

INNOVATIONS

Withdrawal of Criminal Charge in Ethiopia: Exploring the role of Courts to protect rights of Accused persons

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Abstract

Withdrawal of criminal charge by public prosecutor plays decisive role in the administration of justice and securing public interest. If it is regulated and managed in lights of International instruments for the protection of human rights and the FDRE constitution of Ethiopia, Courts ensure the protection of accused persons rights. However, in Ethiopia both at federal and regional level courts have limited power on withdrawal of criminal charge and its effect also not clear indicated within the existing legal framework. This work ties to explore role of courts in Ethiopia to protect accused rights in light of Withdrawal of charge. As a result of limited involvement of courts in withdrawal of criminal charge, accused person's lives in the cloud of suspicion. In order to accomplish this work, the researcher utilized qualitative research and found that public prosecutor has unlimited power to withdraw criminal charge for any reasons. Thus, the writer recommends amendment of laws of prosecution to empower courts on withdrawal of criminal charge in Ethiopian legal framework.

Key words: 1. Criminal Charge 2.FDRE Constitution 3. Prosecution 4. Withdrawal of charge 5. Ethiopia

1. Introduction.

The dictionary and usual meaning of the word withdrawal is obvious and familiar one. It denotes formal abandonment or renunciation of one's abandonment of a claim, right, or possession.¹ Black Law dictionary also defines withdrawal of charge as the removal of charges by the one bringing them, such as a prosecutor.²It is termination of a criminal proceeding by public prosecutor up on its own motion whenever circumstances justify to do so.

In countries where the prosecution is allowed to exercise discretionary powers, the withdrawal of criminal charges is one of the most important prosecutorial discretions in the hands of the prosecution units. in most legal systems of the world, prosecutors used the discretionary power to withdraw a criminal charge to ensure the interest of the public in the criminal justice system by discontinuing a proceeding which runs against the public interest though there is sufficient evidence which will support the sustainability of the case.³The rationale behind withdrawal of charge in criminal matters particularly relates to avoid prosecution of offences that were negatively affect the purpose and goal of criminal law. Besides, it has positive contribution to reduce the case load at court.

With respect to Ethiopian legal system related in lights of withdrawal of charge, different laws such as Ethiopian criminal procedure code, Ethiopian Federal general attorney proclamation establishments and directives talks about withdrawal of charge. However, none of those laws defined withdrawal of

charge in the context of Ethiopia. Courts play decisive role to protect and enforce human rights including Accused persons rights. Because, compared to public prosecutor which is the wing of the executive organs of government of Ethiopia, courts are neutral and independent to enforce and protect rights of accused. Having this concept in mind, the roles of courts are not questionable on the withdrawal of criminal charges. In this piece of writing, the writer tried to assess the role of Ethiopian courts on withdrawal of criminal charges to protect rights of accused. To accomplish this task, qualitative methodology was employed and data were generated from secondary sources like laws, proclamations and cases.

2. General Overview of withdrawal of Criminal Charge and its regulation

The withdrawal of a criminal charge is dependent upon the legal rules and principles under which the country adheres to. In Countries where the Prosecution is allowed to exercise prosecutorial discretion, one of the important powers of the prosecution is the power to withdraw a criminal charge. Accordingly, the prosecution units either public prosecutor or police officer may not always continue from the start up to the end of a trial and strive for final judicial determination of the case. It may occasionally find it advantageous to withdraw from prosecution an offence for some superseding reasons, even though there is sufficient evidence which will support the sustainability of the case.⁴The major legal systems which allow the withdrawal of charge also vary on many points, including the grounds for the withdrawal, the procedure under which it's allowed and the role of the controlling mechanisms in regulating the discretionary power and so on. For instance, in some countries like England, the power of the prosecution to withdraw a charge is subject to the control and the regulation of the court. Offences can be withdrawn by the prosecutor in the magistrates' court (only) at any time before adjudication by the court. If proceedings are withdrawn in anticipation that they may be re-instituted if additional evidence comes to light, this should be made clear in court.⁵Leave to withdraw is required. The court has complete discretion whether to grant leave. The prosecuting advocate will need to give sufficient reasons to satisfy the court that the application is a proper one.⁶The defendant is entitled to make representations as to whether they should be entitled to an acquittal. If the reasons raised by the prosecuting organ is not sufficient and sound, the withdrawal of criminal charge requested by public prosecutor would be refused. However, if proceedings are withdrawn, there is no technical bar to instituting further proceedings for the same offence at a later date.

