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Concurrent Crimes in the Ethiopian Criminal Justice System: The Law and the Practice in Northern Showa Zone, Amhara Region

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BAHIR DAR UNIVERSITY

SCHOOL OF LAW

CONCURRENT CRIMES IN THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM: THE LAW AND THE PRACTICE IN NORTHERN SHOWA ZONE, AMHARA REGION

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CONCURRENT CRIMES IN THE ETHIOPIAN CRIMINAL JUSTICE SYTEM: THE LAW AND THE PRACTICE IN NORTHERN SHOWA ZONE, AMHARA REGION

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non- adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the university and can also invoke criminal sanction from the state and civil action from the source which have not been properly cited or acknowledged.

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Table of Contents

Contents Page

Declaration ii

Acknowledgment iii

Abstract vi

Chapter One: Introduction 1

1.1 Background of the Study 1

1.2 Statement of the Problem 3

1.3 Objective of the Study 5

1. 3.1 General Objective 5

1.3.2 Specific Objectives 5

1.4 Research Question 5

1.4.1 Central Research Questions 5

1.4.2 Specific Research Questions 6

1.5 Significance of the Study 6

1.6 Literature Review 7

1.7 Research Methodology and Design 8

1.7.1 Methodology 8

1.7.2 Research Design 9

1.7.2.1 Participants of the Study 9

1.7.2.2 Source of Data and Methods of Data Collection 9

1.7.2.3 Sampling Technique and Method Data Analysis 10

1.8 Scope of the Study 10

1.9 Limitation of the Study 10

Chapter Two: The Concept of Concurrent Crime 11

2.1 General Overview on Concurrent Crimes 11

2.2 Definition and Nature of Concurrent Crime 12

2.3 Development of Concurrent Crime in the Ethiopian Legal System 14

2.4 Types of Concurrence 16

2.4.1 Material Concurrence 17

2.4.2 Notional Concurrence 19
2.4.3 Victim Concurrence 21
2.4.4 Imperfect Concurrence 24
2.5 Methods of Prosecuting Concurrent Crimes 29
2.6 Methods of Sentencing Concurrent Crimes 32
2.6.1 The Principles of Totality (Cumulating Rule) 34
2.6.2 Rule of Absorption (Rule of Assimilation) 36
2.6.3 Consecutive Sentencing 39
Chapter Three: Analysis, Discussion and Interpretation of Fact Findings 41
3.1 Facts of the Case 41
3.1.2 Critique on Preparation of Charge 41
3.1.2.1 Critique on Framing of Charge 42
3.1.2.2 Critique on Consolidation of Charge 46
3.1.3 Critique on Sentencing of Concurrent Crimes 50
Chapter Four: Conclusion and Recommendation 57
4.1 Conclusion 57
4.2 Recommendation 59
Bibliography 61
I. Legislation 61
II. Books and Journals of Articles 62
III. Cases 65
Annexes 69

Abstract

Most of the time, people engage themselves in the commission of a single crime, and sometimes it is very likely that they may commit more than one crime. Concurrent crimes as the name indicate the existence of two or more unlawful acts resulting from different circumstances. It is a conduct of same person which establishes the commissions of more than one offence arise from a single, successive or repeated act before being finally convicted for any of them. Concurrent crimes by itself give rise to both theoretical and practical difficulties. It is arguably the most complicated topic in criminal law. Despite the fact that, laws dealing with the area of concurrent offences that are controversial, neither get more emphasis nor extensive training in both law school and justice machinery organs or institutions on the issue. This creates unreasonable, arbitrary, inconsistent and unpredictable practice in relation to instituting of a charge and sentencing of such crime. In order to bring proportional punishment and to achieve the goal of criminal law, lawyers and legal practitioners should be able to understand the fundamental differences between a single criminal act and the concurrent one together with the methods of framing charge and sentencing of concurrent crimes. This thesis, therefore, tries to clarify the concept of concurrent crimes across different jurisdictions and in the Ethiopian legal system. It also assesses the legal and practical discrepancy observed in the implementation of such crimes in Northern Showa Zone, Amhara Region. It is conducted based on interviews, focused group discussion, legislative analysis, case analysis and analysis of other relevant literature. The finding of the study shows the existing inconsistencies observed in the instituting of charge and sentencing of concurrent crimes in the study area. Finally, the paper contributes its own share for legal practitioners to have full-fledged knowledge and skill about concurrent offences in general, and methods of framing charge and sentencing in particular.

Chapter One: Introduction

1.1 Background of the Study

Criminal law gives due notices about prohibited acts and certain obligations of acting together with its penalties so as to prevent people from the commission or omission of specific crime. "The primary purpose or function of the criminal law is to help maintain social order and stability."[1] Taking into account the above function and purpose, the criminal law provides rules as to how a certain person entails liability. The nature of the offence with which the suspect has been charged, the number of offences committed etc. determines the liability and penalties of the criminal act.

In the administration of criminal justice, those who violate the specific penalizing provision of the Criminal Code should get proportional punishment for their action. To bring such proportional punishment and to achieve the goal of criminal law, lawyers and legal practitioners should be able to understand the fundamental or basic difference between a single criminal act and the concurrent one. Furthermore, they are also expected to understand the method of instituting a charge and calculation of sentences of both single and concurrent crimes.

> *One of the principal criteria, where by the effectiveness of the criminal justice policy of a certain state could be measured, is the instituting of relevant charge and the imposition of proportional punishment against those criminals to the extent of the crime which they committed through a single act or concurrent acts.*[2]

Most of the time, people engage themselves in the commission of a single crime. And sometimes it is very likely that they may commit more than a single crime concurrently. A multiple prosecution of a suspect participating as a principal offender for the commission of two or more crimes can result from a single act. "Multiple crimes may arise from a single event when (1) the criminal commits several crimes against one individual; (2) the criminal commits multiple

[1] Matthew Lippmann, *Contemporary Criminal Law Concepts, Cases and Controversies*, Second edition, Sage publication, California, 2010, p3
[2] *Infra note,* 66 at p31

crimes against different individuals..."[3] in other words the criminal act though flowing from the same criminal intention or negligence and violating the same criminal provision may cause the same harm against the rights or interests of more than one person. Similarly, multiple crimes may arise from a consecutive criminal act or successive transaction. However, rules related to concurrent crimes are found in limited number of criminal codes.[4] In the other jurisdiction they give different name for concurrent crime, they call it multiple crimes or multiple offences. [5]

Ethiopia had practiced its own legal system for centuries. And "…before the promulgation of the Penal Code of 1930 there were *Fetha Nagast*" [6] which contain some rules governing criminal matter. However, in Ethiopia for the first time the concept of concurrent crimes formally introduced in the 1957 Penal Code. In this Penal Code it tries to state the characteristics of concurrent crimes together with the methods where judges used in the calculation of sentences for such type of crimes.[7] In this Penal Code concurrence come in to being either when several unlawful acts are done in contravention of one or more articles of the law (concurrence of offences, or material concurrence) or when one unlawful act is done in contravention of several articles of the law (concurrence of provisions, or notional concurrence).[8] But, the 1957 Penal Code doesn't include the concept of "concurrence of victim"[9] a situation where a single criminal act affects the right or the interest of two or more persons. Due to this punishment as to the act of concurrent of victim become unreasonable. This gap is considered as one of the good reasons to replace this Penal Code.

Similarly, the Federal Democratic Republic of Ethiopia (herein after FDRE) Criminal Code of 2004 incorporates the concept of concurrent crimes in broad manner together with the inclusion

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[3] Allan D. Vestal and Douglas J. Gilbert, 'Preclusion of Duplicative Prosecutions: A Developing Mosaic' *Missouri Law Review,1982, vol.47, issue 1*, pp1-46, p4

[4] Tsehay Weda, *basic principles of criminal law,* first edition published by Commercial Printing Company, Addis Abeba, 1994 E.C, p222

[5] *Supra note 3*

[6] Andargatchew Tesfaye, *the criminal problem and its correction volume 2*, first edition, published by Addis Abeba university press, Addis Abeba, 2004 E.C, p63

[7] The Penal Code of the Empire of Ethiopia Proclamation no.158/1957, Negarit Gazeta extraordinary issue, July 23, 1957, from Art. 60-63, Art. 82 and from Art. 189-192 [herein after the 1957 Penal Code Ethiopia]

[8] Philippe Graven, *An introduction to Ethiopian Penal Code (art. 1-84)*, published by the faculty of law Haileselassie I university, Adisabeba, Ethiopia, in association with Oxford university press, Adisabeba-Nairobi, 1965, , p163

[9] Dejene Girma Janka, *A hand book on the Criminal Code of Ethiopia* , 1st edition, published by Far East Trading PLC, Adisabeba, Ethiopia, 2013, p33

of new concepts like concurrence of victim and it expressly created conducive environment to charge those persons that harm against the right and interest of two or more persons. And by so doing this rectified the problem of the previous Penal Code.

Concurrent crimes by itself give rise to both theoretical and practical difficulties. When clearly scrutinize the Ethiopian criminal justice system we can find such difficulties in the implementations of concurrent offences. In the administration of the Ethiopian criminal justice system the concept of concurrent crimes is considered as one of the most complex issue to understand. And one can simply observes the inconsistencies existed from prosecuting the crime up to sentencing.

1.2 Statement of the Problem

The characterization and the methods of sentencing concurrent crimes is not a crystal-clear concept. "Concurrence of crimes arguably the most complicated topic in criminal law in those countries that care about it at all."[10] The 1957 Penal Code of Ethiopia from Articles 60-63 and 82 (1) (a) deal about the definitional elements of concurrent crimes and from Articles 189-192 the Penal Code provide the methods for sentencing of such crimes. In the 2004 FDRE Criminal Code from Articles 60-66 provide the theoretical concept of concurrent crimes and from Articles 184-187 deal with rules for sentencing of such crimes. Such provisions of the Penal Code and the Criminal Code which deal about concurrent crimes are considered the most difficult concept to understand and to put clear cut demarcation to other non-concurrent one.[11]

Despite the fact that laws dealing with the area of concurrent offences that are controversial, neither get more emphasis nor extensive training in both law schools and justice machinery organs or institutions on the issue. This creates devastative effect on the interpretation of concurrent offences.[12] This factor motivates the Researcher.

One of the distinct features of concurrent crimes is, it entails grave punishment. While such acts sometimes considered as a single crime and based on this it entails less punishment. Such apparent contradiction exists due to the existence of criminal provision which incorporate similar

[10] *Infra note, 153* p131
[11] *Supra note 2*
[12] *Supra note 2,* at page 32 and 66

crimes or a combination of criminal acts in aggravated single crime or in one legal provision which fully covers the criminal act in one hand. On the other hand, there exist criminal provisions which deal successive or repeated acts against the same legally protected right flowing from the same initial criminal intention or negligence constitute one crime and the criminal shall be punished for the said crime and not for each of the successive acts which constitute it.[13]

To set justice in motion, the active participation of components of criminal justice system or justice machineries are highly needed.[14] At the same time so many legal practitioners are expected to enforce various laws dealing with area of concurrent offences that are controversial one. Decisions made by justice organs without strict observance of rules governing as to concurrent offences lead to serious miscarriage of justice.[15] Hence, they are expected to strictly adhere to understand and apply provisions dealing with concurrent offences.

As a legal practitioner when I was a judge and registrar[16] I got some basic theoretical and practical knowledge on the issue. In doing my profession, I have been observed lots of inconstancy with regard to prosecutor charges or prosecution and sentencing of concurrent offences. The court including the Federal Supreme Court Cassation Division also doesn't immune from such type of problem or controversy. Although, the Federal Supreme Court Cassation Division established with the aim to come up consistent and predictable decision through interpretations of laws[17], it gives inconsistent decisions in relation to concurrent crimes[18] in different times. The above-mentioned points particularly, the existence of inconsistent charge

[13] See The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation no.414/2004, Federal Negarit Gazeta, 9th day of May 2005,Article 61 [herein after the FDRE Criminal Code]

[14] The new Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, Ministry of Justice, Addis Ababa,2011, preamble paragraph 6 [hereafter the FDRE Criminal Justice Policy]

[15] Infra note, 66 at p65-66

[16] I have been worked since 2007-2010 E.C as a judge in Amhara national regional state supreme court, the Waghmera National Administration zone high court, Gazgibla worda court and I was working as Amhara national regional state supreme court registrar, at Debrebrhan branch

[17] Muradu Abdo, review of decisions of states courts over state matters by the federal supreme court, Mizan law review,2007 E.C, vol. 1, no. 1, , pp. 60-74, at p.70

[18] *Redat sajen Ahmed v the federal public prosecutor*, Federal Supreme Court Cassation Division,2006 E.C file no. 96078, in the federal supreme court cassation decision, volume 16, federal supreme court, Adiss Abeba, 2007 E.C, pp285-290 and *Adisu Gemechu v Amhara National Regional State Public Prosecutor* Federal Supreme Court Cassation Division,2009 E.C file no. 123046, in the Federal Supreme Court Cassation Decision, volume 21, Federal Supreme Court, Adiss Abeba, 2010 E.C, pp345-353

and sentencing with regard to concurrent crimes inspire the Researcher to make research on the topic.

Despite the fact that the concept of concurrent crimes is theoretically and practically controversial, there is no sufficient prior literature on this area. Hence making research on this issue makes the paper more relevant and contemporary.

1.3 Objective of the Study

1. 3.1 General Objective

In line with the problems stated above, the cardinal objective of this study is to clarify the concept of concurrent crimes and to analyze the legal and practical discrepancy observed in the implementation of concurrent offences in the study area.

1.3.2 Specific Objectives

The specific objectives of the study are:

- Examining the concept of concurrent crimes pertaining to the FDRE Criminal Code
- Point out the basic classifications of concurrent offences with their collateral issues in the Ethiopian context.
- Analyzing the clear-cut demarcation of concurrent offences from non- concurrent one and from imperfect concurrent crimes.
- Assessing practical inconsistencies observed in the charging process and in sentencing of concurrent offences.

1.4 Research Question

1.4.1 Central Research Questions

Pertaining to the research problem and the general objective stated above, the central research questions of this study are:

- What does concurrent crime mean?

- What are the legal and practical discrepancies observed in the enforcement of concurrent crimes in the study area?

1.4.2 Specific Research Questions

In line with the central research questions and specific objectives of the study, this paper tried to answer the following specific research questions:

- What are the criteria to distinguish concurrent offences from non-concurrent one?
- What are the reasons for the absence of common understanding in the implementation of concurrent offences by legal practitioners in the study area?
- What are the legal and practical controversial issues arise in relation to acts of concurrent crimes?
- In what way concurrent crimes are being prosecuted and sentenced in the study area?

1.5 Significance of the Study

This study will append its own contribution to the existing knowledge. The study will have the following importance:

- Since the study identifies the characterization of concurrent crimes, the legal and practical discrepancy together with the reasons for absence of common understanding on the issue, it contributes its own share the concerned stakeholders to have full-fledged knowledge and skill about concurrent offences. Such as pressing of charges and calculation of sentence.
- This study will show the existing inconsistencies observed in the understanding and implementation of concurrent crimes.
- Both the absence of sufficient prior writing on concurrent crimes and the conducting of research on this area makes the paper to have a gap filling role on the contemporary controversies on the area of concurrent crimes. In addition to that it provides a convenient forum for discussion and further study.

