

Ethiopia Legal Frame Work Regarding Compensation for Wrongful Conviction

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Abstract

Due to the fallibility of criminal justice system a lot of individuals are being wrongful convicted throughout the world. For instance wrong full convictions occur in 1 to 5 percent of all conviction in USA.¹ No criminal justice system can avoid wrongful conviction. Wrongful convictions have a terrible and irreparable impact on the innocent defendant or on his family. However it would be worse, if the victim of wrongful conviction is not compensated. Countries give compensation to make the damage good. However cannot give back what the victim has lost due to wrongful conviction or cannot restore the victim to the previous position perfectly. In Ethiopia compensation for wrongful convictions is a legal issue which has yet to find a solution for those who the government has denied to pay compensation for the damage such wrongful conviction brought to their lives. Ethiopia has signed an international convention in favor of paying compensation to the persons who have been wrongfully convicted. However the federal and the regional state legislatures have not implemented efficient statutory provisions to comply with such commitment. In the absence of a statute how the government should respond to this situation of granting compensation to the wrongly convicted person.? Since there is no certainty in how our legal system would respond to the issue of compensating victim of wrongful conviction. It is important to explore the available alternatives in order to find a legal mechanism that gives justice to the victims of legal system. To this end the writer discusses the meaning, causes and impact of wrongful conviction, and analyze the legal frame work of compensation for wrongful conviction in Ethiopia and forward the proposed solution.

Keywords: wrongful conviction, miscarriage of justice, compensation, exoneration.

1. Introduction

1.1. Meaning of miscarriage of justice or wrongful conviction.

Oxford advanced learners dictionary defines miscarriage of justice as a failure of a court or judicial system to attain the ends of justice especially the one which results in the conviction of innocent person.² In Ramsey and Frank's (2007), the term Wrongful convictions was define as a process in which individuals were wrongfully convicted of a crime but are in fact innocent. They stated that two kinds of errors of justice can occur: errors of due process, which can be from violations of a defendant right to the conviction of a factually innocent person, and errors of impunity ,which can be from the failure to apprehend a perpetrator to the acquittal of a factually guilty defendant.³ It is also defined as an errors of justice which means errors in the interpretation, procedure, executions, of the law typically errors that violate due process, often resulting in the conviction of innocent person. The Scandinavian language have a words the Swedish variant of which is *justitemord*, which literally translates as "justice murder." The term exists in several language and was originally used for cases where the accused was convicted, executed and later cleared after death. With capital punishment decreasing, the expression has required an extended meaning namely any conviction for a crime not committed by the convicted person.⁴ However whilst, miscarriage of justice or wrongful conviction is a term which is very familiar, it has no settled meaning lord Birgham pointed out in the application of Muller Vs secretary of state for the home department (2004) that it could be used to describe the convictions of the "demonstrably innocent but it also has been used to describe cases in which defendants guilt or not certainly should not have been convicted".⁵ Therefore in legal terms miscarriage of justice or wrongful conviction is defined broadly to include not only the factually innocent but also the factually guilty who have been wrongfully convicted.

1.2. Meaning of compensation

West Encyclopedia of American law second edition defines compensation as a pecuniary remedy that is awarded to an individual who has sustained an injury in order to replace the loss caused by said injury. It is indemnification payment of damages; making a mends; that which is a necessary to restore an injured party to his former position. An act which a court orders to be done or money which a court orders to be paid by a person whose acts or omissions have caused loss or injury to another in order that there by the person affected (injured)

¹ BRITTNAY LEA-ANDRA MORGAN(2014): WRONGFUL CONVICTIONS: REASONS, REMEDIES, AND CASE STUDIES PP2.

