs prosecutors, visit suspects and listen to their complaints, and give instructions to the police about the suspects with petty offences to be brought to court speedily and the judge has to remand also the suspect can be released with police guarantee. As what is stated in Article 32 Sub Article 1 the Criminal Procedure Code, is without prejudice. We have seen the defects in the implementation of criminal procedure code article 32 sub article 1 by elaborating what seizing means and its implementation by the customs police. So it has to be explained in detail what seizing means to the customs police.

We have to establish a procedure, which will help us to take measure on those customs police who arrest innocent people and suffer them. There is also a normal way of doing things which is called Berera. It is going out of the known station and examining people. This way of doing things does not identify the suspect and the innocent. It is done in general way where every body has to be examined. The times and the conditions of surprise investigation to be taken place should be stated in detail in the procedure. Generally, when we see contraventions against the rights of the customs suspects, those rights which are given to them by the supreme law, that is, the constitution and by those laws which are originated from the constitution like the Criminal Code Procedure and by proclamations No 60/1997 the reestablishment and modernization of customs authority. And these rights are getting denied by the lack of follow up and effective control by the legislative body, by those who interpret the law and by those who enforce the law. I do not think that those staying places have been visited by the Human Rights Office, Institute of Ombudsman etc. If it was so, improvements should have been made. If the institutions I stated above visited those places, I believe that the problems will be minimized if not fully solved.

### **Recommendations**

As it has been shown in the study, the rights of citizens, which are given to them by the constitution and the Criminal Procedure Code, are being denied. However, to stop and prevent this denial of rights of the suspected citizens, the executive body has to take measures. Because the government has a responsibility to ensure and protect the rights of citizens Thus, the following measures should be taken by the executive body.

1. The customs police have to give its mandate to prevent contraband trade to the Federal Police. I have a reason that supports my idea. I recommend this because the customs police have visible weaknesses to prevent contraband trade and also the way the suspected citizens are



kept by customs police is without discharging responsibility which has resulted in the denial of human and democratic rights of citizens. The Federal police, has better training than the custom's police, it updates its training every time, it has enough personnel and material preparation to prevent contraband and as it is experienced how to handle suspected citizens under arrest. Therefore, the human and democratic rights of citizens can be ensured by the Federal police than the customs police.

2. The customs police have power to investigate the arrested and suspected individuals in addition to protecting contraband trade and I suggest that it would be better if the regular police around the area where the suspects are arrested handle this investigation matter. And the police can present the issue to the court after finalizing the investigation. In this way they can get speedy. Therefore, it would be better for those suspected individuals to be investigated by the regular police rather than by the customs police for the sake of ensuring the law. Because the regular police have better knowledge of the law, are well experienced in investigation and handling the arrested suspects. Moreover the nature of their work is with ensuring peace and security and they have also better execution ability to ensure the right of the suspects.
- 3 The customs prosecutor is organized under and specially for customs authority, and it sides with the authority only. It has also a problem in ensuring the right of suspected individuals arrested by the customs police. So, I suggest that this institution should be taken out of the customs and its power be given to the Attorney General under the Ministry of Justice. Because the regular prosecutor office can do the job better than the customs police even the suspected individuals can be handled well. Because though the prosecutor is working representing the government, until the suspects are found guilty of a crime, it can ensure their rights by following up their case.

4 While the Customs Authority trying to accomplish its responsibilities, in accordance with the power given to it, through Proclamation No 60/2005, by bringing the suspects who are assumed to be against the customs laws to the regular court, mostly these suspects do not get speedy decision at these courts for these court procedures stay for longer period of time, it is a problem to the suspected individuals. So I believe that the government should establish a court that entertains only customs cases. And the judges who will be appointed in these courts should acquire knowledge of customs laws and crimes done against customs. It helps also to prevent illegality, because those people who are arrested, by the suspicion that they are working against customs laws, if they know that decisions will be made speedily for such cases they will not get in to illegal actions, instead this will help them to do things in the right procedural way and in accordance with the law.