1.6 Literature Review

It is a well-known fact that a person may, by their single or multiple conducts, commit two or more crimes. Such crimes are considered as concurrent crimes or multiple offences. Since the concept of concurrent crimes or multiple offences are debatable, a few related studies on this area have been conducted. And a number of dimensions have been identified on this issue.

The term concurrent crimes by itself indicate the existence of two or more offences. But there is no common consensus as to the occurrence of concurrence crimes. Allan D. Vestal and Douglas J. Gilbert on their writing of 'Preclusion of Duplicative Prosecutions: A Developing Mosaic' stated that multiple crimes may arise from a single event when (1) the criminal commits several crimes against one individual, (2) the criminal commits multiple crimes against different individuals, (3) a single event constitutes crimes under the laws of several jurisdictions, or (4) a combination of these possibilities occurs.[19] From the above definition an act to be concurrent crime the act should be done within a single act.

Fulvio Maria Palombino on his study Cumulation of offences and purposes of sentencing in international criminal law: A troublesome inheritance of the Second World War provides that an ideal concurrence of offences occurs when a single criminal act splits in to two or more offences.[20] The existence of a single act is an essential element for the so-called concurrent crimes.

Dejene Girma Janka, on his writing a hand book on the criminal code of Ethiopia provides that under the new Ethiopian Criminal Code there are three cases where concurrent crimes can be committed. First where there are many criminal acts producing many different or similar crimes, second where there is only one criminal act which, however, violates two or more criminal provision, thirdly where a single criminal act goes contrary to the interest of two or more persons.[21]

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[19] *Supra note 3*

[20] Fulvio Maria Palombino,'Cumulation of offences and purposes of sentencing in international criminal law: A troublesome inheritance of the second World war' international comparative jurisprudence journal, *2016, vol.2, no. 2*, pp. 89-92, at p.89

[21] *Supra note 9*

From the legal perspective of Ethiopian criminal law, Philippe Graven in his writing of 'an introduction to Ethiopian Penal Code' tries to distinguish concurrent crimes from non-concurrent one under the 1957 Penal Code of Ethiopia. He tries to illustrate material and notional concurrent crimes by using lots of hypothetical cases. Further, he deals with the modes of liability and methods of calculation of sentence with regard to concurrent crimes. Finally, he recommends that in order to bring fairness and proportional punishment plural criminal consequence result from a single act (victim concurrence) should be incorporated in the Ethiopian law as an additional concurrent crime. But his study relies on the theoretical concept of concurrent crimes under the 19457 Penal Code of Ethiopia. It fails to discuss the practical problems and challenges that the legal practitioners faced in relation to concurrent crimes.[22]

Furthermore, Solomon Tegegnwork on his writing of "the concept of concurrence crime the law and practice in the Amhara regional state" on the Amhara National Regional State Justice Professionals Training and Legal Research Institute journal of law vol.3, no.1, in the year 2008 E.C, from page 31-66 tries to describe the type of concurrence in the FDRE Criminal Code together with the sentencing of such crime. However, it fails to incorporate the historical development, other jurisdictions experience and the issue of joinder of charge pertaining to concurrent crimes.

1.7 Research Methodology and Design

1.7.1 Methodology

Research methodology describes how the research is done scientifically. "It is a way to systematically solve the research problem."[23] It identifies the methods to be used in it. The research methodology follow in this study is a qualitative one. Qualitative research thus refers to the meaning, concepts, definitions, characteristics and description of things or the subject matter.[24] At the same time, the Study concerns the law and practice in relation to concurrent crimes, it analyzes laws, cases and other relevant documents on the issue. Because of this the

[22] *Supra note 8*, from pp163-175
[23] C.R. Kothari, *Research Methodology Methods and Techniques*, second edition, New Age International Publishers, New Delhi, 2004, at p.8
[24] Bruce L. Berg , qualitative research methods for the social sciences, fourth edition, publishing by Allyn & Bacon A pearson education company, needham height Boston 2001, p3

research questions are properly addressed by this research methodology. The study is a Doctrinal type of research. “Doctrinal research asks what the law is in a particular case. It concerned with the analysis of the legal doctrine and how it was applied.”[25] This makes the Doctrinal research more appropriate one.

1.7.2 Research Design

This part of the study shows the methods that the Researcher employs to achieve the main objective of the study. Furthermore, it shows the approaches used to address the research question of the study properly. Hence, it discusses participants of the study, sampling technique, method of data collection and source of data.

1.7.2.1 Participants of the Study

For the proper implementation of the objective of the study and the research question, the research will have the following major participants: Judges and Attorneys working in the Northern Showa Zone and other legal practitioners.

1.7.2.2 Source of Data and Methods of Data Collection

Since the paper relies on doctrinal qualitative research methodology the researcher used interview and focused group discussion as a primary source of data collection instrument. For the purpose of this study semi- structured interview shall be employed to collect data from the concerned participants of this study and it composes open-ended questions that will enable the respondent to reflect their perceptions in their own perspectives. In order to give the opportunity for participants to ask questions each other and to get a wide range of response the researcher uses focus group discussion as a method of data collection. Furthermore, relevant legal documents, files, journals and books are used as a secondary source of data to gather pertinent information in the study area.

[25] Salim Ibrahim Ali, *et al*, ‘legal research of doctrinal and non-doctrinal’ *international journal of trend in research and development,2017, vol.4, no. 1*, pp. 493.-494, at p.493

1.7.2.3 Sampling Technique and Method Data Analysis

The study will employ purposive sampling technique in order to get the target population. The selection takes in to account experience, position and expertise on the study area. And information obtained from both sources will be coded and analyzed in a qualitative approach. In doing so interviews, legal documents and relevant literatures, collected from primary and secondary sources will be analyzed and critically examined.

1.8 Scope of the Study

The concept, characterization, the clear-cut demarcation, methods of prosecution and sentencing of concurrent crimes raises legal and practical controversies in different regions of Ethiopia. However, this study focuses on the assessment of the law and practice in relation to concurrent crimes in Northern Showa Zone. Furthermore, the Researcher selects specific woredas in the study area based on their criminal case loads.

1.9 Limitation of the Study

The Researcher may face challenges while conducting the study. Absence of sufficient literature on the area of the study would be the main challenge for the researcher. Among others Covid-19 Pandemic, financial constraint and shortage of time will also be other challenges for the researcher.

Chapter Two: The Concept of Concurrent Crime

2.1 General Overview on Concurrent Crimes

In international criminal law, as well as in national penal system, a defendant may be found guilty of more than one crime as a result of the same act. And an ideal concurrence of offences occurs when a single criminal act is split in to two or more offences.[26] Concurrent crime is not a crystal-clear concept. "Concurrence of crimes arguably the most complicated topic in criminal law in those countries that care about it at all."[27] "[T]he issues of cumulation of offences in international criminal law appears quite controversial"[28]. Cumulative charging and conviction of multiple crimes become the source of controversy and debate in the international criminal law system.

Neither the Rome Statute of International Criminal Court (ICC statute) nor Ad hoc International criminal tribunals include any explicit provision that allow an accused to be sentenced for cumulative crimes based on a single act.[29]

Those who argued against cumulative conviction in the international criminal court states cumulative charging and conviction of multiple crimes are against the principle of legality (no punishment without law). Furthermore, multiple crimes potentially place an undue Burdon on the accused who is forced to prepare multiple, varied defenses.[30] Those who argued in favor of cumulative conviction in the international criminal court provides that the main objective of international criminal court to end impunity for the most serious crimes, in hopes of ending their continued and widespread preparatory. Thus, failure to fully capture the extent of the crime undermines the legitimacy of the international criminal court. As the international criminal tribunal of the former Yugoslavia (ICTY) judge Mohamed Shahabuddeen noted in his partial dissenting opinion in *prosecutor v. Goran Jelisic*, failing to convict cumulatively "is to leave

[26] *Supra note 20*
[27] *Supra note 10*
[28] *Supra note* 20, at p 92
[29] See The Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, 17 July 1998 [adopted in on 17 July 1998 and corrected in different times. It entered into force on 1 July 2002], The Statute of the International Military Tribunal at Nuremberg (1947), The Statute of the International Criminal Tribunal of Yugoslavia, Trial Chamber, (14 January 2000)
[30] Leila Mokhtarzadeh, 'Ending war rape: A matter of cumulative conviction', Fordham international law journal, 2013, vol.36, issue 4, pp. 1022-1061, at p.1044

unnoticed the injury to the other interest of international society and to fail to describe the true extent of the criminal conduct of the accused."[31] This shows how the concept of concurrent crime is controversial among legal scholars.

Concurrent crime as the name indicates the existence of several unlawful act results from different circumstances. There is no common consensus as to the concept and application of such crime across different jurisdiction. In addition to that they give different name for concurrent crimes in different legal systems; they call it multiple crimes or multiple offences, cumulative charge, *concours d'infraction* and criminal episode.[32]

2.2 Definition and Nature of Concurrent Crime

In order to entertain any criminal case, the act, the intention, the consequence and the law are the main determining factor to distinguish one act as a single crime or a concurrent one. Because one of the above elements is exist singly, while the other elements are multiple.[33]

Since the concept of concurrent crimes is debatable among different scholars and jurisdictions it has no a universal agreed definition and criteria for the term. The concept of cumulative offences is approached differently under the common law and civil law systems. In the common law legal system, it is possible to charge a defendant with multiple crimes cumulatively or in the alternative, leaving it to the judge or jury to decide of which crime the accused should be found guilty.[34] This approach gives the prosecutor flexibility in presenting multiple charges or single charge for the same conduct. In this legal system the jury may find that the criminal incident involves multiple criminal acts, and that each act constitutes a separate crime. It is also possible for a jury to find that multiple acts are part of the same criminal transaction, thus concluding that only one crime has been committed, this creates uncertainty in sentencing. [35]

On the other hand, the civil law system requires, as an extension of its principles of legality that the prosecutor charge the offender with the crime that has been committed under law, thus

[31] *Id* at p.146 [see *prosecutor v. Jelisic*, case no.IT-95-10-T, judgment para.42, International Criminal Tribunal for the Former Yugoslavia Dec.1999 [judge Shahabuddeen dissenting]
[32] The Penal Code of Texas, 2005, chapter 3, section 3.01.
[33] *Infra note 95*, at p805
[34] Attila Bogdan, 'cumulative charges, convictions and sentencing at Ad hoc international tribunals for the former Yugoslavia and Rwanda', Melbourne journal of international law, 2002, vol. 3, no.1, pp. 1-32, at p.2
[35] *Id* at p.2-3

precluding cumulative charging or charging in the alternative as part of prosecutorial strategy.[36] In this approach in relation to cumulative charging, it essentially requires the prosecutor to charge the most appropriate offence based on the fact of the case.

The Texas Penal Code prescribed "criminal episode" means the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances: (1) The offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or (2) The offenses are the repeated commission of the same or similar offenses.[37] The Romania Penal Code defines concurrent crime as "a real competition crime when two or more crimes were committed by the same person, through action or inaction distinct before being finally convicted for any of them."[38] The Criminal Code of Georgia stated Cumulative crimes shall mean commission of two or more acts provided for by an article or part of an article of the Criminal Code for the commission of neither of which the person has been convicted. Commission of an act that contains elements of crimes provided for by two or more articles or part of an article of the criminal Code shall also constitute a cumulative crime.[39] In the French legal system, the situation where the same facts give rise to multiple crimes is called *concours d'infraction*, meaning that the elements of several crimes are present in the commission of one act.[40]

The Rwanda Penal Code defines concurrent crimes as: "a situation where the same person commits several offences before being finally convicted for one of them."[41] Furthermore, it categorized concurrent crimes into two such as ideal concurrence and real concurrence.[42] Unlike other states the Rwanda Penal Code contains similar or has closeness provision with Ethiopian Criminal Code with regard to concurrent offences. Moreover, they used the term concurrent crime to explain multiple offences.

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[36] *Id,p.3*
[37] The Penal Code of Texas, 2005, chapter 3, section 3.01.
[38] The Penal Code of Romania, Law no. 286/2009, July 17, 2009, Art. 38
[39] The Criminal Code of Georgia, no. 2287, 22 July 1999, Art. 16
[40] *Supra note, 34* at p*3*
[41] Organic law instituting the Penal Code of Rwanda, No. 01/2012, Official Gazette, special no. 14 June 2012, Art. 83 [hereafter the Penal Code of Rwanda]
[42] *Ibid*

In dealing with the Ethiopian criminal law in relation to concurrent crimes, neither the 1957 Penal Code nor the FDRE Criminal Code explicitly define what a concurrent crime means. Rather it states how concurrent crimes come in to being.[43] After a close look at of the FDRE Criminal Code provisions governing concurrent crimes the researcher come up with Concurrent crime is a conduct of same person which establishes the commissions of more than one offence goes contrary to the right or interest of the same or different persons which arise from single, successive or repeated acts before being finally convicted for any of them.

2.3 Development of Concurrent Crime in the Ethiopian Legal System

Ethiopia had practiced its own legal system for centuries and well known by its legal tradition. The *Fetha Negest,* the 1930 Penal Code, the 1957 Penal Code and the FDRE Criminal Code served as an important legislation in the history of Ethiopian criminal law. It shows how Ethiopian criminal legal system passed several stages of development.

Similarly, the concept of concurrent crime is not a new concept. It develops through time. Such concept is incorporated in different manner across the history of Ethiopian criminal legislation. The *Fetha Negest* ("Law of the Kings"[44]) were the famous law in the history of Ethiopia, particularly since the reign of Emperor Zara Yakob when both the study and enforcement of this law began.[45] It incorporates both spiritual and secular matter. It contains some rules governing criminal matter. The criminal provisions of *Fetha Negast* were applied in Ethiopia until they were replaced by the 1930 Penal Code of Ethiopia.[46] As already been dealt with the Law of King (*Fetha Negast*) there is no as such meaningful governing rule which deal about concurrent crimes. It only contains single provision which resembles multiple offences. It states that "*if a single man kills many persons he alone must be condemn to death*"[47] This provision provides the existence of criminal act which cause the same harm against the rights or interests of more than one person that entails grave punishment. It indicates the commission of two or more than two similar offences by a single or same person, which is an element of concurrent crime. The

[43] See the 1957 Penal Code of Ethiopia, from Art. 60-63, and the FDRE Criminal Code Art. 60
[44] Peter H. Sand, Roman origins of the Ethiopian "Law of the Kings" (FETHA NEGAST), Ethiopian journal of law, 1980, vol.11, pp. 71-83, at p.71
[45] Abba Paulos Tzadua, the Fetha Negast the Law of the Kings translated from the ge'ez, second edition, published by Carolina Academic Press, Durham USA., 2009, p v.
[46] *Id, p.* xxxiv
[47] The Ethiopian Orthodox Tewahido Church Faith and Order, art. 47 [in short and clear language the *Fetha Negast* (Law of the Kings) art.47]

concept of multiple offences raised in this provision as incidental issue in dealing with acts of homicide. Although it is not as such a significant historical sign of concurrent crime, it can be taken as evidence to show the existence of legal provision that describes the commission of two or more crimes by the same person that entails grave punishment.