² <http://en.m.wikipedia.org>

³ Brain Forst(2004): *Errors of justice ,nature,sources and Remedies (Cambridge University press)* at 45

⁴ *supera note 22*

⁵ Daniel Layne(2010): *Compensation for Miscarriage of Justice* www.internetjournalofcriminology.com accessed on Dec 12,2015

my receive equal value for his loss or to be made whole in respect of his injury.¹ Compensation can include monetary and non- monetary components. The main purpose of any compensation is indemnifying or restoring injured party as far as possible, to his former position. As regarding wrongful convicted persons, states have a responsibility to restore the lives of the wrongfully convicted to the best of their abilities. Despite their proven innocence, the difficulty of re-entering society is profound for the wrongly convicted, thus the failure to compensate them adds insult to injury.² Therefore it is unfair and unreasonable to deny them compensation for that treatment. Society has an obligation to promptly provide compassionate assistance to the wrongfully convicted in the following ways:-

- Monetary compensation, based up on a set minimum for each year served.
- Provision of immediate service including; financial support for basic necessities including subsistence funds, food, transportation, help securing affordable housing, provision of medical/ dental care and, psychological and counseling services, assistance with education and the development of work force skills, and legal services to obtain public benefits ,expunge criminal records and regain custody of children.³

Conceding that no system is perfect the governments' public recognition of the harm inflicted up on a wrongfully convicted person helps to foster his healing process while assuring the public that the government regardless of fault is willing to take ownership of its wrong or error.

1.3. Causes of wrongful convictions

Miscarriage of justice result in wrongful conviction of innocence and which in effect shake the public confidence on criminal justice system so what are the causes of wrongful conviction? There are several factors that lead to wrongful convictions. These are: - unfair and oppressing conduct of the police, falsification of evidence, non-disclosure of evidence, mistaken identity whether deliberate or accidental, unreliable confession due to police pressure, corruption, faulty forensic test, media pressure...⁴ An article by well known criminologists Dr Pawl Willson's co- written with Juliette Langdon, entitled "when justice fails" provides a valuable insight into the possible causes of miscarriage of justice cases in Australia and New Zealand. The authors identified factors said to be responsible for actual or possible miscarriage of justice, based on review of 32 Australian and New Zealand cases since 1965. They are:-

Un professional police investigation, allegation of incompetent police investigation, allegation of criminal police behavior partisans expert testimony, inconclusive expert evidence , Circumstantial evidence, possible witness perjury ,unreliable eye witness identification, Confession by other suspect, un reliable police informer, unreliable prison informer, media pressure media stereotypical prejudice, possible erroneous judges instruction, inadequate representation, allegation of prosecutor misconduct and misunderstanding of cultural factors such as translator error.⁵

The United States of America has been subject of more wrongful conviction research than any country in the world. In a quarter century since 1989, more than 1400 persons were wrongfully convicted and subsequently released from prison because of evidence of their innocence. This is about 4.5 exonerations per month or one per week every week for the past 25 years. More than 90% of the exonerees were men and 46% were African American.⁶ There have been 333 post conviction DNA exoneration in the United States of America and the average length of time served by exonerees is 14 years.⁷ So what are causes of wrongful conviction in United states of America. Research conducted by different researchers and scholars,⁸ shows that mistaken eye witness identification, false testimony, race and class, false or coerced confession, perjury or false accusation by witness, informant and jail house snitches, faulty forensic science, police tunnel vision and misconduct, overzealous or unethical prosecutors, inadequate defense counsel, community pressure, jurors bias... When we see causes of wrongful conviction in Canada they are almost similar with that of USA and Australia. They are eye witness identification error, jail house informant testimony, false confession, tunnel vision, systematic discrimination, professional misconduct and errors in forensic science.⁹

¹ Edmond G92002): *Constructing miscarriage of justice: Oxford journal of legal studies* at 75-90.

² <http://www.roughjustice.co.uk/compensation~ htm> accessed on Dec 10,2015

³ *Ibid para graph 15*

⁴ http://en.wikipedia.org/wiki/miscarriage_of_justice~ htm accessed on Dec 02,2015

⁵ Adjunct associate professor, school of law and Justice, Edit Cowan University, Perth, WA. The contribution of corruption to miscarriage of justice 2005.