With respect to India experience, which is one of the common law legal systems to which Ethiopia's most of procedural laws including criminal procedure is transplanted outshine the role of courts in withdrawal of criminal charges. Section 321 of Indian Criminal procedure talks about withdrawal of prosecution as follow: The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal, if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences: Provided that where such offence- (i) was against any law relating to a matter to which the executive power of the Union extends, or (ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or (iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or (iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted

by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.⁷The intention of legislature behind this law in India was: Any crime is said to be committed not against just the individual but the entire society. Since the entire society is injured by the act of the accused and since the entire society cannot practically sue the accused person, the State arrogates the power and responsibility to initiate prosecution against the offender. It is not the case that the private individual cannot initiate a prosecution or that he or she cannot be represented by counsel of his or her choice, but such counsel will be supervised by the public prosecutor. Since the State is responsible for prosecuting the offender in criminal justice system, the Public Prosecutor who acts as a representative of the government in the court and as an officer of the court assumes prime importance in justice delivery. Under s. 321 of Indian Criminal procedure, the public prosecutor is empowered to withdraw from prosecution after consent of the court at any stage before the judgement is pronounced. The process of withdrawal from prosecution has as its prime actor – the Public Prosecutor or the Assistant Public prosecutor, and as supervisor – the court. In this process, as envisaged by the section itself, there is no role of the government. However, in practical reality, the government is the executive concerned with prosecution and therefore inherently has major say. Since the Public Prosecutor is appointed by the State government, it has a relationship of agent-principal with the government which indeed becomes the source of all interpretative and practical problems.

The public prosecutor as an officer of court has to apply his mind, acting independently in good faith must be satisfied that the withdrawal is in public interest and in advancement of cause of justice withdrawal should not stifle the cause of justice and allow the guilty to escape the punishment for the offence committed; if happened it is injustice to social justice. Equally it is the duty of the court to consider the cases filed for withdrawal that it is a fit case and serve the cause of justice and public interest.⁸ This clearly confirms that in order to enforce the rights of suspects in lights of withdrawal of criminal charge, involvements of courts are very decisive. The India courts have read too many principles into in the criminal procedure law of the country, especially the part dealing with the withdrawal of charge, which the legislature itself have not thought necessary to mention in the provision. Hence, the process of the withdrawal of a criminal charge is governed by a combination of the Indian criminal procedure code with the precedent of the Indian courts. India is a country known for its adherence to the principle of legality in determining the level of discretion given to its prosecution service, hence the level of discretion generally given to its prosecution is very much limited.⁹The writer did not discuss Ethiopian courts involvement in withdrawal of criminal charge thoroughly under this section since the forth coming sections are allotted for it.

3. Legal Framework in Ethiopian on Withdrawal of Charge

The public prosecution unit was formally introduced in Ethiopia in 1942 by proclamation number 29/1942, which had given the prosecutors the power to litigate for the prosecution of cases before courts. One of the discretionary powers which was given to the prosecution at the time was the power to withdraw a criminal charge with the consent of the court or the instruction of the principal prosecutor any trial before judgment.¹⁰The enactment of the 1961 criminal procedure code of the Empire of Ethiopia, was the next major development. It had given very much limited level of prosecutorial discretion, to the prosecution by following the principle of legality as its prosecution principle. However, it had brought significant change in the power and function of the prosecution

units of the country. One of the major amendments was made to the part of the law which govern the process of the withdrawal of a criminal charge.

The procedure through which a charge may be withdrawn by the public prosecutor is addressed in Article 122 of the 1961 Criminal procedure code of Ethiopia. It states *Withdrawal of charges*.

(1) With the permission of the court the public prosecutor may before judgment at any stage of the proceedings withdraw any charge other than a charge under Art. 522 (homicide in the first degree) or Art. 637 (aggravated robbery).

(2) Where the public prosecutor informs the court that the withdrawal of a charge is on the instructions of government, the court shall, if it is satisfied that the public prosecutor has been so ordered, grant permission to the public prosecutor to withdraw the charge.