The Penal Code of 1930, which represented the first consistent endeavor to unify and to systematize Ethiopian traditions in criminal matter, combined customary with comparatively more modern nation, as it drew its inspiration both from the well-known Law of Kings (*Fetha Negast*) and from the more advanced European penal codes.[48] It marked a step forward in the legal development of Ethiopia.[49] In this Penal Code under section 6 with title rules governing calculation of sentence in case of multiple crimes provides that:

> "*When a person commits multiple offences and charged cumulatively, then where he found guilty of those cumulative charge, he will not be punished for each offence rather he punished for the most serious crime among them*…" [50]

The above provision prescribes issues pertaining to multiple offences in line with multiple charging and it gives more emphasis as to calculation of sentencing of multiple offences. Despite the fact that the provision doesn't give any clue about the definitional element and characterization of concurrent crime, it serves as an indicative rule how multiple offences have been sentenced.

In Ethiopia for the first time the concept of concurrent crime formally introduced in the 1957 Penal Code. In this Penal Code concurrent crime is classified in to material and notional concurrence. Material concurrence (concurrence of offences) occurs "when the criminal successively commits two or more similar or different crimes, whatever their nature."[51]Notional concurrence (concurrence of provisions), however, occurs "when the same criminal act simultaneously contravenes several criminal provisions or results in crimes with various material consequences."[52] It provides that the offenders will be liable for both of the crimes whether they

[48] *Supra note 8*, at p.1
[49] *Supra note 8*, at p.1
[50] The Penal Code of the Empire of Ethiopia, 1930, Emperor Haileselasie Printing Press, Sep. 1930, Art.42
[51] See the 1957 Penal Code of Ethiopia, Art. 82 (1) (a)
[52] *Ibid*

are material or notional concurrence.[53] Unlike the above mentioned criminal legislations, this Penal Code puts a big picture in relation to concurrent crimes.

Under the current FDRE Criminal code, there are three scenarios where concurrent crimes come in to being. These are 1) material concurrence: these types of concurrence exist when the criminal successively commits many criminal acts producing many different or similar crimes.[54] 2) Notional concurrence: these types concurrence exist when one criminal act violates two or more criminal provisions.[55] 3) Victim concurrence: this type of concurrence regulates neither material nor notional concurrence. It deals with a situation where a single criminal act goes contrary to the interest of two or more persons.[56] The act doesn't violate more than one legal provision rather the act violates the same protected right of two or more persons. With regard to material and notional concurrent crimes both the 1957 Penal Code and the current Criminal Code contains similar concept. However, in order to bring reasonable and proportional punishment for such types of criminal acts the current Criminal Code incorporates victim concurrence as a novel idea.

2.4 Types of Concurrence

It is common where a defendant is found guilty of more than one offence as a result of a single act or multiple one. Someone commits concurrent offences if they do something that constitutes of several offences. As already stated above, in different states they give different name and classification for such type of crime. For instance, the Criminal Code of the Republic of Armenia without any classification calls such type of offences as an aggravated crime in general.[57] Rwanda in its Penal Code classifies concurrent crimes as Ideal concurrence and Real concurrence. Ideal concurrence of offence occurs when: a) a single act constitutes several offences. b) An act comprises acts which, by comprising separate offences, are related among themselves as they arise from a single criminal intent or some of them constitute aggravating

[53] *Ibid*
[54] See the FDRE Criminal Code, Art. 60 (a)
[55] See the FDRE Criminal Code, Art. 60 (b)
[56]See the FDRE Criminal Code, Art. 60 (c) [Dejene Girma Janka, *A hand book on the Criminal Code of Ethiopia* , 1st edition, published by Far East Trading PLC, Adisabeba, Ethiopia, 2013, p33]
[57] the Criminal Code of the Republic of Armenia, 2003, Art.20

circumstance of the others.[58] While real concurrence of offences occurs an act which are separate have followed one after the other and are regarded as independent offences.[59]

The FDRE Criminal Code based the nature of the act with which the crime of concurrence occurred; it classified concurrent crimes in to three. This are:

1) Material concurrence (concurrence of acts)
2) Notional concurrence (concurrence of offence)
3) Victim concurrence (neither material nor notional concurrence)

2.4.1 Material Concurrence

Material concurrence is prescribed in the FDRE Criminal Code under Article 60 (a). Even such type of concurrent crime is incorporated under the 1957 Penal Code of Ethiopia. Under Article 60 (a) of the FDRE Criminal Code material concurrence of offences occurred when a criminal suspect successively commits several criminal acts that results the commission of two or more similar or different offences. "This type of concurrence exists where there are many criminal acts producing many different or similar crimes"[60]

Generally, two basic elements must be fulfilled to say a criminal act is an act of material concurrence one. This are:

1) The suspected criminal shall commit two or more criminal acts that constitute two or more similar or different crimes whatever their nature.
2) The criminal act must be done successively.[61]

The criminal act may be covered in one criminal provision or in different provision. The commission of the crime either intentional or negligence. Furthermore, the act can go against the protected right of same person or different person. For instance, if a person breaks in to somebody house, steals some property, and also rapes a lady in the house, there will be two different crimes eventuating because of the two different acts.[62] First the person is liable for the act of aggravated theft by violating Article 669 of the FDRE Criminal Code. Second, he is liable

[58] The Penal Code of Rwanda Art. 83
[59] *Ibid*
[60] *Supra note*, 9
[61] See the FDRE Criminal Code Art. 60 (a)
[62] *Supra note*, 9

for rape offence by violating Art. 620 of the FDRE criminal code. Hence this criminal suspect charged for both crimes.

Moreover, Ato Zenbe Mamo with intent to commit homicide fired two bullets in front of victim A, one bullet in front of victim B, C and D, and two bullets in front of victim E successively.[63] Accordingly, he missed victim A and caused bodily injury on the other victims.[64] On this particular case, there were five acts resulting in five similar crimes. This perpetrator was liable for the crime of an attempted homicide making violation of Art. 27 (1) and 540 of the FDRE Criminal Code and he was charged for all the five crimes of an attempted homicide.[65]

The main contentious issue left not an answered under Art. 60 (a) of the FDRE Criminal Code in relation to material concurrence is the meaning of "successive act". Taking to consideration of other elements of material concurrence in order to say the criminal conduct as a material concurrence, the criminal conduct must be done successively. What does it mean successive act is a big question? The legislation body doesn't put any time scale between the first criminal act and the next one. This makes difficult to distinguish successive criminal act from non- successive ones. What is the standard time, hours, Weeks, Months, Or years? Are used to distinguish the first act from the next one is debatable.[66] It is questionable what standards should guide these determinations.

On this issue legal practitioners have different perspective. In one hand they argued that successive criminal act interpreted in a way that the commission of the crime should be done in the same transaction without renouncing the pursuits of his criminal activity.[67] For insistence, if someone intentional prepares to kill his three enemies, and then if he kills enemy "a" at 1:00 pm, if he kills enemy "b" at 2:00 pm, lastly if he kills enemy "c" at 3:00 pm, then this person commits the crime of homicide flowing from the same criminal intention, i.e. killing of his three enemies and for the purpose of material concurrence, they argued such type of criminal act amounts successive criminal act. On the other hand, other legal practitioners argued that

[63] *Public prosecutor v Zenbe Mamo,* Northern Showa Zone Public Prosecutor Office Criminal Division, June 2, 2012 E.C , prosecution file no. 220/2012 [unpublished]
[64] *Ibid*
[65] *Ibid*
[66] Solomon Tegegnwork, 'the concept of concurrence crime, the law and practice in the Amhara regional *state' the Amhara National Regional State Justice Professionals Training and Legal Research Institute journal of law, 2008 E.C, vol.3, no.1,* pp31-66, p37-38
[67] *Ibid*

successive criminal act interpreted in a way that, the perpetrator commits a crime and then if he founds the commission of another crime neither convicted nor bar by statutory limitation of the first crime at any time, such criminal act amounts successive criminal act.[68] From this perspective, the only determining factor to distinguish the first criminal act from the next one is statutory limitation. The second outlook is the widely accepted legal practice in Northern Showa Zone Courts and Public Prosecutor Offices.[69]

2.4.2 Notional Concurrence

Like that of material concurrence, notional concurrence also incorporated in both 1957 Penal Code and in the FDRE Criminal Code. Notional concurrence occurs when the same criminal act simultaneously contravenes several criminal provisions. It prescribed in the FDRE Criminal Code under Article 60 (b). The simultaneous infringement of distinct legal provisions constitutes notional concurrence. It concerns a situation in which several offences are committed by means of a single act. Such type of concurrence occurs from a single criminal intention or negligence results in crimes with various material consequences. The doer forms only one intention or negligence regardless of the fact that the offence actually contains a combination of many criminal offences. It occurs when a single criminal act is split in to two or more offences.

According to Article 60 (b) FDRE Criminal Code, the existences of two basic elements are required to say the criminal act is a notional concurrent of the one. These are:

1) The crime must be committed within in a single act. There is only one criminal act. There exists a single criminal intention or negligence.
2) This single criminal act must violate two or more criminal provisions. It should be noted that the provision violated need to be different. If one act repeatedly violates the same provision, it will not give rise to notional concurrence.[70]

For instance, Ato Teshome Altaye while driving too fast the Car collided with a parked Car; consequently, he killed one person, caused bodily injury on two Individuals and damaged some parts of the parked Car.[71] In this case the perpetrator was charged for three crimes, namely,

[68] *Ibid*
[69] *Infra note*, 196
[70] *Supra note*, 9
[71] *Public prosecutor v Teshome Altaye,* Northern Showa Zone Public Prosecutor Office Criminal Division, July 22, 2012 E.C , prosecution file no. 38/2012 [unpublished]

homicide by negligence (Art. 543 (3) of the FDRE Criminal Code), bodily injury caused by negligence (Art. 559 of the FDRE Criminal Code) and defacement or depreciation of another person's property (Art. 856 of the FDRE Criminal Code) within a single act.[72] Similarly, Goshme Getahun, who was driving a car with five people, realized the difficulty and slopes of the road and had to drive carefully, he left his own lane and collided with a Volvo Truck in the opposite direction and damaged the front pole light, the front creek left, and the right door of the truck. [73] In this case two offences are committed by means of a single act. Firstly, by the fact that exposing to danger the life, body and health of five passengers, he committed the crime of exposing to danger through the violation of traffic regulation which is stated in Article 572 (1) of the FDRE Criminal Code.[74] Secondly, by the fact that he damaged some parts of the Volvo Truck, he committed the crime of defacement or depreciation of another person's property which is stated in Article 856 of the FDRE Criminal Code.[75]

To add more, Ato Mogessie (Alemayehu) Mulugeta with intent to kill a person throws a bomb at a liquor store and killed victim A.[76] On this case he committed two crimes in one act. Firstly, by the fact that he killed a person, he committed the crime of ordinary homicide by violating Article 540 of the FDRE Criminal Code.[77] Secondly, by the fact that he possessed prohibited weapon, he committed the crime of unauthorized possession of a firearm by violating Article 808 (a) of the FDRE Criminal Code.[78]

Moreover, the special part of the FDRE Criminal Code also provides notional concurrent crimes emanate from a single criminal act and intent. For instance, if someone with the intent to steal a movable property, where the criminal himself has detached the movable object from an immovable property, and while so doing has caused damaged to the movable or the immovable property, the provisions of Articles of 689-691 shall apply concurrently. [79] This provision stipulates situations where the suspect was charged simultaneously for the crime of theft and

[72] *Ibid*
[73] *Public prosecutor v Goshme Getahun,* Tarmaber Woreda Public Prosecutor Office Criminal Division, Aug. 7, 2011 E.C , prosecution file no. 12/2012 [unpublished]
[74] *Ibid*
[75] *Ibid*
[76] *Public prosecutor v Mogessie (Alemayehu) Mulugeta,* Northern Showa Zone Public Prosecutor Office Criminal Division, Oct. 08, 2012 E.C , prosecution file no. 209/2012 [unpublished]
[77] *Ibid*
[78] *Ibid*
[79] The FDRE Criminal Code, Art 665(2)

damage to property within a single criminal act. To add another insistence, if somebody rapes a lady, where the rape is related to illegal restraint or abduction of the victim, or where communicable disease has been transmitted to her the relevant provision of this code shall apply concurrently.[80] This provision provides situation where the suspect be charged for offending crime of rape together with crime of abduction or spreading of human diseases.

Inter alia with the above instances Article 472, 424 (1), 572 (2), 691, and Article 701 (3) etc. of the FDRE Criminal Code shows the existence of notional concurrence crime in the special part of the Criminal Code. Apart from the general part of the Criminal Code which deals with the definitional elements of notional concurrent crimes, we can also find provisions in the special part of the Criminal Code in a scattered way dealing about notional concurrent crimes.

2.4.3 Victim Concurrence

The concept of victim concurrence is a newly incorporated type of concurrent crime under the current FDRE Criminal Code. It prescribed under Article 60 (c) of the FDRE Criminal Code. The 1957 Penal Code of Ethiopia doesn't incorporate the concept of victim concurrence. Victim concurrence deals with a situation where a single criminal act goes contrary to the interest of two or more persons. It concerns a situation in which several similar offences are committed against the protected right of two or more persons by means of a single act. Like that of notional concurrence such type of concurrence occurs from a single criminal intention or negligence. But it results similar offence contrary to the interest of two or more persons. Therefore, the current Criminal Code has expressly created conducive environment to charge such type of situations for the harm against all the victims involved and by so doing rectified the problem of the previous Penal Code.

According to Article 60 (c) FDRE Criminal Code, three basic ingredients are required to say the criminal act is a victim concurrent one. These are:

1) The criminal fault has to be one. The crime must be committed within in a single act. This indicates the existence of the same criminal intent.
2) The criminal harm has to be the same. The criminal act must be violating the same criminal provision.

[80] The FDRE Criminal Code, Art. 620(4)

3) It must victimize more than one person.[81] The criminal act must cause same harm against the protected right of two or more persons.

For better understanding of the situation it is necessary to make some illustration. Ato Moges Yehualawork, who had the responsibility of protecting the body and health of another person, had to drive calmly and maintain his own lane, while driving he failed to do so, consequently he fell on the right side of the road and suffered minor bone fractures on victim A, victim B and victim C and tooth fractures on victim D.[82] In this case, firstly the criminal act is one that is a Car accident or the criminal fault is one that is bodily injury caused by negligence. Secondly, the criminal harm (the criminal provision violated) is the same that is bodily injury caused by negligence. But the victims are many. On this particular case the above-mentioned ingredients are fulfilled. Hence, the suspect was charged for committing a crime of bodily injury caused by negligence by violating Article 559 (2) of the FDRE Criminal Code against all the victims.[83] Moreover, if a car driver without due care bumps two passengers and causes bodily injury. This situation will give rise to concurrence of victim. Thus, the criminal suspect will be charged for offending crime of bodily injury caused by negligence (Article 559 of the FDRE criminal code) against the two victims.