⁶ The national registry of exoneration (2014) www.law.umich.edu/special/exoneration~ htm visted on Dec 20, 2015

⁷ www.innocenceproject.org/free_innocence~ htm accessed on Dec 20,2015

⁸ Loftus et Messo (1987) Green et Loftusc 1984, Bochard Bedua and Radelet (1987), Gould and Leo (2010), Ramsey and Frank (2007), Gross et al(2005)--and others

⁹ Kenit Roach, professor of law, Uniiversity of Toronto: Wrongful conviction in Canada (2011)pp 21

1.4. The impact of wrongful convictions

Wrongfully convicted people may experience psychiatric and emotional effects from the conviction and subsequent imprisonment. They undergo enduring personality changes similar to that experienced by people suffering a catastrophic experience. They often exhibit serious psychiatric morbidity and display symptoms of disorders including post traumatic stress disorder.¹ Wrongfully convicted people may also suffer ongoing emotional effects from the conviction and the disengagement from the society that it brings fear of physical and sexual assault may cause some people to develop physically aggressive or intimidating character traits as a coping mechanism. The often exist feeling of bitterness, loss, threat, paranoia and hopelessness.² Research conducted by Dr. Kathryn camp ball shows that the losses experience by wrongly convicted were profound. These include loss of freedom and loss of their former identity (sense of self) issues of loss, and effects on family, intense anger and aggression, an in tolerance of injustice and continued sense of imprisonment despite their release.

2. Legal frame work with respect to wrongful conviction.

2.1. International Legal Frame work.

The right to fair trail is guaranteed under international law in order to protect individuals from unlawful detention and to minimize the possibility of wrongful convictions. International standards relating to a fair trial are constantly evolving but include the right to a fair hearing; the presumption of innocence; freedom from compulsory self incrimination; the right to know the accusation; adequate time and facilities to prepare a defense; the right to legal assistance; the right to examine witnesses; the right to have interpreter and the right to appeal in criminal charges.

Numerous human rights treaties and covenants affirm the need for a fair trial. Article 10 of UDHR states everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. The right to a fair trial is further guaranteed under article 14 of the international covenant on civil and political rights, Article 6 of the European convention on human rights, Article 8 of American convention on human rights and Article 7 of the African commission on human and people rights. However, even when all standards for fair trail are protected, wrongful convictions can occur. That is way international and regional instruments provide the right to compensation for wrongful conviction in case individual suffer injustice by state machinery.

2.1.1. International covenant on civil and political rights

Article 14(6) of the ICCPR provide that when a person has by a final decision has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice the person who has suffered punishment as a result of such conviction shall be compensated according to the law. Unless it is proved that the non -disclosure of the unknown fact in time is wholly or partially attributable to him. Of the 160 states parties that have ratified the ICCPR nine countries made reservations to article 14(6).³ Trinidad and Tobago, Malta, Guyana, Belize and Bangladesh have expressly recognized the right to compensation but have stated that they are too impoverished to implement such a system. Ireland has since with draw its reservation.⁴ State parties to the ICCPR meet their obligation under article 14(6) in one or more of the following ways: incorporation of the article or a rewording of the article directly into domestic legislation to create a statutory right to compensation; conferring a dedicated discretion on an administrative or judicial body to determine whether the awards of compensation should be paid; and utilizing the general power of domestic governments to make ex-gratia payments.⁵ It should be noted that compensation for miscarriage of justice may be granted only after a conviction has become final and that the claim may be brought regardless of the severity of the offense involved.⁶ There are three additional conditions that must be cumulatively met:-

- i) a miscarriage of justice must have been subsequently officially acknowledged by a reversal of the conviction or by pardon,
- ii) The delayed disclosure of the pertinent fact(s) must not be attributable to the convicted person and
- iii) The convicted person must a have suffered punishment as a result of the miscarriage of justice.⁷ The phrase according to law does not mean that states can ignore the right to compensation by simply not providing for

¹ Grounds A.(2004): psychological consequences of wrongful conviction and imprisonment Canadian journal of criminology and criminal justice 46(2) at 165.

² www.aic.gov.au accessed on Dec 14,2015.

³ www.aic.gov.au/Trends and issues in crime and criminal justice~html pdf

⁴ Ibid paragraph 13.

⁵ Ibid para 15.