(3) Where no new charge is framed under the provisions of Art. 119 the accused shall be discharged.

(4) The court shall give reasons for allowing or refusing withdrawal of a charge.

(5) The withdrawal of a charge under the provisions of this Article is no bar to subsequent proceedings.¹¹By the readings of this article, with the exception of aggravated robbery or aggravated homicide, any charges can be withdrawn by the permission of court. Aggravated robbery and aggravated homicide are the mandatory prosecution policy in which the public prosecutor cannot withdraw charge of them. From this provision, it is easily possible to grasp the value of the involvement of court. The second sub article of this code provides that the court shall allow the prosecutor to withdraw the charges upon ascertaining that the prosecutor is instructed by the government to do so. And the court is required to give reasons for allowing or prohibiting withdrawal of the charge. These three sub articles of 122 were repealed by the proclamation that provided for the establishment of the Office of Central Attorney General of the Transitional government of Ethiopia.¹² Article 16/6 of proclamation 691/2010 on the definition of powers and Duties of the executive Organs of federal democratic republic of Ethiopia provides that the ministry of Justice has the power to withdraw a charge *for good cause* and in *accordance with the law*.¹³ However, what matters are good cause and in accordance with law is not listed exhaustively. It is open for arbitrarily withdrawal of charge which affects the rights of accused persons.

The Ethiopian Criminal justice policy empower the public prosecutor, by informing the trial court, to withdrawal a charge where he is convinced that continuation of the criminal proceeding is not in the *interest of public*.¹⁴The policy lacks transparency and objective criteria to predict what matters are in the interest of public interest to withdraw a criminal charge once it is framed and submitted to court. However, the Ethiopian Criminal Justice Police has envisaged *public interest* test by listing factors to be considered in discontinuing a particular criminal investigation. a) Where the committed crimes are very minor as prescribed in laws specifically and likely a very nominal penalty would be imposed;

b) Where the suspect is elderly or seriously ill and cannot attend the proceeding;

c) Where it was believed by Attorney General that the customary laws and institutions brings better last long solution between the victim and suspect than formal criminal justice administration regardless of the nature of the crime;

d) Where proceeding will have detrimental effect on international relation or national security;

e) Where the committed crime was crime upon compliant in which the victims and defendant reconciled on the case;

f) If the prosecution brings disproportionate the harm; where the committed crime is punishable with simple imprisonment and the suspect admitted the offence, apologized and ready to rectify the loss or harm that was caused on victims;

g) Due to failure to bring the case timely to competent court and if its significance is not important, where the offence is very minor and the harm sustained is very nominal in which the suspect is not aware of criminal nature of the conduct absolutely and others.¹⁵This section of criminal policy lists the matters of public interest to discontinues the investigation but failed to determine what constitutes public interest to withdraw charge. Basing on the principle of legality, it is not possible to interpret analogically so that matters incorporated within criminal policy to gauge the public interest will applies to withdraw charge. On the issues of ensuring accountability, the criminal policy requires the public prosecutor who decides to withdraw a charge to report his decision to the superior public prosecutor and the Attorney General. Had the court involvement been taken in to account, it did not need to report to superior public prosecutor and the Attorney General and at the same time ensures accountability and transparency in lights of withdrawal of criminal charge.

The Federal Attorney General of Ethiopia was legally established on May, 2016 by virtue of Proclamation No. 943/2016 intended to have one strong law enforcement public prosecution institution which can comprehensively protect public and government interest and deliver uniform, effective and efficient service.¹⁶The Attorney General has a power to institutes criminal case charges by representing the federal government, litigates, withdraws charge when found necessary in the *interest of the public*, resumes withdrew charge. However, issues directive concerning the withdrawal of cases having *national interest* with consultation of the Prime Minister.¹⁷The extent of the involvement of Prime minister to issue directive and what matters are national interest is not clearly indicated within the proclamation. It is not clear whether intention of legislation stating national interest is similar with public interest incorporated within the Ethiopian criminal policy or not. Lack of clarity on those matters affects the rights of accused persons because the government/ruling party utilize it as an instrument of trap to exclude individuals from political participation which is a venomous for building democratic governance of certain country. The power of prosecution either to withdraw or resumes the withdrew charge is ultimately resides up on public prosecutor. The proclamation does not invite courts to reduce the power of prosecutor either to withdraw or resume the withdrew criminal case so that the rights of accused person can be protected. Basing on article 21/2 of proclamation No.943/2016, the Federal Attorney General is empowered to enact directive for the enforcement the same proclamation. As a result, Directive No.3/2012/20 'directive to determine working procedure for discontinues of investigation and withdrawal of criminal charge.¹⁸The directive lists some circumstances/ reasons for the withdrawal of charges once submitted before court. It is possible to withdraw all criminal charges at any stage before the judgement is pronounced as far as reasons included within directive is fulfilled. Those reasons are: when identity of Accused is not known, for public interest and for *any other reasons*.¹⁹