Although, a single criminal act committed against the same protected right of more than one person give rise to victim concurrence, there are also instances in the special part of the FDRE Criminal Code which provides criminal acts that victimize more than one person covered in one aggravated crime. There exists a criminal provision which incorporate similar crimes in one aggravated crime or in one legal provision. For insistence, Ato Hbtamu (Gofer) Chale who has a duty to protect the health and safety of others, and had to drive carefully as the road is curved, while driving he failed to do so and left the allowed right lane and crashed with a Motorcycle 2.57 Meter into the left lane, consequently he killed two people on the Motorcycle.[84] In this case a single aggravated charge was bought against him in violation of Article 543 (3) of the FDRE Criminal Code[85] rather than preparing cumulative charge against two victims. If somebody

[81] *Supra note*, 9
[82] *Public prosecutor v Moges Yehualawork*, Angolelana Tara Woreda Public Prosecutor Office Criminal Division, June 07, 2011 E.C , prosecution file no. 112/2011 [unpublished]
[83] Ibid
[84] *Public prosecutor v Habtamu (Gofer) Chale*, Northern Showa Zone Public Prosecutor Office Criminal Division, May 17, 2012 E.C , prosecution file no. 509/2012 [unpublished]
[85] *Ibid*

commits crime of human trafficking against many persons, he will be charged for committing an aggravated crime of trafficking in person.[86] However, before the promulgation of Proclamation no. 909/2015 [87] such act is treated as concurrence of victim. Thus the offender will be charged for committing the crime of human trafficking (violating Art. 598 of the FDRE Criminal Code) against all the victims. [88] Surprisingly, proclamation no. 1178/2020 repealed the former Proclamation no. 909/2015 and treated the act of human trafficking described above as an act of victim concurrence again.[89] Similarly, crime of arson stated in Article 494 of the FDRE Criminal Code can be taken another good example. Despite the fact that crime of arson causes collective injury to persons or property, the suspect will be charged a single crime. Finally, for the sake of convenience the Researcher calls such provisions of the FDRE Criminal Code "exceptional rules of victim concurrence".

As already stated above, the concept of victim concurrence is a newly incorporated type of concurrent crime under the current FDRE Criminal Code. Different justifications are raised for the incorporation of this concept under the current FDRE Criminal Code. The first justification is to bring fair, reasonable and proportional punishment for acts concurrent crimes. [90] It was legitimate the one who causes the same harm to several persons should be punished more severely than if he causes harm to only one person. It will not be fair and reasonable to try the person who killed two persons with one bullet as one offence while punishing the other person who killed one person and injured the other with two counts.[91] According to the 1957 Penal Code of Ethiopia the person who killed two or more persons in one bullet considered it as one offence, and he got lesser punishment than the one who killed one person and injured the other

[86] A Proclamation to provide for the prevention and suppression of trafficking in person and smuggling of migrants, Proclamation no.909/2015, Federal Negarit Gazeta, 17th August 2015,Article 3 and 6 [hereafter Proclamation no. 909/2015]

[87] *Ibid*

[88] The Federal Supreme Court Cassation Bench gives a binding decision as to preparation of charge in relation to crime of human trafficking. Holding that a cumulative charges should be prepared in accordance with the number of victims in relation to crime of human trafficking while entertaining the case of *Redat sajen Ahmed v the federal public prosecutor*, found in the Federal Supreme Court Cassation Decision, volume 16, file no. 96078 at Federal Supreme Court, in the year 2007 E.C, pp285-290 [however, Proclamation no. 909/2015 repeals both article 598 of the FDRE Criminal Code and this decision]

[89] See A Proclamation to provide for the prevention and suppression of trafficking in persons and smuggling of persons, Proclamation no.1178/2020, Federal Negarit Gazeta, 1st April 2020 [in this proclamation the crime committed in large scale doesn't recognized as an aggravated circumstances under Art. 4]

[90] *Infra note, 259 raison d'etre on Article 60 (c)*

[91] *supra note,* 8 at p165-166

considered it as two offences, it makes punishment unreasonable and disproportional.[92] Thus the inclusion of victim concurrence under the FDRE Criminal Code rectifies such problem.

Secondly, our criminal justice policy provides that victim's right should be protected in the administration of criminal matters.[93] This means each victim interest must be protected properly. They have the right to reasonably protected from the accused. Thus, the incorporation of victim concurrence under the FDRE Criminal Code served as one indicative sign of the protection of the right or interest of victims of a crime. Lastly, the concept victim concurrence served as one protective mechanisms of the right to life, the right to security, the right to property of each person enshrined under the FDRE Constitution.[94]

However, those advocates of 'single intent theory' argue that if the consequence of the accused's action is preferable to a single criminal intent, the accused is answerable for only one offence.[95] Since the intent of man can't be tried this test, of course, not absolute and it was questionable does one act he/she does it within a single intent, while if he /she simultaneously does two acts, he/she acts with two intents.[96] Moreover, it complicates and confuses the general structure of criminal liability making difficulty or non-sense of the prosecution of one consequence amounts to a prosecution for all the consequences.[97]

2.4.4 Imperfect Concurrence

Imperfect concurrence actually is not a cause of concurrence at all. It is not part of the classification of concurrent crimes. However, it has a significant value to properly understand the concept of concurrent crimes as a whole. It seems that there is concurrence merely because there are acts which contain some elements of concurrent crimes.

Imperfect concurrence is prescribed under Art. 61 of the FDRE Criminal Code. It is an exception to Article 60 of the FDRE Criminal Code in a sense that the provision of Article 60 is not applicable for the conditions enumerated under Article 61. This article enumerates three scenarios where imperfect concurrence comes in to being.

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[92] *supra note*, 8 at p165-166
[93] the FDRE Criminal Justice Policy, section.6.2
[94] *supra note*, *66* at p46
[95] Frank Edward Horack Jr. 'the multiple consequence of a single criminal act', *Minnesota law review1987, vol.47, issue 2*, pp805-822, p812
[96] Id, P112-114
[97] Id, p112-114

The first scenario describes situations where the act is done in infringement of several legal provisions but only one provision can cover everything that has happened (one legal provision fully covers the criminal acts). This scenario is prescribed under Article 61 (1) of the FDRE Criminal Code. It describes a situation where "the act is done in contravention of several legal provisions but one of these provisions fully covers this act, the one provision is applicable to the exclusion of others under which the act apparently also falls."[98] For instance, Ato Bizuayehu Tsehaye intending to kill victim A throws stones at him, while he failed on the ground repeatedly hit his head with a stick, after that the victim later died of head injuries after receiving medical treatment.[99] In this case the suspect was charged for ordinary homicide making violation of Article 540 of the FDRE Criminal Code.[100] The suspect is punishable exclusively for completed homicide, but not for attempted homicide or injury, because bodily injury is element of offence of murder without which the offence murder may not be materialized, unless the offence uses other means to kill.[101]

The same is true for the following cases; Ato Bruk Taye in order to obtain unlawful enrichment for himself entered in to victim A compound and broke down the living room, then he stoles a Magnifying glass, hair machine and clothes, which cost an estimated 20,000 Ethiopian Currency. [102] And the suspect was charged for the crime of an aggravated theft making violation of Article 669 (3) (b) of the FDRE Criminal Code.[103] On this particular case, two things came in to picture: abstracting others property and breaking the living room. Out of the two things, the first belongs to crime of theft and the second belongs to damage to property. However, there is a criminal provision which covers these two things, namely crime of an aggravated theft.[104] Thus, the suspect was charged only under this provision, not under both crime of theft and damage to property.

[98] The Justice and Legal System Research Institute, Sentencing and Execution Teaching Material, Adisabeba, 2009, p.92 [prepared by Dejene Girma and Mekonnen Felke for first degree university student]
[99] *Public prosecutor v Bizuayehu Tsehaye*, Northern Showa Zone Public Prosecutor Office Criminal Division, Nov. 11, 2012 E.C , prosecution file no. 270/2012 [unpublished]
[100] *Ibid*
[101] *Supra note*, 98
[102] *Public prosecutor v Bruk Taye*, Debrebrhan City Woreda Public Prosecutor Office Criminal Division, Aug. 17, 2011 E.C, prosecution file no. 81/2012 [unpublished]
[103] *Ibid*
[104] The FDRE Criminal Code Art.669 (3)

In another case, Ato Seshaw Chefek, Ato Habtamu Abebe and Ato Awelachew Mamuye, intending to steal the property of other, beat up a pedestrian on a road and took 3400 Ethiopian currency and Itel mobile which cost an estimated 1000 Ethiopian currency out of his pocket.[105] And the suspect was charged for crime of robbery in violation of Article 670 of the FDRE Criminal Code.[106] On this case the suspect committed two separate crimes, i.e. crime of theft and common willful injury. However, there exists a single aggravated criminal provision fully covers the two things, namely crime of robbery.[107] Therefore, the suspect was charged for committing a crime of robbery, not charged under for crime of theft and common willful injury.

For the application of Article 61 (1) of the FDRE Criminal Code the following three ingredients must fulfilled. This are:

1) There should exist a single criminal provision fully covers all the criminal acts. If such provision doesn't exist, the offender can be charged for all the provisions his single act violates.
2) There must be same criminal fault. The criminal act or the combination of criminal act should flow from the same criminal fault (single criminal intention or negligence).
3) The criminal act or the combination of criminal act must be done against the protected right of a single person. Because if the victims are many victim concurrences will come in to picture.

The second scenario describes situations where successive or repetition of wrongful acts of the same nature which is punishable in itself as an attempted or completed offence. This scenario is prescribed under Article 61 (2) of the FDRE Criminal Code. In this scenario the person commits the so called successive or repeated offences is punished for only one offence and not each of the repeated or successive offences. For instance, Ato Girma Felke and other ten people occupied victim A an investment land and plowed the land for six days using about 50 Oxen.[108] In this case the suspects were charged for the crime of disturbance of possession making violation of Article 686 (2) of the FDRE Criminal Code.[109] On this particular case, despite the fact that, the

[105] *Public prosecutor v Seshaw Chefk et al,* Northern Showa Zone Public Prosecutor Office Criminal Division, Nov. 24, 2012 E.C, prosecution file no. 92/2012 [unpublished]
[106] *Ibid*
[107] The FDRE Criminal Code Art. 670
[108] *Public prosecutor v Girma Felke et al,* Woromo Wajetu Woreda Public Prosecutor Office Criminal Division, Oct. 21, 2012 E.C, prosecution file no. 44/02/2012 [unpublished]
[109] *Ibid*

co-offenders unlawfully occupied and plowed other persons land repeatedly, they were charged for only one offence, namely disturbance of possession stated under Article 686 (2) of FDRE Criminal Code, not each of the repeated offences of disturbance of possession.

The application of Article 61(2) requires the fulfillment of the following two ingredients. This are:

1) The existence of same or single initial criminal intention or negligence.
2) The act must be done against the same legally protected right.

For better understanding of the above requirements it is necessary to raise an illustration. Ato Mekonen Habte, intending to obtain undue wealth for himself, he misappropriated 135,479.649 Ethiopian currency during his tenure as a property department employee and salesmen at Menze Mama Farmers Cooperatives from March 06, 2007 to Feb. 17, 2009 E.C.[110] And he was charged for the crime of an aggravated breach of trust.[111] On this particular case, the suspect misappropriated few moneys for a period of two years successively. The act which he has been done repeatedly rises from a single criminal intention of misappropriation, and it was done directly against the same legally protected right, namely property right. Hence, all the above ingredients are fulfilled. Although the act of misappropriation committed repeatedly, the suspect was charged for a single offence of an aggravated breach of trust.[112] The period of limitation of the successive or repeated acts stated under Article 61 (2) of the FDRE Criminal Code shall begin to run from the day in which the last act was performed.[113]

Furthermore, the second paragraph of Article 61 (2) of the FDRE Criminal Code states instances in the special part of the Criminal Code where the repetition or succession of criminal acts or the habitual or professional nature of the crime constitute an element of an ordinary or aggravated crime. For instance, the repetition of the criminal act is an essential element of a crime of an aggravated vagrancy.[114] Similarly, habitualness of the criminal act is required for a crime

[110] *Anti-corruption prosecutor v Mekonen Habte, Amhara National Regional State Anti-Corruption Commission Debreberhan Cluster Office,* Mar. 18, 2010 E.C , prosecution file no. 08/2010 [unpublished]
[111] *Ibid*
[112] Corruption Crimes Proclamation, Proclamation no. 881/2015, Federal Negarit Gazeta, 3rd April 2005,Article 31
[113] The FDRE Criminal Code Art. 219(2)
[114] The FDRE Criminal Code Art. 477

unlawful exercise of the medical or public-health profession.[115] Article 354, 634, 636, 640(2), etc. of the FDRE Criminal Code is a good example on this regard.

The third scenario describes situations where several criminal acts are done for the execution of the main designed crime. This scenario is provided under Article 61 (3) of the FDRE Criminal Code. In this scenario the person who commits preceding or following criminal acts for the executions of the main crime is punished for only the main designed offence and not for each of the preceding or following criminal acts done to fruitful the main designed crime at all.

This article "deals with the problem of the so called non- punishable acts of execution preceding or following offence."[116] For instance, a person who counterfeit currency does something which is purposeless unless and until the currency is put in to circulation; assuming that he utters as a genuine currency which he counterfeited, the question is whether he should be punished for both counterfeiting[117] and uttering[118] or for only one of these offences, it is punishable for only one offence on the basis of Article 61 (3) of the FDRE Criminal Code. The other question is which either unlawful act should be treated is an act of execution. The legal justification of Article 61 (3) of the FDRE Criminal Code is when people with a single end in view, commits several offences closely connected with one another; a guilty mind is deed to have existed with respect to the main offence.[119] In the above illustration, therefore, the doer is punishable for the counterfeiting, which is the main offence; the uttering is to be regarded as an act of execution "merged by the unity of intention and purpose"[120] unlawful act done after the commission of a given offence is an act of execution, this act may not be punished as though it were an independent offence and the sentence passed for the main offence may not be increased on the ground of concurrent offence. The same is true in case where execute a forged document and used it.[121]

[115] The FDRE Criminal Code Art. 535
[116] *Supra note*, 8 at p170
[117] The FDRE Criminal Code Art. 356
[118] The FDRE Criminal Code Art. 361
[119] *Supra note*, 8 at p170
[120] *Supra note*, 8 at p170
[121] *Supra note*, 8 at p170

2.5 Methods of Prosecuting Concurrent Crimes

It is common where the suspect is found guilty of more than one offence. This occurs as a result of either a single act in which two or more criminal statutes are violated, or as a result of a serious of criminal activities taking place at different times.[122] In this situation the criminal justice system expected to determine the best methods to take in dealing with concurrent offences.[123] Such type of cases brought several basic questions among them: (1) for how many of the offences committed should the accused be prosecuted? (2) In what way the offence should have been prosecuted?