⁶ [www.lchr.org/ lawyers committee for human rights pdf. What is fair trial? A basic guide to legal standards and practice para 15-17.](http://www.lchr.org/lawyers committee for human rights pdf. What is fair trial? A basic guide to legal standards and practice para 15-17)

⁷ Ibid para 22.

it but rather that they are obliged to grant compensation pursuant to a mechanism provided for by law.¹ Article 3 of protocols 7 of the ECHR make almost identical provision for a right to compensation for wrongful conviction. In case between Poghosyn et Baghdasaryan Vs Armenia European court of Human right found unanimously, a violation of Article 3 of protocol No 7 of ECHR in that the national law did not provide for non pecuniary damages. The court stated that compensation is due even where the domestic law or practice does not provide for such compensation and that the purpose of article 3 of protocol is not merely to recover any pecuniary loss caused by wrongful conviction but also to provide a person convicted as a result of a wrongful conviction with compensation for any non- pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life.² Again in a case between Shilayayeu vs Russia ECHR found a violation of Article 6 of the European convention on Human rights (rights to fair trail) and of article 1 of protocol No 1 of the convention in that a state took more than two years to pay compensation that had been awarded for the petitioner's wrongful conviction & imprisonment.³ Human right committee in it's General comment number 32 has put exception for article 14(6) of ICCPR and it said this guaranty does not apply if it proved that the non disclosure of such a material fact in good time is wholly or partially attributable to the accused; in such cases the burden of proof rests on state. Furthermore, no compensation is due if the conviction is set aside upon appeal i.e before the judgement becomes final or by a pardon that is humanitarian or discretionary in nature or motivated by considerations of equity not implying that there has been a miscarriage of justice.⁴ Many national laws provide citizens with the right to seek review of unjust convictions and compensation for the damage they suffered - although most of the countries that have passed such legislation no longer apply the death penalty. In some countries, these rights are expressly enshrined in the constitution see constitution of Portugal art 29(6), constitution of Italy article 24, constitution of Brazil article 5, the constitution of Spain for example guarantees compensation if damage arises from judicial errors. In United Kingdom the rights are enshrined in specific acts see e.g UKs criminal justice Act sec 133.⁵

2.1.2. Regional instrument

The principles and guidelines on the right to a fair trial and legal assistance in Africa endorsed by the African commission on human and people rights require that victims of wrongful conviction be compensated. Article 1(h) and 2(j) of the above document provides that those who were victims of unlawful arrest or detention or torture or in human treatment have right to claim compensation and it imposes obligation on the state to enact legal provision to fulfill the above duty.⁶

2.2. Compensation under Ethiopian

According to Ethiopia law a person will be liable for the damage he causes in to another by offense even if there is no any under taking on his offense. This means, the person will be liable to another person without any contractual relation between them. In addition a person is liable for the damage he causes to another by an activity in which he engages or by an object he posses and he shall be liable where a third party for whom he is answerable in law incurs a liability arising out of an offence or resulting from law.⁷

Generally there are three types of extra contractual liabilities.

2.2.1. Liability arising from an offense :This is a liability that arises when a person causes damage to another by an offense. These offense may consist in an intentional or negligence. As per civil code of Ethiopia a person commits an offence where he acts or refrains from acting in a manner or in conditions which offend morality or public order. Professional fault is one of the offences that entail liabilities. A person will be liable where due regard being had to scientific facts or the accepted rule of the practice of his profession he is guilty of negligence constituting definite ignorance of his duties Abuse of power ,infringement of law and non performance of a contract are offenses that results in liability. Person who committed the above offenses will be liable to the in juried person without any contractual agreement between them.⁸

2.2.2. Liability in the absence of an offense: This is a type of liability which a person will be liable for any damage he deliberately causes to another in order to save himself or another from an imminent damage to person or property, e.g the owner of a building shall be liable for damage even where the damage was unforeseeable.⁹

2.2.3.Liability for the action of others. A person is liable for another person if he is bound by law or

¹ See,Human Right General comment 13 para graph 15.