The phrase 'any other reasons', does not have limitation in which the public prosecutor has unlimited discretionary power to withdraw of criminal charge. In order to limit such discretionary power of public prosecutor, the involvement of courts to enforce and protect rights of accused very decisive. No exceptions are incorporated to exhibit the enforcement of mandatory prosecutions which were included within Ethiopian Criminal law, Criminal policy and Criminal procedure code of 1961.

4. Rationales and Effect of withdrawal of Criminal Charge in Ethiopia

With respect to withdrawal of charge, a number of rationales can be deduced from the practice and existing legal frame work. In most legal system, it is usually applied in relation to less serious criminal offences with the aim to relieve the court system workload and humanize the treatment of the offender.²⁰ When it was done with the involvement of court, it advantages for both court and the accused persons.

The Indian Supreme Court listed rational behind of withdrawal of criminal charge for the seek of public interest in *Rajender Kumar Jain v State*²¹ observed that in cases when going ahead with prosecution causes or threatens to cause violence, mass agitations, communal violence, student unrests etc., it is okay and in the interests of public for the public prosecutor to withdraw from prosecution in such particular cases. The court further observed that when deciding between going forward with prosecution and withdrawing from prosecution in cases which threaten the peace of public, the state government is right in withdrawing from the prosecution. The court held that the narrower public interest of prosecuting the accused ought to be jettisoned for securing larger public interest of maintaining peace and tranquility in society. Similarly, by virtue the 2001 special guideline of prosecutors of Northern Ireland, director of public prosecutor should withdrawal criminal charge contains if the case involves a public interest.²² What is more special in this guideline is that it has enumerated some indication of parameters to know the existence or non-existence of public interest. Accordingly, factors like where the court is likely to impose a very small or nominal penalty, where the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by an error of judgment, and the like.²³ Ethiopian criminal policy and subsequent laws states that the Attorney General has a power to institutes criminal case charges by representing the federal government, litigates, withdraws charge when found necessary in the interest of the public. And the current directive issued by general attorney indicates rationales behind the withdrawal of charge: when identity of Accused is not known, for public interest and for any other reasons. Those reasons are beyond the scope of public interest intended within the criminal policy Ethiopia. Unlimited discretionary power of public prosecutor to withdraw charge affects the enforcement and protection of the rights of accused persons and it also undermine the accountability and transparency on the working of the prosecutor. That means, any person cannot predict whether his case is subject to withdrawal or not basing on the existing laws and the practical facts of the public prosecutors on the ground. In Ethiopian practice and law, the prosecutor acts like post box or dictate of state government to implement interest of the latter rather than acting objectively. Had the prosecutor been acted objectively, the court freely assess whether prima facie case is made or not.

Once the public prosecutor has withdrawn criminal charge, what the effect of withdrawal of charge must be highlighted here in this section. In lights of the effect of withdrawal of charge, it is necessary to analyze the experiences of different countries. For instance, in India legal system withdrawal of criminal charge has two effects; according to clause (a) of s. 321, if the application for withdrawal from prosecution is made before charges are framed and the court consents to such application, then the accused is discharged in respect of the offences he or she was charged with.²⁴ That means, if the time of withdraw of charge made before the framing of charge and the court consented on the application of withdrawal of charge, the status of accused person is discharged in respect of the offence he/she was charged with. This in turn hinder the public prosecutor to reinstitute charge on the same offence and if any, the accused can raise objection basing on double jeopardy. However, the withdrawal of charge in this circumstance can have effect on the accused person as a criminal record to aggravate penalties for the subsequent commission of crime.