Prosecution is one of the important subsets of criminal justice system. In most societies' crime is consider as a public injury.[124] Generally, "a crime is an offence against the state and a violation of its criminal law."[125] Therefore, the state takes the responsibility of taking action against the offender and thus represents the people. It is only in exceptional cases that the victim of a crime or his/her representative will be allowed to prosecute the offender.[126] Based on this principle the prosecution of criminals becomes the distinctive responsibility of public prosecutor. "A prosecutor is, therefore, an attorney who is elected or appointed by the state to head a prosecution agency whose official duty is to conduct criminal proceedings on behalf of the people against persons accused of committing criminal offence." [127]

"Once a prosecutor decides to charge a case, he will have a great deal of freedom in determining the types of the charges to be lodged."[128] Since criminal behavior involves the breaking of varieties of laws, the prosecutor may opt for a single charge or for multiple charges.[129] Under the Ethiopian criminal justice system preparation of concurrent charges for concurrent crimes is

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[122] *Supra note 3*
[123] Jeffrey M. Chemerinsky, 'counting offences', *DUKE law journal,2009, vol. 58, no. 4,* pp709-746, at p709-711
[124] *Supra note 6*, p58
[125] Endalew Lijalem, A move towards Restorative Justice in Ethiopia: Accommodating Customary Dispute Resolution Mechanism with the Criminal Justice System, Master thesis, University of Tromso, Norway Faculty of Humanities, Social Science and Education, 2013, p2
[126]Conducting Private prosecution is another exception the Ethiopian criminal justice system provides for victims and other stake holders to intervene in the criminal justice process. This right to initiate a private prosecution arises when the public prosecutor refuses to institute a criminal charge due to insufficiency of evidence to justify conviction for crimes that are punishable upon formal complaint. [see the Criminal Procedure Code Art. 44 (1) 47]
[127] *Supra note* 6, at p58
[128] *Supra note* 6, at p61
[129] *Supra note* 6, at p61

solely within the discretion of public prosecutor.[130] There is no legal provision that allows the court to order joinder of separate charges lodged against the accused. The court may order addition or alteration or a new charge to be framed in relation to charge, where the charge contains essential errors or omissions that the accused has been or is likely to be misled.[131] This power of the court doesn't relate with joinder of charge. The matter of consolidating separate offences for trial is procedural.

Joinder of charge is prescribed under the article 116 and Ethiopian criminal procedure codes. *Article 116. - More than one charge.*

(1) A charge may contain several different counts relating to the same accused and each offence so charged shall be described separately.

(2) All charges may be tried together but where the accused is likely to be embarrassed in his defense, the court shall order the charges to be tried separately.

The first sub article allows the prosecutor to charge an accused with several counts in a single charge. Although this provision doesn't specify specific conditions or criminal acts that are framed in such types of charge, it served as an indicative provision how and in what way concurrent crime can be charged. However, the new Draft Criminal Procedure Code of Ethiopia explicitly provides in what way concurrent crimes be charged, that is, joinder of charges are allowed whenever crimes are committed in accordance with Article 60 and Article 62-66 0f the FDRE criminal code.[132]

Wondwossen Demissie Kassa on his publication stated that Article 116 (1) conveys two points in connection with joinder of charges. First, joinder is permissive: the prosecutor does not have an obligation to prepare concurrent charge, it follows that an accused has no right to have all alleged offences tried together.[133] There is no provision that allows the court to order consolidation of separate cases against the accused. Hence, consolidation is solely within the discretion of the

[130] *Infra note* 133

[131] The Criminal Procedure Code of the Empire of Ethiopia, Proc. No. 185/1961, Negarit Gazeta, Extraordinary Issue, No. 1, Art.119 [hereafter the Criminal Procedure Code of Ethiopia]

[132] The Draft Criminal Procedure Code of the Federal Democratic Republic of Ethiopia, 2010, Draft Legislation, Ministry of Justice, Adisabeba, Art. 186 (1) [herein after the FDRE Draft criminal Procedure Code]

[133] Wondwossen Demissie Kassa, *A text book of Ethiopian criminal procedure,* 1st edition, published by school of law, Addis Ababa university, Addis Ababa, 2012. p304

prosecutor.[134] Second, the provision does not limit the prosecutor's power to charge, and caused the accused to be tried for different offences in a single charge.[135]

In other jurisdictions, the court has the discretion to order consolidation of charge. Furthermore, there are governing rules as to consolidation of charge and allow joinder of charge only under certain condition. For instance, many states of United States have statutory rule for the joinder and severance of criminal offence together with the specific conditions or tests for consolidating offences.[136] The Federal Rules of Criminal Procedure of the United States allow the court to order that the separate case be tried together as through brought in a single indictment if all offences could have been joined in a single indictment.[137] Similarly, the US Rules of Criminal Procedure provide the conditions where joinder of offences is allowed, that is, if the offences (1) are of the same or similar character, (2) are based on the same act or transaction, (3) are based on two or more acts or transactions constituting parts of a common scheme or plan, (4) are part of a course of criminal conduct.[138]

Under the British indictment act and criminal procedure rule prescribes that charges for more than one felony or for more than one misdemeanor, charges for both offences may be joined in the same indictment.[139] And an indictment may contain more than one count if all the offences charged are found on the same act or form or are a part of a series of offences of the same or a similar character and also the counts must be numbered consecutively.[140]

As already stated above, the prosecutor can charge the accused for several offences. Based on Article 116 (2) of the criminal procedure code, it allows the court to order that the charge be tried separately. The court will do so where it believes that trial of the accused under multiple counts of charge would have a prejudicial effect on his/her defense. However, there is no any guiding rule with regard to the circumstances under which trial of the accused on multiple counts of offences would be embarrassed him/her.

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[134] *Ibid*
[135] *Ibid*
[136] Baron and Samuel A. ' A look at the Tennessee multiple offender and the joinder and severance of criminal offence for trial' *Memphis state university law review, 1977, vol.7, issue 3* pp.457-474, at p 471
[137] The federal rules of criminal procedure of United States, U.S government printing office, 113th congress 2nd session, no. 9, Dec. 1, 2014, rule 13 [hereafter US federal rules of criminal procedure]
[138] US Federal Rules of Criminal Procedure, rule 8(A)
[139] The Indictment Act of England, the king's Printer of Acts of Parliament, 23rd Dec. 1915, rule 4
[140]the Criminal Procedure Rules of United Kingdom, no. 1490/2015, Queen's Printer of Acts of Parliament, 6 Apr. 2015, rule 10.2 sec. 3 and 4

Among other things the absence of clear prosecution guide-line in general and in relation to joinder of charges in particular, creates the prosecution of separate charges against the same accused for concurrent offences at different trial, which have a detrimental effect on "judicial economy."[141] Apart from this, it creates prosecution of several counts of offences within a single indictment, which is difficult to handle the case smoothly. Moreover, it brings inconsistent practice in the presentment of charges of concurrent crime.

Despite the fact that, joinder of charges has its own problem in case management, it is advisable to frame a consolidated charge for concurrent offences in terms of saving time and resource, avoiding the necessity of same witnesses giving the same evidence two or more times indifferent trial, facilitating to render concurrent sentencing, etc. To sum up, the framing of charge is the most basic step of the process of initiation of a trial in a criminal proceeding. Utmost care must be taken while the charges are being framed as a wrong framing may lead to denial of justice. Therefore, one should abstain from wrongful framing in general and joinder of charge in particular; because as such inefficiency would vitiate the very basic essence of a fair trial and justice.

2.6 Methods of Sentencing Concurrent Crimes

In any legal system, the stage at which legal sanctions are applied is perhaps the most important stage in the application of law. Because the protection that the law gives would become complete only if the sanction attached thereto are properly imposed and applied whenever these laws are violated.[142] "Criminal sentencing is a fundamental mechanism of social control in society."[143]

The word sentence refers to the judgment of a criminal court imposing on a person convicted. It is a punishment, such as fine or imprisonment.[144] Sentencing is a final step a judge takes against a defendant who has been found guilty of the crime he/she is accused of.[145] Hence, sentencing is

[141] Judicial economy refers to efficiency in the operation of the court and the judicial system. It refers in the management of a particular litigation or of the court in general; refers to measures taken to avoid unnecessary effort or expense on the part of the court or the court system including the accused, witnesses and public prosecutor.
[142] *Supra note,* 9 at p146
[143] Brian D. Johnson, 'the multilevel context of criminal sentencing: integrating judge-and country-level influences', journal of criminology, 2006, vol.44, no.2 pp.259-298, at p260
[144] Concise Law Dictionary, third edition, 2006, *s.v.* 'sentence'
[145] *Supra note,* 6 at p83

one of the important components of the criminal justice system. And it is one of the most crucial tasks of a judge. It has been a problematic area in the administration of justice.[146]

Many States in the world have their own legal documents which deal with sentencing of convicted persons.[147] Ethiopia is not exception to this fact since it has its own law dealing with sentencing. In Ethiopia, the FDRE Criminal Code urges making appropriate sentencing decision and it has tried to avoid sentencing disparities by, firstly, providing for the factors to be taken into account during sentencing; secondly, by mandating the Federal Supreme Court to issue a manual relating to sentencing; and thirdly, by adopting determinate sentencing approach where judges are required to fix the date of release of a person convicted.[148] This is, however, without prejudice to the possibility of releasing criminal on parole.

In the assessment of criminal sentence the court strictly observe the goal and purpose of the Criminal Code and the special provisions defining offences and their punishment.[149] In doing this the degree of individual guilt, the dangerous disposition of the criminal, his antecedents, motive and purpose, as well as the gravity of the crime and the circumstance of its commission is taken in to consideration.[150] In the process of evaluating sentencing scheme several considerations may prove useful in evaluating the merits of a particular approach. These includes, proportionality (a sentence should fit the crime), individualism (a sentence should reflect the offenders criminal history the threat posed to society), disparity (the sentence for a particular offence should be uniform; like cases should be treated a like), predictability and simplicity (the sentence to be imposed for a particular offence should be clear and definite, it should be relatively easy for a judge to determine the appropriate sentence).[151]

When we talk of sentencing, one thing that comes to our mind is the person found guilty of the violation of specific criminal law. The violation is either a single crime or two or more crimes. And it is common where an accused is charged and convicted for more than one offence at the same court hearing. Hence, like that of joinder of charge there was a separate method of

[146]In doing my profession the Researcher observed a considerable disparity in the penalties imposed against the accused for identical cases in different trial of courts and between trial and appellate court. The problem is harsh to worth in case of concurrent offences.

[147] The Federal Justice Organs Professionals Training Center, Criminal Sentencing Training Model, Adisabeba, Aug. 2012, p16 [prepared by Desalgn Demeke]

[148] *Supra note,* 9 at p147

[149] Cumulative reading of article 1, 87 and 88 (1) of the FDRE Criminal Code

[150] See The FDRE Criminal Code Art. 87 and 88, see the 1957 Penal Code of Ethiopia, Art. 85 and 86

[151] *Supra note,* 1 at p 57

sentencing concurrent crimes. One of the distinct features of concurrent crime is it entails grave punishment. In many jurisdictions including Ethiopia, concurrent crimes are considered as a special aggravating circumstance for the purpose of sentencing.[152] Although concurrent offences are declared as a special aggravating circumstance, the imposition of penalty on such crimes should observe the principle of proportionality (punishment should equal the crime) in setting the appropriate crime. The 1957 Penal Code of Ethiopia from Article 189-192, the FDRE Criminal Code from Article 184-187 and the FDRE Supreme Court Revised Sentencing Manual 2/2013[hereafter the Revised Sentencing Manual] Article 22 are pertinent provisions which deal with sentencing of concurrent offences. The criminal laws and legal practices of many jurisdictions have adopted three main methods or approaches for sentencing of concurrent crimes.[153] The legislative model and the current legal practice of Ethiopia used in regulating the sentencing of concurrent offence are the reflection the above stated three approaches. This are:

1) The principles of totality (cumulating rule)
2) Rule of absorption (rule of assimilation)
3) Consecutive sentence[154]

2.6.1 The Principles of Totality (Cumulating Rule)

The principle of totality or principle of cumulation is one of the widely used approaches to regulate sentencing of concurrent offences. This principle applies whenever an accused is being convicted of concurrent offence. "Cumulation would then mean that the available maximum is the sum of the applicable maxim of all crimes committed."[155] Hence, cumulating means addition of penalties. It "…reflects the overall criminality of the offending behavior."[156]

Principle of totality has a statuary foundation across different jurisdiction. Section 155 and 156 of the Penalties and Sentencing Act 1992 of Australia states that, when an offender is sentenced to imprisonment of more than one offence or is already undergoing a sentence of imprisonment,

[152] See the FDRE Criminal Code Art. 85, and the 1957 Penal Code of Ethiopia Art. 82
[153] Andrew Ashworth and Martin Wasik, *fundamentals of sentencing theory*, 2nd edition, published by Clarendon Press, New York, 1998, at p133
[154] *Ibid*
[155] *Id* at p132
[156] Mirko Bagaric and Theo Alexander, 'Rehabilitating totality in sentencing: from obscurity to principle', UNSW law journal, 2013, *vol.36, no.1*, pp139-167, p140

the aggregate sentence or cumulative sentence is passed against the offender. [157] Similarly, the Victoria Sentencing Act 1991 under section 9 (2) provides that, if a person founds guilty of a number of offence, the aggregate sentence is imposed by a court, however the sentence cannot exceed that which would have been imposed if a separate sentence was imposed for each offence.[158] To add more, the German criminal Code under Article 53 (1) provides that, "if a person has committed more than one offence, and incurred more than one sentence of imprisonment or more than one fine, an aggregate sentence shall be imposed."[159]

Such method of sentencing is incorporated under Article 184(1) (b) of the FDRE Criminal Code. If two or more crimes entailing loss of liberty are committed, the court should determine penalty for all and add them up. However, the total penalty should not exceed the general maximum of the kind of penalty applied. That is, if the penalties are simple imprisonment, the aggregate cannot go beyond three or, at times five, years.[160] If the crime entails rigorous imprisonment, the aggregate penalty cannot exceed twenty-five years with the possibility of making it life imprisonment or death penalty.[161] For better understanding of the situation it is necessary to make an illustration. For instances, if the court imposes 12 years rigorous imprisonment for ordinary homicide, 8 years rigorous imprisonment for attempted ordinary homicide, 10 years rigorous imprisonment for robbery, all the penalties shall be added. That is 12+8+10=30; since the aggregate penalty cannot exceed 25 years the aggregate penalty reduced to 25 years. Article 184(1) (b) second paragraph is addressing the method of calculation when concurrent crime entails both simple imprisonment and rigorous imprisonment at the same time. In this case addition also applicable, but simple imprisonment of two years shall be deemed to equivalent rigorous imprisonment of one year. To make an illustration, if the court imposed 7 years rigorous imprisonment for rape and 2 years simple imprisonment for crime of theft, when it is added it doesn't mean that the aggregate become 9 years rather 8 years.