## CHAPTER ONE

### END NOTE

1. Professor Sir Randolph Quirk new ed. long man dictionary p. 254.
2. Hennerly Campbell black's law dictionary: 4<sup>th</sup> edition 1995 p. 386.
3. Encyclopaedia Britannica; vol.21 p.814.
4. Ibid.
5. Ibid.
6. Ibid.
7. Glossary of International customs terms part IV p. 12.
8. Ibid.
9. The Re-establishment and modernization of customs Authority proclamation No 60/1997.Neg.Gaz.3<sup>rd</sup> tear No. 18 art.2 (10).
10. Encyclopaedia American: Vol.8, 1998 p.357.
11. Supra not at 16, p. 24.
12. Ibid.
13. Ibid
14. Supra not at 10, p. 269.
15. Supra not at 16.
16. Ibid.
17. Supra not at 10, p. 272.
18. Ibid.
19. Ibid.p273.
20. Ibid.p275.
21. Ibid. p. 288.
22. Ibid. p. 290.
23. World History of customs and tariffs: by (World Customs Organization), Customs co-operation council and Hironori Asakura, 2003, p. 11.
24. Ibid.

25. Ibid.
26. The study of the Roman Customs duty (Leportorium Chezless Romans)  
by Maria Divenasa, Fifth edition.
27. Supra not at 10 page 20.
28. Ibid.
29. The History of the customs: A historical outline of customs and trade  
policy In Europe and World: by Giuseppe Favale. P.31.
30. Ibid.
31. Ibid.
32. Ibid.
33. Supra not at 10.p.224.
34. Ibid.
35. Ibid.
36. Ibid.
37. Ibid.
38. Ibid.
39. Ibid.
40. Intranet (<http://www.fff.org/freedom./fdo.502.@.asp>)
41. U.S. customs and border protection international border introduction  
training.
42. Ethiopian customs law: its impact on foreign trade: by Hadush Desta  
(Unpublished).
43. Ibid.
44. Ibid.
45. Internet (<http://www Thailand customs>).
46. Supra not at 27. p. 4.
47. Ibid.
48. Ethiopian observer, by Richard pakrust. Vol.8, p. 37.
49. Amharic booklet of customs news it translated from Amharic.

50. Re-establishment, Re-organization and powers and functions of the Ethiopian customs Authority: by Hiwot Tadese p. 5(unpublished).
51. *ibid.*
52. Proclamation No 368/2003 re-establishment and modernization of customs authority (amendment) proclamation.
53. The Exported Goods Control Proclamation No 39/1943 Neg. Gaz.5<sup>th</sup> year No. 25 article 3.
54. Customs voice, *supra* not at 21.of chapter 1 .p.25
55. *Ibid.*
56. *Ibid.*
57. *Ibid.*
58. *Ibid.*
59. *Ibid.*p.26.
60. Interview to Tensaye W/mariam, head investigation department of customs authority Addis Ababa.
61. Proclamation No 60/1997 *supra* not at art.59 (3).

## **CHAPTER TWO**

### **END NOTES**

1. Legal history of Ethiopia from 1434-1974 some aspects of substantive and procedural law by Abera Genbera page 3-5
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*
5. *Ibid*
6. *Ibid*
7. The Constitution of the Federal Democratic Republic of Ethiopia article 19 (i-6) p. 13.
8. The constitution of F.D.R.E article 40(1) p.28.
9. *Ibid*, 21 (1-2) p. 15.

10. The criminal procedure cod article 28 (1-2) p. 7.
11. Ibid, art. 29 (1) p. 7.
12. Ibid. art. 32 (1) p. 8.
13. Ibid. art. 49.51 (1-2).
14. Ibid. art 59 (3).
15. Ibid. art 59 (10).
16. Criminal procedure cod, supra not at 3 art 59 (1).
17. Proclamation No 60/1997 supra not at 23.
18. F.D.R.E constitution, August 21, 1995 by proclamation No 1/1995 year 1<sup>st</sup> No 1 Federal Neg. Gaz. of F.D.R.E in art 19 (3).
19. Supra not at 23.
20. standly I Fisher ,Ethiopian criminal procedure, (1969) p. 39.
21. Proclamation No 60/1997, supra not at 3 of chapter 1 art.61 (1).
22. Ibid. art 61 (2).
23. Encyclopaedia Americana (Vol, 24/1997) p.489.
24. Criminal procedure cod supra not at 4 art. 32 (1).
25. Proclamation No 60/1997 supra not at3 of chapter 1 art 61 (9).
26. Criminal procedure cod article 29(1).
27. Ibid. art. 49.
28. Ibid. art.59 (1) and proclamation No. 60/1997.
29. Federal Democratic Republic of Ethiopia article 19(3), art.29 (1), and Criminal procedure code art.59 (2).
30. Proclamation No.60/1997.
31. Ibid.
32. Criminal procedure cod art.32 (1).