The second effect of withdrawal of charge is, according to clause (b) of s. 321, if the application for withdrawal from prosecution is made after the charges have been framed and the court consents to the application, then the accused is acquitted in respect of the offences he or she was charged with.²⁵This is if the occurrence of withdrawal of charge is made after the charge is already framed and also the court is consented on the application of withdrawal of charge, the status of accused is 'acquittal'. Like the effect of discharge, the acquittal of accused hinder the public prosecutor to reinstitute criminal charge on the same offence and if any, the accused can raise objection of double jeopardy. Unlike the effect of discharge, acquittal of accused person will not be taken as criminal record to aggravate the subsequent crime if any committed by the accused once acquitted.

In England, there are two effects pertaining to the withdrawal of criminal charge: In a trial before any court a public prosecutor may, with the *consent of the court* or on the instructions of the Director of Public Prosecutions, and any other complainant may with the consent of the court, at any time before judgement is pronounced, withdraw from the prosecution of any person; and upon such withdrawal— (a) if it is made before the accused is called upon to make his defence, he shall be discharged but such discharge of an accused shall not operate as a bar to subsequent proceedings against him on account of the same facts;

(b) if it is made after the accused is called upon to make his defence, he shall be acquitted.²⁶Divergent with the experience of India, the effect of withdrawal of criminal charge relies accused persons making defence. If the withdrawal of charge is made before making defence by accused, it is taken as discharge but, this discharge does not hinder the public prosecutor to reinstate charge on the same offence which is quite different from Indian experiences. On the other hand, if the withdrawal of charge is made after the accused make his defence, the effect is acquittal and the public prosecutor is hindered to reinstitute charge on the same offence.

In Israel, the prosecutor is allowed to drop a charge at any stage during trial. If the prosecutor withdraws a charge after the accused pleads not guilty, the withdrawal result in acquittal of the accused. Where the charge is dropped prior to pleading, the charge will simply be quashed by the court without affecting the prosecutor's right to file a new charge.²⁷This is slightly similar with the experience of England discussed above.

Coming to the Ethiopian context, proclamation No.943/2016 Article 6/3/e and Directive issued by Attorney General No. 3/2012 it states that the Attorney General has a power to institutes criminal case charges by representing the federal government, litigates, withdraws charge when found necessary in the interest of the public, resumes withdrew charge.²⁸From this provision, unlike the experiences of other countries discussed above, we cannot find the effect of withdrawal of charge as either discharge or acquittal accused person. The public prosecutor has unlimited discretionary power to reinstate the withdrew charge against accused. The accused person lives in the cloud of suspicion since he/she did not have status of either discharge or acquittal. By the guise of withdrawal of criminal charge the government of Ethiopia has been utilizing it as trap to exclude from political participation. For instance, the ruling party put in jail the opposition parties like Oromo Liberation Front and Oromo Congress leaders and framed charge during the course of controversial election held in Ethiopia. Later the case of Jawar Siraj Mohammed²⁹et al was withdrawn after the government hold his power/election though Oromo liberation Front leaders are still in jail. Currently, Jawar and his teams are living in cloud of suspicion whether the Federal General Attorney reinstate the withdrawn charge or not. As a result of non-predictable effect of withdrawal of criminal charge in Ethiopia, the accused person cannot arrange his ways of life in the future

5. Role of Courts on Withdrawal of Criminal Charge in Ethiopia

Courts as one of the three government organs play great role for the protection and promotion of human rights in general and that of accused persons in particular to attain and maintain rule of law and administration of justice. Thus, Courts are expected to be neutral and independent for both the prosecuting units and accused person in criminal matter and between defendant and plaintiffs in civil matters. With respect to this, FDRE (Federal Democratic Republic of Ethiopian) Constitution empower the courts establish by law to enforce and protect human rights including Accused persons rights. All federal and state legislative, executive and *judicial organs* at all levels shall have the responsibility and duty to respect and enforce the provision of chapter three of the FDRE constitution.³⁰More than two third of the constitution talks about human rights, which are categorized under chapter three of the constitution. Though the FDRE constitution which is the supreme law of the land empower the judicial organs/courts to protect and enforce human rights including accused persons rights, courts power on withdrawal of criminal charge no existent both practice and within subsidiary laws.