² www.hudoc.echr.coe.int/sites/eng/pages

³ .Ibid

⁴ Human right committee general comment 32para 33

⁵ www.deathpenaltyproject.org/news accessed on Dec 15,2015.

⁶ <http://www.achpr.org/> principles and Guidelines on the right to a fair trail and legal assistance in Africa accessed on Jan 20,2016.

⁷ Ethiopia civil code article 2027

⁸ Ibid Article 2026, 2029, 2030, 2031, 2032, 2033, 2035.

⁹ Ibid article 2066, 2071, 2077.

agreement to compensate the injured party e.g. a father is liable under law where his minor child incurs liability. The employer is liable under the law or contract where his employee incurs liability in the discharge of his duties.¹

2.3. Compensation for wrongful conviction under Ethiopia law.

We have seen the meaning of wrongful conviction in the previous section. It is a situation in which individuals are wrongfully convicted of a crime while they are in fact innocent. In the previous section we have seen the negative impact of wrongful conviction on the life of victims, and on their family, and the failure to compensate them is unreasonable or unacceptable for the damage they have suffered. Having in mind this let's consider the following scenario-if a person who is convicted of a crime and subjected to a death sentence or imprisonment is later found actually innocent by a court through post convictions proceeding, does the person (victims) or his spouse or his heirs have the right to claim compensation under Ethiopia law. Is Ethiopia criminal justice system provide a legal base for victims of wrongful conviction to claim compensation?

FDRE constitution as well as regional constitutions or other legislations do not provide clear legal provisions to deal with such issue, so how can victims of wrongful conviction claim compensation? Ethiopia is one of signatory party of ICCPR and ratified it on 11 June 1993,² which imposes formal obligations on state parties to respect its provision. FDRE constitution article 9(4) provides that all international agreements ratified by Ethiopia are an integral part of the law of the land. More over article 13(2) of FDRF constitution provides that the fundamental rights and freedoms specified in this chapter shall be interpreted in a manner conforming to the principles of the universal UDHR, International covenant on human rights and international instruments adopted by Ethiopia. This means that any government organ have duty to interpret fundamental rights and freedoms guaranteed under chapter three of the constitution in accordance with international human rights instruments adopted by Ethiopia. When we come to our point, as discussed in the previous section article 14(6) of ICCPR imposes obligation on the state parts to incorporate directly into domestic legislation the right to claim compensation for wrongful convictions and to make sure that the victims of wrongful conviction are compensated. Eventually Ethiopia has ratified ICCPR, however Ethiopia did not fulfill obligation regarding incorporation of article 14 (6) directly in to domestic legislation to create a statutory right to compensation. The failure of Ethiopia to fulfill the above obligation has created a lot of confusion in practice when we see in connection with proclamation No 3/95. Federal Negarit Gazette establishment proclamation No 3/1995 article two provides the followings: all laws of the federal government shall be published in the federal Negarit Gazette, and all federal or regional legislatives executives and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta. There seemed to be some confusion among lawyer about the status of the covenant on domestic law because the full text had not been published in the legal Gazeta. This had caused some confusion for the practitioners such as lawyer and judges responsible for applying the covenant. HRC has expressed it's concern that none of the provisions the covenant have been invoked before the national courts and that the covenant has not yet been translated in to local languages and published in full text the Federal Negarit Gazeta. HRC recommended that Ethiopia should take appropriate measures to raise a wariness of the provisions of the covenant among judges, lawyers and prosecutors to ensure that they are taken into account before national courts and in this regard the state should take effective measures to widely disseminate it in national languages.³ Although the failure of Ethiopia government to publish ICCPR on Federal Negarit Gazeta creates confusion on lawyers and judges. In my opinion it cannot be a good reason for court not to implement Ethiopia's obligation stated under ICCPR.⁴ Recently, Ethiopia Federal Supreme court in its cassation decision⁵ has given interpretation that the national courts have duty to give interpretation regarding the right of accused in line with International human right instruments adopted by our country in a case between Tesfaye Buche Vs Public Prosecutor,⁶ Birhanu Nurga Vs Public Prosecutor.⁷ Ethiopia government has understood the problem and stated in its criminal administration policy that the relevant law need to clearly state that the person who are imprisoned or sentenced to death penalty or with fine are entitled to equitable compensation from the state for the moral and property damage caused by the judgment if subsequent to the execution of the judgment if it is established by a court that they did not commit the offence or pardoned by

¹ Ibid article 2124, 2126, 2130.