The cumulative reading of Article 184(1) (b) of the FDRE Criminal Code and Article 22(1) (a) of the Revised Sentencing Manual provides; the general methods of sentencing of concurrent crimes based on principles of totality. That is, when the court founds that the accused being

[157] *Id* at p146
[158] *Id* at p146
[159] The Criminal Code of German, no. IP 3214, Federal Law Gazette, 2 Oct. 2009, Art. 53 (1)
[160] The FDRE Criminal Code Art. 106
[161] The FDRE Criminal Code Art.108

convicted of two or more offences, the court has to first determine the initial penalty range for each offence, and then added them up, after that it examines aggravating and mitigating circumstances, so that it pronounces the more appropriate sentence against the accused. In other jurisdiction, where the highest statuary maximum penalty for rigorous or simple imprisonment are not limited, imposes the total penalty by add them up.[162] Hence, the cumulated punishment may go beyond the accused's lifetime.

Similarly, if the crimes committed entails fine, the court has to first decide fine for all the crimes and then added them up. However, the aggregate cannot exceed the general maximum fixed for legal person and juridical person.[163] If the crime committed entails imprisonment and fine, both may be imposed.[164] The main contentious issue left an answered in relation to totality approach is the assessment of a crime committed entails rigorous or simple imprisonment and penalty of petty offence. Because there is no provision which allows changing the penalty of petty offence; i.e. arrest and fine in to simple or rigorous imprisonment and vice versa for the purpose of aggregation.

In general, the principle of totality reflects the seriousness of the offence considered as a whole or in its totality and operates the sum of all sentences imposed against the accused. This might ensure proportionality of punishment, which is one of the main objectives of sentencing. Moreover, it provides the total effective sentence to be served.

2.6.2 Rule of Absorption (Rule of Assimilation)

Like that of totality principle, rule of absorption is a well-established sentencing doctrine for concurrent crimes. "Absorption would mean that the available maximum is identical with the highest individual's maximum applicable among the crimes committed."[165] Assimilation is the absorption of one or more than one penalty to another maximum penalty deserved for one of the concurrent crimes.[166] The purpose of absorption sentence is to allow the accused to serve his entire sentence at the same time. So, if the accused has been sentenced for 25 years rigorous

[162] For instance, South Africa Criminal Code doesn't provide the highest statutory maximum penalty for rigorous and simple imprisonment, it imposes the total penalty by adding all the penalties with which the accused has been found convicted of. As cited in supra note 66 at p56 citation.
[163] The FDRE Criminal Code Art.184(1)(d) and Art.90
[164] The FDRE Criminal Code Art.184(1)(c)
[165] *Supra note*, 10 at p132
[166] *Supra note*, 68 at p96

imprisonment for aggravated homicide, 10 years rigorous imprisonment for robbery, 1-year simple imprisonment for bodily injury, his entire sentence is absorbed by 25 years rigorous imprisonment and the total sentence would equal to 25 years rigorous imprisonment.

Rule of absorption has a legal backup. For instance, the Criminal Code of the Republic of Armenia states that when assessing punishment for multiple crimes, the court determines the final punishment by absorption of the less severe punishment by a more severe punishment.[167] Similarly, the Swiss Criminal Code under Article 49 (1) provides that "if the offender, by committing one or more offences, has fulfilled the requirements for two or more penalties of the same form, the court shall the sentence for the most serious offence."[168]

This method of sentencing concurrent crimes is prescribed under Article184 (1) (a) first paragraph of the FDRE Criminal Code. And it reads as:

184.-agravating of penalty in case of concurrent crimes

> *1(a).- "where capital punishment or life imprisonment is determined for one of the concurrent Crimes punished with deprivation of life or liberty or where the maximum term imprisonment provided under the provision of the general part (Art. 106 and 108) is imposed for one of the concurrent crimes punishable with imprisonment of the same kind, this penalty shall, subject to the provision of sub-Article 1(c) and (e) of this article override any other penalty that would have been imposed on the other concurrent."*

Hence, this Principle of absorption is a form of sentencing imposed against an accused who has been convicted of two or more crimes, where one the offence committed entails capital punishment or life imprisonment or the maximum term of imprisonment provided under the general part of the Criminal Code. The rationale behind this approach is the maximum penalties imposed against the accused believed to have absorbed the penalties of other crimes. It's a futile business to discuss other penalties after punishing the capital one. In other word "…the sentence

[167] The Criminal Code of the Republic of Armenia, no. ZR-528, on Apr. 18, 2003, Art. 66 (1)
[168] The Criminal Code of Swiss, no. SR/RS 311, 1 Mar. 2018, Art. 49 (1)

imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment."[169]

To make an illustration, if the court imposes 25 years rigorous imprisonment for homicide, 10 years rigorous imprisonment for rape, 6 years rigorous imprisonment for grave willful injury, the first 25 years rigorous imprisonment, which is the maximum penalty in the general part of the Criminal Code,[170] will absorb all the penalties. Therefore, the accused shall serve only 25 years rigorous imprisonment.

The main relevant issue raised in relation to rule of absorption is the imposition of final sentence of imprisonment below the maximum penalty provided in the general part of the Criminal Code has been passed for the most serious crime due to mitigating circumstance. In such case the Criminal Code creates conducive environment to aggravate the sentence to the extent of the maximum penalty laid down in the general part of the Criminal Code.[171] By doing so, the court shall aggravate the sentence on account of the other concurrent crimes in accordance with the rule of cumulation.[172] For instance, in the above case the court passes 21 years rigorous imprisonment against the accused for the crime of homicide, the penalty he is supposed to serve will be aggravated to the maximum provided in the general part of the Criminal Code, which is 25 years rigorous imprisonment.

The circumstance where principle of absorption is operative stated under Article 187 (1) second paragraph and Article 187 (2) (b) of the FDRE Criminal Code, in a situation, where concurrent crimes are committed negligently. At this time, the sentence is calculated based on Article 22 (1) (b) of the Revised Sentencing Manual, where the court first determines the maximum penalties among them, and then, the penalty is aggravated by two scales for each offence. For instance, if an accused kills one person and injures the other caused by negligence, first the court determines the penalty of negligent homicide, and then it aggravates the penalty by two scales for the other bodily injury.

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[169] Erin E. Goffette, 'sovereignty in sentencing: concurrent and consecutive sentencing of a defendant subject to simultaneous state and Federal jurisdiction', *Valparaiso university law review, ,2003, vol.37, no.3* , pp1035-1101, p1047

[170] The FDRE Criminal Code, Art. 108

[171] See the FDRE Criminal Code Art. 106 and 108

[172] The FDRE Criminal Code Art. 184 (1) (a) second paragraph

2.6.3 Consecutive Sentencing

Consecutive sentencing is one of the sentencing methods for concurrent offences. It refers to "sentence that distinguish between more than one crime and assign punishment for each. They are then served one after the other until all have been served."[173] As the name implies, a consecutive sentencing requires an accused to serve two or more sentences back to back. When sentences run consecutively, the accused have to finish serving the sentence for one offence before they start serving the sentence for any other offence. Consecutive sentencing, happens when a judge orders a criminal with offences committed in different scenarios to serve prison time one after the other instead of at the same time.[174]

To make an illustration, for example, if the court imposes 25 imprisonments for homicide, 10 years imprisonment for rape, 6 years imprisonment for grave willful injury, the total sentence would be 41 years. To add more, if a convicted person was sentenced to two consecutive 10 years imprisonment the total sentence would be 20 years. In consecutive sentencing, the total sentence period is the sum of the duration of all sentences.

Consecutive sentencing is served one after the other. The total length of the sentence to be served will be longer when it compares with other sentencing methods of concurrent crimes, i.e. principle of totality and rule of absorption if the sentence calculated on the basis of consecutive sentencing rule or if the sentence runs consecutively.

In most cases such method of sentencing concurrent crime is applied for grave concurrent crimes. For instance, in Canada individuals who are convicted of committing multiple murders serve their penalty consecutively.[175] In the state of New Jersey, one state of U.S any sentence imposed for the Kidnapping conviction shall be served consecutively to any sentence imposed for homicide, a sentence imposed for possessing a firearm or other weapon during the commission of certain enumerated drug offence shall run consecutively to that imposed the

[173] University of San Francisco center for law and global justice, U.S sentencing practice in a global context, San Francisco, may 2012, p11

[174] U.S center for prison reform, the unsystematic issuing of consecutive sentence in America: A report for the Ohio criminal justice recodification committee, Washington, June 2015, p3

[175] The Canadian Resource Center for Victims of Crime, consecutive sentencing for multiple murderers in Canada Ottawa, March, 2012, p2 [the Canadian multiple murders act of 2011 enacted in December 2011. The act ensures individuals who are convicted of commuting multiple murders serve their penalty consecutively without parole]

undelying drug offence.[176] Such approach for sentencing of concurrent crime focused on goals of deterrence and retribution punishment, neglect the possibility of rehabilitation, where the international human right law places social rehabilitation and reformation as the aim of any penitentiary system.[177] On the basis of consecutive sentencing method a 61 years old man in Texas was sentenced for to 100 years of prison.[178] Similarly, in Ohio, a 15 years old student was sentenced 112 years of imprisonment.[179] This is beyond their life time. This method of sentencing creates unintended consequence, it has a diminishing return to the value of sentencing a criminal to jail for long times for justice, for correction, and for rehabilitation. [180]

Under the Ethiopian criminal law, the legislator explicitly determines what type of sentencing methods are used in sentencing of concurrent crime, i.e. principle of totality and rule of absorption. Consecutive sentencing of concurrent crimes is not a recognized approach in the Ethiopian criminal justice system.

[176] New Jersey Superior Court Central Appellate Research Center, Oral Argument Sentencing Guideline, Trenton, Aug. 2005, p26
[177] *Supra note*, 174 at p4
[178] *Supra note*, 174 at p5
[179] *Supra note*, 174 at p5
[180] *Supra note*, 174 at p5

Chapter Three: Analysis, Discussion and Interpretation of Fact Findings

3.1 Facts of the Case

Prosecution and sentencing are the most important components or stages of any criminal justice system. Utmost care must be taken in relation to charging and sentencing of criminals otherwise wrong framing of charge and improper sentencing of criminals may lead to miscarriage of justice.

Since the concept of concurrent crime is quite controversial lots of discrepancies are being observed within the same courts and prosecutor offices, and among different hierarchal prosecutor office and courts on the methods of charging and sentencing of such crime.[181] In addition to that, contradictory understandings are being reflected among public prosecutors and judges at this stage.[182] Under this chapter, the Researcher tries to reflect the practical application of laws dealing with concurrent crimes in the process of charging and sentencing of criminals. Moreover, efforts also have been made to identify the practical discrepancies observed among the concerned practitioners and the rationale behind it.

3.1.2 Critique on Preparation of Charge

Before framing of any charge against the suspect, the prosecutor is expected to analyze the type of charges to be lodged together with the way that the offence should be prosecuted. In line with this in the case of concurrent offences the prosecutor is expected to understand each type of concurrent crimes and the method of instituting charge for such crime. For the purpose of clarification and convenient discussion the Researcher categorizes the practical problems observed in relation to framing of charge for concurrent crimes in to two. This are:

1) critique on framing of charge
2) critique on consolidation of charges

[181] An interview with Tizazu Getachew, head of Northern Showa Zone High Court criminal Bench, *on the issue of concurrent crimes,* 29 May, 2020
[182] *Ibid*

3.1.2.1 Critique on Framing of Charge

In the case of concurrent crimes, separate counts of charges are prepared for each offence the accused is suspected within a single indictment. Each offence so charged should be described separately in a separate count of charge based on Article 116 (1) Ethiopian Criminal Procedure Code. This part is categorized in to four based on the types of concurrence.

A. Critique on Framing of Charge in Case of Material Concurrence

In practice, different from the method of prosecuting concurrent crimes, there are occasions where by, public prosecutors preside in the justice department frames one count of charge against the accused instead of preparing multiple count charges for each offence in the case of material concurrence.[183] This leads to lenient punishment which is disproportional to the penalties attached for concurrent offences. For instance, Ato Gebreselassie Abebe has been charged for committing a crime of sexual outrage against two female infants consecutively, Victim A and Victim B who are aged between 5-7 and 6-8 years respectively on the 17th day of February 2011 E.C in Kebele 08 of the City of Debrebrhan only in a single count in violation of Article 627 (1) of the FDRE Criminal Code.[184] In this particular case the crime committed by the perpetrator pertains to a material concurrent one as has been stipulated under Article 60 (a) of the FDRE Criminal Code which is a crime of sexual outrage committed against two infants in consecutive manner. Hence, in such case the public prosecutor should have framed two counts of charges instead of a single count one. Because of this wrong framing of charge, the convict has been sentenced to only 10 years of rigorous imprisonment[185] as though if he committed a single criminal act.

In another case, Ato Yergu Teshome has been charged with the commission of a crime of an aggravated theft against two mobile Merchants, by breaking their shops stoles five mobile belongs to Merchant A and three mobile belongs to Merchant B consecutively on the 19th day of November 2012 E.C in Begerba Kebele of Basona Woreda only in a single count making violation of Article 669 (3) (b) of the FDRE Criminal Code.[186] In this particular case the crime committed by the perpetrator is a material concurrent one, that is, a crime of an aggravated theft committed against two mobile merchants in a consecutive manner. Accordingly, the public prosecutor should have framed two counts of charges instead of one.

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[183] *Infra note* 196

[184] *Public prosecutor v Gebereselassie Abebe*, Debreberhan City Woreda Public Prosecutor Office Criminal Division, Feb. 25, 2011 E.C, prosecution file no 292/011[unpublished]

[185] *Public prosecutor v Gebereselassie Abebe,* Debrebrhan City Woerda Court Criminal Bench, March 09 ,2011 E.C, criminal case no. 0212840 [unpublished]

[186] *Public prosecutor v Yergu Teshome*, Basona Woreda Public Prosecutor Office Criminal Division, Dec. 14, 2012 E.C, prosecution file no 63/2012[unpublished]

In the above cases, the charges of the public prosecutors are directly contradicted with the material concurrence nature of the crime as it expressly demands the framing of two counts and disproportionate to the degree of their guiltiness or the gravity of the crime.

B. Critique on Framing of Charge in Case of Notional Concurrence

In the case of notional concurrence, multiple counts of charges are framed taking the number of offences committed by a single act in to account. In conflict with this, there are occasions where by, public prosecutors frame one count of charge while more than one distinct legal provision are violated by means of a single act. For instance, Ato Tadesse Workshet threw a stone in front a Car, broke the car window and slightly injured the driver head, has been charged with the commission of the crime of common willful injury making violation of Article 556 (2) (a) of the FDRE Criminal Code.[187]

In this particular case, two distinct legal provisions are violated namely crime of common willful injury and property damage making violation of Article 556 (2) (a) and Article 689 of the FDRE Criminal Code respectively. Accordingly, the public prosecutor should have framed two counts of charges for the crime of common willful injury and property damage.