In India, the Supreme Court has clearly articulated the role of court in the protection of accused person's rights and for maintaining admiration of justice at the time of withdrawal of criminal charge. Although, the section 321 of Indian criminal procedure provides no grounds on which withdrawal from prosecution can be filed by the Public Prosecutor, the essential inherent condition read into the section by the Supreme Court is that withdrawal should be in the interest of administration of justice. It is the responsibility of the respective court, in which the withdrawal application has been filed, to scrutinize the reasons behind the withdrawal and check that withdrawal is not sought on reasons extraneous or against the interest of justice.³¹ Furthermore, it is the duty of the court to see that the Public prosecutor actually applies his or her free mind and not just act as mere mechanical agent of the State government.³² This is particularly intended to encourage the works of public prosecutor free from government official to secure justice and projection accused at the same time. Thus, the court in India should give consent only when it is satisfied that such grant of permission for withdrawal from prosecution would serve the *interests of justice* and would not undermine the principles which the executive is bound to uphold and follow.³³ Even though the FDRE constitution empower courts to protect and enforce human rights including accused rights, subsidiary laws both at federal and regional state which regulates about withdrawal of criminal charge silent with regard to power of court. The Criminal procedure of Ethiopia and laws of federal general attorney is not clear whether the public prosecutor withdraw his/her criminal charge in written form or orally. The current explanation Ethiopian federal supreme court explanation and information dissemination through different social media firmly strengthen absence of clear to withdrawal of criminal charge either in written or orally. The public prosecutor in Ethiopia has unlimited discretionary power to withdrawal criminal charge, which in turn affects rights of accused person to arrange his/her way of life in the future.

From the practice and the law, the Federal and Regional courts of Ethiopia accepting the withdrawal criminal charge requested by public prosecutor even without requiring the opinion of the accused or his defense on the issue. Thus, both Federal and Regional courts of Ethiopia have limited themselves from regulating the request of the prosecution to withdraw criminal charge basing on subsidiary laws thought the FDRE constitution empower courts to enforce and protect human rights. The writer is not in a position of accepting the purpose of withdrawal of charge but suggesting there must be effect of withdrawal of charge and involvement of courts of Ethiopia to ensure the rights of accuse and preserving justice. Because, once the accused person and victim of the offence reach in to alternative dispute settlement, it is indispensable to withdrawal criminal charge of accused persons. Thus,

basing on the values and role of courts incorporated within FDRE constitution which are to ensure rule of law, protection and promotion of human rights, both federal and regional state courts of Ethiopia must regulate the unlimited discretionary power of public prosecutor to withdraw charge for any reasons as indicated within preceding discussion of this work.

6. Concluding Remarks

Public prosecutor as one of the wings of three government organs plays great role for the prevention and protection accused rights and victims starting from the initiation of the investigation to execution sentence by Court. Likewise, court as an independent and neutral government organ plays decisive role for the protection and promotion of human rights including accused persons rights. Withdrawal of criminal charge is an important aspect of Ethiopian criminal procedure and also if regulated properly by the involvement of court serves the speedy trial and preserving of justice. Unlike other countries such as, India, Israel, the Ethiopian public prosecutor has unlimited power to withdraw criminal charge for any reasons and the courts of Ethiopia both at federal and regional state has limited power on the withdrawal of criminal charge to protect and enforce accused persons rights.

Therefore, the writer recommends amendments of prosecution laws of Ethiopia related with withdrawal of criminal charge in lights of enforcing values and principle incorporated within FDRE constitution. In doing so, limiting the discretionary power of prosecutor to withdrawal criminal charge for any reason and specifically empowering court to rule on withdrawal of charge. Finally, the new law should come up with the effect of withdrawal of charge either acquittal or discharge.