² [http://www.article.org/Ethiopia legal frame work~ htm, pdf](http://www.article.org/Ethiopia%20legal%20frame%20work~.htm) accessed on Dec 30,2015

³ [www.hornaffairs.com/en/ Ethiopia recommendations of-un- human rights committee – full- text- htm](http://www.hornaffairs.com/en/Ethiopia%20recommendations%20of%20un-human%20rights%20committee%20-%20full%20text%20.htm) acceded on Jan5,2015

⁴ Article 46(1) of Vienna convention on the law of treaties states that states may not invoke it's domestic legislation for a failure to implement international obligations.

⁵ Federal proclamation 454/2005 article 2(4) provides that Interpretation of a law by the Federal Supreme Court rendered by the cassation division with not less than five judges shall be binding on federal as well as regional council at all levels.

⁶ Cassation Decision Volume 18 case number 100860 on August 10, 2015 G.C.

⁷ Ibid case number 95921 On March 30, 2015 G.C.

state.¹ Since ICCPR ratified by Ethiopia it is integral part of the law of the country. Hence, the writer strongly believes that ICCPR can be a base to claim compensation for wrongful conviction before national courts and it is a duty of lawyer and judges to apply the covenant. Therefore wrongfully convicted person can bring compensation claim before Ethiopian courts against government and it's authorities as per ICCPR and extra contractual law of the country.

3. Concluding Remarks

Criminal justice system of any country is not perfect so that even all standards of fair trial are protected wrongful conviction can occur. Wrongful conviction causes tremendous and irreparable damage on the life of innocent citizen. So countries use compensation to right the wrongs of criminal justice system. ICCPR and other international instruments provide compensation for wrongful conviction. Even though, Ethiopia has ratified ICCPR, it's federal and state legislations do not provide clear provision regarding compensation for wrongful conviction. This created problems on practical application of obligations provided under ICCPR. However, this is not a good reason not to implement Ethiopia obligation under international convention under pretext of absence of clear provision. This is because according to article 9 of FDRE constitution international treaties ratified by Ethiopia are integral part of the law of the land. Therefore, this gives strong base for judges and lawyers to implement ICCPR provisions for sake of wrongfully convicted person. Even if there is no clear provision in federal and state legislation Ethiopia courts can use ICCPR, FDRE constitution, and Ethiopia extra-contractual law by way of interpretation to ensure compensation for wrongfully convicted person. So the followings are the few remarks on the way forward:-

- Ethiopia has to incorporate article 14(6) of ICCPR directly in to domestic legislations to create a statutory right to compensation for wrongful conviction. The law of the county has to clearly state that people who are imprisoned or sentenced to death penalty or with fine as a result of the final judgment of a court or their heirs or spouses, are entitled to equitable compensation from the state for the moral and property damage caused by the judgment if subsequent to the execution of the judgment if it is established by a court that they did not commit the offence or pardoned by state.
- Since courts as well as other organs of the government has duty to interpret fundamental rights and freedoms in accordance with international human rights instruments adopted by Ethiopia, courts and any other organ with power of interpreting constitution should provide further guidance on issues relating standing and remedies for violation of the rights of innocent citizens wrongfully convicted
- Government and others concerned stake holders has to create awareness with respect to wrongful conviction and ICCPR.

Competing interest.

I declares that I have no competing interest. I am the sole author of this article, take principal role in the conception of idea, development of methodology, analysis and write up of the manuscript.

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Abbreviations

FDRE.....	Federal republic of Ethiopia constitution.
ECP.....	Ethiopia Criminal procedure
ECC.....	Ethiopia criminal code
ICCPR.....	International covenant on civil and political rights
ECHR.....	European convention on human rights

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