C. Critique on Framing of Charge in Case of Victim Concurrence

In the case of victim concurrence, multiple counts of charges should be framed taking the number of victims in to account, that is, one count for each one of the victims. On the contrary to this, there are many occasions in which public prosecutors frame only one count of charge while the numbers of victims are more than one. For instance, Ato Yetages Tasew has been charged with the simultaneous commission of the crime of theft of two sheep belonging to Victim A and a sheep belonging to Victim B on the 4th day of November 2010 E.C in Wekefele Keble of Kewet Woreda only in a single count making violation of Article 665 (1) of the FDRE Criminal Code.[188] In this particular case, two victims of the crime have been found, i.e. the act of this perpetrator affects the property right of two individuals. Hence, the act of the perpetrator amounts to victim concurrence which is prescribed under Article 60 (c) of the FDRE Criminal Code and in such case the public prosecutor should have framed two counts of charge taking the number of victims in to account instead of one. Although he commits concurrent crime (victim concurrent crime), this perpetrator is punished lesser penalty as he has been charged committing a single crime of theft. Hence, wrong framing of concurrent crimes may lead to improper punishment. Such types of wrong framing of charge for concurrent crimes occurred due to lack of clear understanding of the types of concurrent crimes and the methods of prosecuting such offences. Unlike other contemporary issues like human trafficking, remand, bail right, etc.

[187] *Public prosecutor v Tadesse Workshet,* Hageremaryam Woreda Public Prosecutor Office Criminal Division, Feb. 11, 2011 E.C , prosecution file no. 46/11 [unpublished]

[188] *Public prosecutor v Yetages Tasew,* Kewet Woreda Public Prosecutor Office Criminal Division, March 21, 2010 E.C , prosecution file no. 74/10 [unpublished]

Concurrent crimes did not get due attention for training.[189] Although the issue of concurrent crimes occurred on daily basses, any training or forum of discussion are not prepared for legal practitioners on this issue separately.[190]

In another case, Ato Abdu Ahmed who is a car driver, while driving he got an accident and causes bodily injury to seven passengers, has been charged for committing a crime bodily injury caused by negligence against seven passengers on 19th day of June 2010 E.C in Washa Negat Kebele of Antsokeya Gemza Woreda only in a single count making violation of Article 559 (2) of the FDRE Criminal Code.[191] On this particular case, seven victims of the crime have been found and the commission of the crime is a victim concurrent one. Taking the number of victims in to account, the prosecutor is expected to prepare seven counts of charge against the accused instead of one if he aware of the concept of victim concurrence and the methods of prosecuting such offences. Because of lack of awareness on preparation of charge for victim concurrent crimes, the accused person entails lesser punishment which is in equivalent with the seriousness of the offence.

In the above cases, although the perpetrators commit victim concurrent crimes, the prosecutors wrong framing of charge makes the commission of the crime a single crime incident before a court of law. Hence, the prosecutors should have framed multiple counts of charge against all the victims. As already stated above one of the distinctive features of concurrent crimes are, it entails grave punishment. "Unless it has been framed in a separate count of charge, the court considers the criminal act as a single crime incident and punished it as a single crime, as a result the penalty imposed on the accused become low or simple one, which is disproportionate with the seriousness of the offence."[192]

Finally, the other relevant issue which has not been omitted from mentioning in relation to framing of charge for victim concurrent crimes is the decision of the Federal Cassation Division on criminal case file no. 123046 at Feb. 29, 2009 E.C. On this case the public prosecutor prepares eight (8) counts of charge against Ato Adisu Gemechu. The first count describes that the accused has been charged for committing a crime of negligence homicide for causing death of two individuals on a car accident by violating Article 543 (3) of the FDRE Criminal Code.[193] And the next seven (7) counts describe that the accused has been charged for committing a crime of bodily injury caused by negligence against seven passengers in violation of Article 559 (2) of

[189] An interview made with Ato Mola Setotaw, head of Kewet Woreda Public Prosecutor's Office, *on the methods of prosecuting concurrent crimes,* Apr. 14, 2020
[190] *Ibid*
[191] Public prosecutor v Abdu Ahmed, Antsokeya Gemza Woreda Public Prosecutor Office Criminal Division, 04 Dec. 2011 E.C, prosecution file no. 97/2011[unpublished]
[192] *Infra note* 196
[193] *Adisu Gemechu v Amhara National Regional State Public Prosecutor* Federal Supreme Court Cassation Division, 2009 E.C file no. 123046, in the Federal Supreme Court Cassation Decision, volume 21, Federal Supreme Court, Adiss Abeba, 2010 E.C, pp345-353

the FDRE Criminal Code.[194] Finally, the Cassation Division decides that the next seven counts of charges are framed wrongly; all the seven counts of charges are considered as a single crime based on unity of guilty and penalty which is provided under Article 61 of the FDRE Criminal Code.[195] Such decision of the Cassation Division doesn't successfully realize the concept of victim concurrence and the method of charging this crime which is prescribed in Article 60 (c) and 116 (1) of the FDRE Criminal Code and the Ethiopian Criminal Procedure Code respectively. Furthermore, it was contrary from its prior decision made on criminal file no. 96078, on volume 16 in the year 2007 E.C which decided multiple counts of charge should be prepared in accordance with the number of victims.

D. Critique on Framing of Charge in Case of Imperfect Concurrence

The other prominent problem raised with regard to framing of charge for concurrent crimes is, prosecution of multiple counts of charge where one legal provision fully covers the criminal act. "Such problem is occurred due to lack of knowledge about imperfect concurrence and absence of critical understanding of each definitional elements of the specific provision of the special part of the Criminal Code"[196] For instance, the Debreberhan Woreda public prosecutor institutes two counts of charges against two co-offenders namely, Ato Bruk Alemshet and Samson Negash.[197] The first count describes that this co-offenders have been charged with the commission of a crime of an aggravated theft as they tries to use force and breaks the Vehicle in order to stole Samsung Galaxy Mobile on 14th day of July 2011 E.C near Markon Night Club in Kebele 03 of the City of Debrebrhan making violation of Article 669 (3) (a) and (b) of the FDRE Criminal Code.[198] And the second count describes that this co-offenders have been charged for committing a crime of property damage for breaking of the vehicles gate on the above stated time and place in violation of Article 690 of the FDRE Criminal Code.[199]

In the above case, if meticulously scrutinizing the provision of Article 669 (3) (b) of the FDRE Criminal Code, one can observe crime of an aggravated theft covers property damage. Article 669 (3) (b) encompasses the second count charge of property damage. Therefore, the second count charge is wrong and unnecessary. Even the court where such charge is lodged, without proper examining of the charge convicted these co-offenders for both counts of charges[200] instead of canceling the second count on the basis of an aggravated theft covers property damage.

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[194] *Ibid*
[195] *Ibid*
[196] An interview with Zemedkun Girma, Public Prosecutor of the Office Amhara National Regional State General Attorney Debrebrhan Permanent Cluster Office, *on the issue of concurrent crimes*, 9 June, 2020
[197] *Public prosecutor v Bruk Alemshet et al*., Debreberhan City Woreda Public Prosecutor Office Criminal Division, 15 Aug. 2011 E.C prosecution file no. 76/012 [unpublished]
[198] *Ibid*
[199] *Ibid*
[200] *Public prosecutor v Bruk Alemshet et al*., Debreberhan City Woreda Court Criminal Bench, 04 Oct. 2012 E.C criminal case no. 0213024 [unpublished]

From this problem we can observe that legal practitioners' lacks clear understanding of the concept of imperfect concurrence.

In another case, the public prosecutor of Shekora Woreda prepares two counts of charge against Ato Gezahegn Demeke.[201] The first count describes that the accused has been charged for committing a crime of grave willful injury against Victim A for causing grave willful injury on his head by a Stone on 26th day of July 2010 E.C in Bechas Kebele of Shenkora Woreda in violation of Article 555 (b) of the FDRE Criminal Code.[202] And the second count describes that the accused has been charged for committing a crime of common willful injury against Victim A for causing common willful injury on his backbone by a Stone on the above stated time and place in violation of Article 556 (2) (a) of the FDRE Criminal Code.[203]In this particular case, one can understand grave willful injury covers the crime of common willful injury. However the court where such charge is lodged in its judgment stated that since the grave willful injury fully covers the common willful injury, the accused is convicted for the first count charge of grave willful injury only.[204] Since grave willful injury covers the common willful injury, the prosecutor should have left the second count and had to frame a single charge of grave willful injury only. "Such problem of framing unnecessary or wrong second count of charge occurred because of lack of awareness and basic training about the concept of concurrent crimes."[205]

3.1.2.2 Critique on Consolidation of Charge

The other problematic area with regard to prosecution of concurrent offence is the issue of consolidation of charges. As already stated above unlike other jurisdictions in the Ethiopian criminal justice system there is no any legal provision that allow the court to order consolidation of separate charges lodged against the accused. In practice legal practitioners raise verity reasons for consolidation of charges.

In the Ethiopian criminal justice system there is no any legal provision that allows mandatory joinders of separate charges lodged against the accused together with in what condition and in what stage of the criminal process have been joined.[206] Particularly, the problem of consolidation of charge become bad to worse when the question of consolidation arises from different local jurisdiction or from different tire of courts or from different regional courts.[207] And the other big quest is who initiate the case? In what way can brought the case? And which court has the power

[201] *Public prosecutor v Gezaheng Demeke,* Shenkora Woreda Public Prosecutor Office Criminal Division, 25 Sep. 2011 E.C prosecution file no. 21/11 [unpublished]
[202] *Ibid*
[203] *Ibid*
[204] *Public prosecutor v Gezaheng Demeke,* Shenkora Woreda Court Criminal Bench, 05 Nov. 2011 E.C criminal case no. 0204761 [unpublished]
[205] An interview with Bantiwalu Assamenew, public prosecutor of Mingar Woreda Public Prosecutor Office Criminal Division, *on problems of prosecution of concurrent offences*, 15 May, 2020 E.C
[206] Focused group discussion with Public Prosecutor of the Office Amhara National Regional State General Attorney Debrebrhan Permanent Cluster Office, *on the issue of concurrent offences*, 9 Apr. 2020
[207] *Ibid*

to entertain the case? Hence, it needs comprehensive legal provision that govern the above stated problems or legal lacuna.[208]

Although, there are no rules which deal with mandatory consolidation of charges, the legal practitioners recommend that it is a viable solution for the court to order consolidation of separate charges which were pressed against the accused in **different trials of the same court** in to a single trial of the court for the purpose of rendering a speedy trial, for the effective utilization of the judicial economy, in order to make concurrent sentencing, in order to avoid the repetitive retrospective concurrence claims of prisoners stated under Article 186 of the FDRE Criminal Code.[209] However, in other jurisdictions, there are explicit legal provisions which allow courts to join two or more separate charges together when the above mentioned pressing of separate charges in different trial happens. Accordingly, in Western Australia, for instance, two or more separate prosecution notices or indictments against one accused be tried together if (a) the prosecutor consents, (b) the courts has jurisdiction to deal with all of the charges , and (c) the court is satisfied that it is in the interest of justice to do so.[210] In India too, where the accused person by application in writing so desire and the court is of opinion that such person is not likely to be prejudiced thereby, the court may try together all or any number of the charge framed against such person.[211]

In practice, courts without stating any reason or justification simply orders consolidation of separate pending cases which were lodged against the accused in different trial after conviction. For instance, for the purpose of rendering concurrent sentence the Northern Showa Zone High Court Criminal Bench on file no. 0241019 orders consolidation of pending criminal file no. 0241012 where the co-offenders namely Abera (Baryaw) Tesfaye and Bere Tadesse were found guilty of two counts of an aggravated robbery.[212] Similarly this Court also orders consolidation under the same situation stated above on file no.0243589[213] and 0237528.[214]

The other contentious issue arose among legal practitioners is, the issue of consolidation of pending separate charges which were lodged against the accused at **different tiers of courts** (that means separate charge lodged at trial and appellate court). On this regard two contradictory views are reflected by legal practitioners. In one hand, they argued that in such case the court

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[208] *Ibid*

[209] *Infra note 242 and 248* [in all interviews I have made with public prosecutors and judges working in different level of Courts and Public Prosecutor Office agreed on the court order of consolidation of charges due to the above stated justifications]

[210] The Criminal Procedure Act of Western Australia, Act no. 071/2004, 08 Dec. 2004, Art 134 (1)

[211] The Criminal Procedure Code of India, Act no. 2, 25th January, 1974, Art 218 [herein after the Criminal Procedure Code of India]

[212] *Public prosecutor v Abera (Baryaw) Tesfaye et al.,* Northern Showa Zone High Court Criminal Bench, 03 Jun. 2010 E.C criminal case no. 0241012 [unpublished]

[213] See *Public prosecutor v Bere Tadesse et al.,* Northern Showa Zone High Court Criminal Bench, 24 Feb. 2012 E.C criminal case no. 0243589 [unpublished]

[214] See *Public prosecutor v Mamuye Shefera et al.,* Northern Showa Zone High Court Criminal Bench, 14 Apr. 2008 E.C criminal case no. 0237528 [unpublished]

should not allow consolidation of charges, it should be entertained separately because it affects the constitutional right of appeal.[215] On the other hand, they argued in order to give effective and efficient judgment, in order to avoid unnecessary appearance of the accused and witnesses in any case in two or more times at different trial, the court should allow consolidation of pending separate charges which were lodged against the accused in trial and appellate court, to be entertained in the appellate court.[216] However, certain promising elements are made in the FDRE Draft Criminal Procedure Code to solve this issue. It provides that the appellate court may decide cases which were lodged against the accused partly in the trial and appellate court to be tried together in the appellate court.[217]

Parallel to this because of the absence of any governing rule on the issue of consolidation of charges the question of consolidation of separate pending charges which were lodged against the accused across **different local jurisdiction** still remains controversial. On this regard legal practitioners argued that such issue of consolidation is likely rise some question of law unusual difficulty, the application should be filed to the next higher court under the name of "change of venue" stated under Article 106 (b) of the Ethiopian Criminal Procedure Code.[218] And this court shall have jurisdiction to entertain the issue of consolidation and decides the convenient local jurisdiction where all charges lodged against the accused can be entertained together.[219] Similarly, the FDRE Draft Criminal Procedure Code gives the power for the next appellate court to order the issue of consolidation of charges which were lodged against the accused in different local jurisdiction to be entertained together in any one of the court in which the charges were lodged at the request of the public prosecutor or the accused person.[220] However, in other jurisdictions there are explicit governing rules as to joinder of charges in such type of cases. For instance, in Norway prosecution against the same person for more than one criminal act across different judicial district can be consolidated in a single case without substantial delay or

[215] A focused group discussion with judges of Amhara National Regional State Supreme Court Debrebrhan Permanent Cluster Chilot, *on the issue of consolidation of charges*, 10 Apr. 2020, an interview with Ato Endeshaw Mamo, judges of Eferta Ena Gedem Woreda Court, *on the issue of consolidation of charges*, 15 Apr, 2020, an interview with Ato Girma Negash judge of Northern Showa Zone High Court, *on the issue of consolidation of charges*, 13 Apr. 2020,

[216] An interview with Tedros Getu, judge of Angolela Ena Tara Woreda Court, on the issue of consolidation of charges, 13 May, 2020, An interview with Admasu markos , judge of Showarobit City Woreda Court, on the issue of consolidation of charges, 16 Apr, 2020,

[217] The FDRE Draft Criminal Procedure Code, Art. 13 (2)

[218] An interview with Zeru Desalgn, head of Tarmaber Woreda Court, on issue of consolidation of charges, may 11, 2020, he stated that sometimes in the case of crime of thefts the accused claims to join or consolidate another pending crime case in other Worda Court particularly in Showarobit City Woreda Court and Debrebrhan City Woreda court. Since there is no any governing which gives jurisdiction or power to order mandatory joinder of charges lodged against the accused across different local jurisdiction, we advised them to file their claim to the High Court under the name of change of venue.