References

1. *Bryan A. Garner, Black law Dictionary, 9th Ed*
2. *Elizabeth A. Martin, Oxford Dictionary of law, 5th Ed*
3. *Kenny Yang. (2013). Public Accountability of Public Prosecutors, Murdoch University Law Review, 20 (1)*
4. *Martin Schönteich (2014), Strengthening prosecutorial accountability in South Africa, Institute for security studies*
5. *MihretAbebe (2018), Legal Lacunas Associated to Withdrawal of Criminal Charges under the Contemporary Ethiopian Legal System: Review of Criminal Legal Frameworks in Comparison with Other Jurisdictions, International Journal of Management, Technology and Engineering V.8*
6. *Stanley Z. Fisher (1969), Ethiopian criminal procedure, Faculty of law, Hailesassie I University*
7. *WondossenDemissie(2012), Ethiopian criminal procedure, A textbook School of law, Addis Abeba University, September 2012*
8. *YaredHailemariam (2016), legal and practical challenges of withdraw of charge in criminal charge: the case of Amhara regional state justice Bureau, LLM thesis, Ethiopian Civil Service University, Unpublished*
9. *Tian Li. (2013). Victims Opportunity to Review Decision not to Prosecute made by Crown Prosecutor, Published Masters of Laws Thesis, The University of Western Ontario*

Laws

1. Proclamation No.185/1961, Criminal Procedure Code of the Empire of Ethiopia, NegaritGazeta, 21st year, No.7, Addis Ababa, 2nd November 1961
2. Proclamation to provide appointment and control of prosecutors, proclamation number 29/1942 NegaritGazeta, 2ND t year, No.2, 31st October 1942
3. The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.1/1995, NegaritGazeta, 1st year, No.1, 21st August 1995,

4. Definition of the power and duties of the executive organs of the FDRE, proclamation number 4/1995, Federal NegaritGazeta, 1st year, No.4, August 1995
5. The criminal policy of the federal democratic republic of Ethiopia (2011)
6. Article 321 of the Criminal Procedure Code of India 1973.
7. Proclamation No.943/2016, power and establishment of Federal General Attorney,NegaritGazet

¹Elizabeth A. Martin, Oxford Dictionary of law, 5th Ed.

² Bryan A. Garner, *Black law Dictionary*, 9th Ed, p 1739

³YaredHailemariam, *legal and practical challenges of withdraw of charge in criminal charge: the case of Amhara regional state justice Bureau*, LLM thesis, Ethiopian Civil Service University, 2016, Unpublished

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷Indian Criminal Procedure Code 1973, s 321.

⁸Prof. Dr. Mukund Sarda, *Withdrawal from prosecution in criminal charges*, Bharati Law Review, Oct. – Dec., 2017,

⁹Ibid.

¹⁰A proclamation to provide appointment and control of prosecutors, proclamation number 29/1942 NegaritGazeta, 2ND year, No.2, 31st October 1942, article 2.

¹¹Criminal Procedure Code of the Empire of Ethiopia, Proclamation No.185/1961, NegaritGazeta, 21st year, No.7, Addis Ababa, 2nd November, 1961, article 122

¹²WondwossenDemissie, *Ethiopian Criminal procedure*, September,2012, Addis Ababa University

¹³Definitions of powers and Duties of the executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, Proc. No. 691/2010, *Fed. Neg. Gaz.* Year 17, No.1

¹⁴Ethiopian Criminal Justice policy, Section 4.5.5

¹⁵Ethiopian Criminal Justice policy, Section 3.12

¹⁶Preamble of proclamation No. 943/2016

¹⁷Ibid, Article 6/3/e

¹⁸Ethiopian Federal Attorney General Directive No. 3/2012

¹⁹Ibid. Article 14/2.

²⁰Zoran Buric Et al, Conditional Deferral (and Withdrawal) of criminal prosecution from National and comparative legal perspective

²¹(1980) 3 SCC 435.

²²MihretAbebe, *Legal Lacunas Associated to Withdrawal of Criminal Charges under the Contemporary Ethiopian Legal System: Review of Criminal Legal Frameworks in Comparison with Other Jurisdictions*, International Journal of Management, Technology and Engineering V.8, 2018

²³Ibid.

²⁴Indian Criminal Procedure Code 1973, s 321.

²⁵ Ibid.

²⁶Article 68 of Indian Chapter 172 criminal procedure code

²⁷WondwossenDemissie, cited above note 12 p. 319

²⁸Proclamation No. 943/2016 Article 6/3/e

²⁹Jawar Siraj Mohammed is one of the top Ethiopian opposition leader and member of Oromo Federalist Congress.

³⁰The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No.11995, *NegaritGazeta*, 1st year, No.1, 2nd August, 1995 article 13/1

³¹ Ibid.

³²SheonandanPaswan v State of Bihar (1987) 1 SCC 288.

³³Supra Note 24