## CHAPTER THREE

### END NOTES

1. Customs proclamation No. 60/1997 p.341, 342 Articles 58,59,60,61,
2. Federal democratic republic of Ethiopia constitution article 19, sub art.1,  
2
3. Ibid Article 19 (2)
4. Ibid Article 19 (3)
5. Ibid Article 40 (1)
6. The Federal Democratic Republic of Ethiopia Federal Supreme Court cassation files No 23855 decision.
7. The customs enforcement department from July 1999- April 2000, 9 month official report.
8. Federal Democratic Republic of Ethiopia Constitution Article 21 and Article 15 (2)
9. The criminal procedures code Articles 28 sub Article 1 and 2.
10. Ibid Article 32(1)
11. Interview from commander weldemariyam hade of the customs police.
12. The criminal procedure code Article 51 sub Article 1 and 2.
13. The customs police July report.
14. Federal Democratic Republic of Ethiopia Constitution Article 19 (1).
15. Ibid. article 19 (2).
16. Ibid. Article 19 (3) and criminal procedure code Article 19 (1).
17. Federal Democratic Republic of Ethiopia Constitution Article 40 (1).
18. Ibid. Article 21 and Article 15 sub Article 2.
19. Criminal procedure code Article 28 sub Article 1, 2.
20. Ibid. Article 32 sub Article 1.

## **BIBLIOGRAPHY**

### **Laws**

The Federal Democratic Republic of Ethiopia Constitution 1987.

The Criminal Procedure Cod of Ethiopia 1954.

The re-establishment and modernization of customs Authority proclamation No 60/1997.

Restricted and prohibited goods from exportation No 43/1943 Neg. Gaz. 7<sup>th</sup> year No. 19 article 4.

The New customs code of Russia; that adopted in 2003.

Customs Tariffs council of Ministers (Amendment). Regulation No. 6/1996 Neg.Gaz.2<sup>nd</sup> year No.27 Article 2(b) (2)

The customs tariffs council of Ministers Amendment Regulation No89/2003 Neg. Gaz. 9<sup>th</sup> year No. 83 Article 2.

The Re-establishment and modernization of customs Authority commandment proclamation No 368/2003 Neg. Gaz. 9<sup>th</sup> year No 93 Article 23.

### **Journals and conventions**

Ethiopian observer, by Richard Pankurst Vol. 8, p.37.

The agreement of World Trade Organization of 1994.

The Revised Kyoto Convention: See its Preamble.

The WCO Hand Book for Commercial Fraud Investors, Section 1 Chapter 4. Page.5.

Risk Management Guide by World Customs Organization June 2003. See it's Introductory part.

U.S. Customs and Border protection international border introduction training Hand Book.

### **Dictionaries**

Encyclopaedia Americana: Vol. 8, 1998, page 357.



Encyclopaedia Britannica: Vol. 21. Page. 8/4.

Glossary of International Customs terms part IV page 12.

Henery Campbell Black's law Dictionary: 4<sup>th</sup> edition 1995 page 386

Professor Sir Randolph Quirk new ed. Long man dictionary p. 254.

### **Books and other Materials**

Legal history of Ethiopia from 1434-1974 some aspects of substantive and procedural law by Abera Genbera

The History of the Customs: A Historical outline of customs and Trade policy in Europe and World: by Giuseppe Favele page 31.

Customs Co-operation Council and Hironori Asakura, 2003.page11

Ethiopian customs law: its impact on foreign trade: by Hadush Desta (Unpublished).

World History of the customs and Tariffs: by (World Customs Organization),

A few points about the Ethiopian customs Authority (booklet)

Booklet that designed for the purpose of training for custom officers

### **Cases**

The case between the Ethiopian custom authority Vs

Ato Tsegahun Mengstu file No, ••••

•• 23855 on

26/02/2000 of E,C

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