[219] *Ibid*

[220] The FDRE Draft Criminal Procedure Code, Art. 13 (1)

difficulty.[221] And the application for consolidation can be brought in any judicial district in which any one of the said acts have been prosecuted.[222]

In practice, courts reject the request of consolidation of separate charges which were lodged against the accused across different local jurisdiction on the grounds that there is no law to allow this. For instance, the Tarmaber Woreda court, on the basis of the above-mentioned ground rejects the request of Ato Fetene Gizaw which applies for an order that another pending case of the crime of theft which was lodged against him in Showarobit City Woreda court be consolidated.[223]

The other dominant problem in relation to prosecution of concurrent offence is the question of how many counts of charge have been framed against the accused in a single indictment and in what circumstances or conditions of trial of the accused under multiple counts of charge would have prejudicial effect on his or her defense. Under the Ethiopian criminal justice system there is no any legal rule which govern how many offences could have been joined or framed in a single indictment. The prosecutor can charge an accused for several offences. Furthermore, there is no any guiding rule with regard to the circumstances under which trial of the accused on multiple counts of charge would be embarrassed him or her.

In practice, if the prosecutor believes that there is sufficient evidence for prosecuting the accused; all concurrent offences are framed in a single indictment without any limit. Because there is no rule that limits the prosecutor from prosecuting several counts of charge against the accused. Starting from two (2)[224] up to twenty-three (23)[225], even forty (40)[226] counts of charges are prepared in a single indictment or sheet which is difficult for manageable and smooth handling of the case. This problem is occurred due to the absence of prosecution guideline. If prosecution guideline is prepared such and other problems raised in relation to prosecution can be solved.[227] In other jurisdiction there are certain conditions where by, joinders of offences are allowed. For instance, in India when a person is accused of more offences of the same kind committed within

[221] The Criminal Procedure Act of Norway, No. 84, 21 June 2013, section 13 [hereafter the Norway Criminal Procedure Act]
[222] The Norway Criminal Procedure Act, section 14
[223] *Public prosecutor v Fetene Gizaw*, Taremaber Woreda Court Criminal Bench, 02 Nov. 2012 E.C, criminal case no. 0200198 [unpublished]
[224] *Public prosecutor v Feredgn Meteke,* Menzegera Meder Woreda Public Prosecutor Office Criminal Division, 01 Aug. 2011 E.C, prosecution file no. 27/2012[unpublished]
[225] *Public prosecutor v Gosheme Adarge*, Northern Showa Zone Public Prosecutor Office Criminal Division, 29 Jun. 2009 E.C, prosecution file no. 210/2009[unpublished] [the accused has been charged with the commission of the crime of usury against 23 (twenty-three) victims making violation of Article 712 (1) (a)]
[226]*Public prosecutor v Teketaye (Mola) Ababu*, Northern Showa Zone Public Prosecutor Office Criminal Division, 29 Jun. 2009 E.C, prosecution file no. 210/2009 [unpublished] [the accused has been charged for a crime of an aggravated homicide and an attempt of an aggravated homicide against forty (40) victims making violation of Article 539 (1) (a) and 27 (1) and 539 (1) (a) of the FDRE Criminal Code and the suspect committed the crime by throwing Bombs at a crowd party
[227] An interview with Eyob yesmashowa, Public Prosecutor of Ensaro Woreda Public Prosecutor Office, on the issue of consolidation of charges, 20 May, 2020

the space of twelve months from the first to the last of such offences may be charged together.[228] And any number of them not exceeds three.[229] In short, three offences of the same kind within a year may be charged together. Similarly, the state of Ireland adopts Prosecution Guidelines with the aim of setting out in general terms principles to guide the initiation and conduct of prosecution.[230]

On the other hand, absence of rule as to the circumstances under which trial of the accused on multiple counts of charge would have prejudice effect on his or her defense make susceptible to arbitrary decision.[231] This affects the application of consistent and predictable decision. Furthermore, in practice courts order multiple charges to be tried separately by stating different reason which is contrary to the spirit of the law enshrined under Article 116 (2) of the Ethiopian Criminal Procedure Code. For instance, the Amhara National Regional State Supreme Court Debrebrhan Permanent Cluster Chilot out of seventeen count of charge, it orders eleven counts of charges prepared for committing an aggravated homicide to be tried separately in Northern Showa Zone High Court.[232] On this file the court states two rational in order to separate joined charges lodged against the accused. These are difficulty of the case for court management and prejudice of constitutional right of appeal for the accused which is against the spirit of article 116 (2) of Ethiopian Criminal Procedure Code.[233] In most cases the court orders multiple charges to be tried separately whenever it affects the right to appeal and creates difficulty for court management.[234] Therefore, the above mentioned instance generally indicates the existence of legal lacuna on issue of consolidation of charges.

3.1.3 Critique on Sentencing of Concurrent Crimes

As already stated above, in the administration of criminal justice system sentencing is the most important stage in the application of law. It is a final step a judge takes against a defendant who has been found guilty of the crime. Sentencing of concurrent crimes has been a problematic area in the administration of criminal justice. Furthermore, it is a disputable area among legal practitioners and contradictory views are raised in the understanding of laws dealing with sentencing of concurrent crimes.[235] Thus, it needs a critical understanding of laws dealing with the area of sentencing of concurrent crimes together with the goal and purpose of the criminal code provided in the preamble and Article 1 of the FDRE Criminal Code in general and principle

[228] The Criminal Procedure Code of India, Art. 219
[229] *Ibid*
[230] The 4th edition Prosecution Guidelines for Prosecutors of Ireland, Director of Public Prosecutions, Smithfield 90 North King Street, Oct. 2016
[231] An interview with Mahtem Seyfe, judges of Amhara National Regional State Supreme Court Debrebrhan Permanent Cluster Chilot, *on the issue of consolidation of charges*, 26 May, 2020
[232] *Public prosecutor v Hassen Abedele et al.,* Amhara National Regional State Supreme Court Debrebrhan Permanent Cluster Chilot , 29 Jun. 2011 E.C criminal case no. 02-19681[unpublished]
[233] *Ibid*
[234] *Supra note 231*
[235] An interview with Edalkachew Worku, head of the Northern Showa Zone Public Prosecutor Office Criminal Division, *on the issue of concurrent crimes*, 13 Apr. 2020

of criminal punishment and the special provisions defining offences and their punishment in particular.[236]

In practice, based on the type of the case with which the accused found guilty, almost all tiers of courts applies principle of totality and rule of absorption approaches for sentencing of concurrent offences and sometimes some court orders on accused who are serving their penalty leads the application consecutive sentence which is not a recognized approach for calculation of concurrent crimes under the Ethiopian criminal justice system.[237] According to personal observation of cases and interviews with public prosecutors and judges, there are occasion where by, courts sentences criminals who have been found guilty of more than one crime without strictly adhere laws which deal with sentencing of concurrent crimes. This part is categorized in to three based on the approaches used for sentencing of concurrent offences.

A. Critique on Sentencing of Concurrent Crimes on the Basis of the Principle of Totality

For the purpose of sentencing of concurrent crimes on the basis of the principle of totality, all the offences which the accused has been convicted of are taken in to consideration and all the penalties must be added. In conflict with this, in practice, courts calculate the sentence of one selected crime notwithstanding that the accused has been found guilty of more than one crime. For instance, the Shenkora Woreda Court sentences Ato Aschenaki Bizuneh to 16 years and 6 months of rigorous imprisonment, who have been convicted of 6 (six) counts of the crime of Homosexual act against six minors making violation of Article 631 (1) (b) of the FDRE Criminal Code.[238] In this case although the accused has been found guilty of 6 (six) counts of the crime of homosexual act committed against six minors, the Court imposed sentence only for the one count making disregard of the other 5 (five) counts of the crime of homosexual act committed against minors.[239] As a result of this, it failed to make any distinction on the sentencing method of a single crime and concurrent one and it passed unreasonable and disproportionate punishment against the accused which doesn't fit the seriousness of the offence. On this particular case, the Court should have calculated and imposed the sentence on the basis of the principle of totality, that is, first the Court shall determine the penalties of all counts, and then all the penalties shall be added not exceeding the maximum statutory limit.

[236] See the FDRE Criminal Code preamble paragraph 6 and 7 and Article 1 and 88

[237] My observation on court files of different Worda courts. i.e. Debrebrhan City Woreda Court, Basona Woreda Court, Showarobit Woreda Court, Kewt Woreda Court, Tarmaber Woreda Court, Keyet Woreda Court, Mingar Shenkora Woreda Court, Efertaena Gidme Woreda Court, Ensaro Woreda Court, Angolela Ena Tara Woreda Court, Sela Dengaye Woreda Court. My observation on court files of Northern Showa Zone High Court and Amhara National Regional State Supreme Court Deberebrhan Permanent Cluster Chilot at different times.

[238] *Public prosecutor v Aschenaki Bizuneh,* Shenkora Woreda Court Criminal Bench, 22 Dec. 2011 E.C, criminal case no. 0204046 [unpublished]

[239] *Ibid*

In another case, the Monthkeya Geberel Woreda Court sentences Ato Zemach Teklehaymanot to 5 (five) years rigorous imprisonment, who have been convicted of 3 (three) counts of the crime of an aggravated theft making violation of Article 669 (3) (b) of the FDRE Criminal Code.[240] In this particular case, despite the fact that, the accused has been found guilty of 3 (three) counts of the crime of an aggravated theft; the court imposed sentence for the one count only[241], as though if he committed a single crime of an aggravated theft making disregard of the other two counts during sentencing. Accordingly, the Court should have calculated and imposed the sentence on the basis of the principle of totality, that is, all the penalties of the three counts shall be added not exceeding the maximum statutory limit.

Therefore, courts had to calculate the sentence on the basis of the principle of totality whenever the accused has been found guilty of more than one crime, where any one of the crime has been committed not entails the maximum statutory term of imprisonment stated in the general part of the FDRE Criminal Code instead of imposing the sentence for the one selected crime only.

B. Critique on Sentencing of Concurrent Crimes on the Basis of Rule of Absorption

The main disputable issue raised in relation to rule of absorption is the application of aggravation rule which is provided in Article 184 (1) (a) second paragraph of the FDRE Criminal Code, which occurred because of the imposition of final sentence of imprisonment below the maximum penalty provided in the general part of the criminal code has been passed for the most serious crime due to mitigating circumstance. On this regard two antagonist views are reflected.

In one hand, legal practitioners argued that Article 184 (1) (a) second paragraph describes the conditions to aggravate the sentence passed against the accused to the extent of the maximum penalty laid down in the general part of the Criminal Code on accounting of other concurrent crimes that the accused commits whenever the imposition of final penalty is bellows the maximum penalty stated in the general part of the Criminal Code because of mitigation circumstance.[242] It is a mandatory aggravation rule that leads the court to aggravate the final sentence.[243] They substantiate lots of rationales to support their argument or position. First, the rationale of applying absorption rule for sentencing of concurrent offences is the maximum penalties imposed against the accused believe to have absorbed the penalties of other crimes with which the accused convicted of.[244] Accordingly, to achieve the rationales of absorption rule the court shall aggravate the sentence whenever the imposition of the final sentence of imprisonment

[240] *Public prosecutor v Zemach Teklehymanot,* Monthkeya Geberel Woreda court criminal bench, 18 Mar. 2011 E.C, criminal case no. 0220417 [unpublished]
[241] *Ibid*
[242] *Supra note 206*,Focused group discussion with public prosecutors of Northern Showa Zone public prosecutor office, *on the issue of concurrent offences*, 13 Apr. 2020
[243] *Ibid*
[244] *Ibid*

bellows the highest statutory maximum.[245] Second, unless we apply rule aggravation whenever the final penalty imposed against the accused bellows the highest statutory maximum, it creates the imposition of similar punishment between a convicted person of a single grave crime and multiple one which is against the principle of proportionality, equality and individualization of punishment.[246]A vast majority of public prosecutors shared this position.[247]

On the other hand, other legal practitioners argued that Article 184 (1) (a) second paragraph applied in order to aggravate the initial penalty range up to the maximum penalty prescribed under the general part of the Criminal Code before the imposition of the final sentence.[248] It should not be interpreted in a way that to aggravate the final sentence of imprisonment has been passed for the most serious crime against the accused after considering relevant aggravating and mitigating circumstance.[249] Most judges of Northern Showa Zone high court practiced this position.[250] Such position of understanding Article 184 (1) (a) second paragraph or sentencing of criminals based on this position leads the court to sentence the most serious crime only, which resembles only one serious crime has been committed. [251] It disregards other concurrent crimes that the accused found guilty of which is against the goal and purpose of punishment and the criminal code.[252] While in order to render proportional punishment there are instances where some judges of high court departs from the revised sentencing guideline believing that the guideline do not adequately reflect the circumstance of the offence and the sentence that would be imposed by applying the sentencing guideline will not achieve the goals of punishment.[253]

In practice courts are seen in implementing the second position. For instance, Ato Getenet Serke who has been found guilty of two counts of an aggravated homicide and three counts of an attempt ordinary homicide violating Article 539 (1) (a) and Article 27 (1) and 540 of the FDRE Criminal Code respectively sentenced to 12 (twelve) years of rigorous imprisonment[254] which is disproportionate and far from the seriousness of the offence. Similarly, Ato Shegaw Mogessie who has been found guilty of an aggravated homicide and an attempted aggravated homicide violating Article 539 91) (a) and Article 27 (1) and 539 (1) (a) of the FDRE Criminal Code respectively sentenced to 17 (seventeen) years rigorous imprisonment [255] which is

[245] *Ibid*
[246] *Ibid*
[247] *Supra note, 235*
[248] A focused group discussion with judges of Northern Showa Zone High Court, *on the issue of concurrent offences*, 12 June, 2020
[249] *Ibid*
[250] *Ibid*
[251] *Supra note 181*
[252] *Supra note 181*
[253]*Supra note 181*
[254] *Public prosecutor v Getent Serke et al.,* Northern Showa Zone High Court Criminal Bench, 13 Dec. 2008 E.C criminal case no. 0236951 [unpublished]
[255] *Public prosecutor v Shegaw Mogessie.,* Northern Showa Zone High Court Criminal Bench, 14 June, 2012 E.C criminal case no. 0244336 [unpublished]

disproportionate with the seriousness of the offence or in other word the sentence doesn't fit the crime. This may lead to miscarriage of justice and public anger.[256]

On the other hand, others calculate the sentence using rule of absorption method of sentencing concurrent crime while departing from the Revised Sentencing Guideline based on Article 27 (1) of the Revised Sentencing Manual. For instance, the Northern Showa Zone High Court in its judgment asserted that, "if the penalty is calculated on the basis of rule of absorption, it will not be possible to impose reasonable and proportional punishment equivalent to the seriousness of the offence, it is better to be sentenced by departing from the Revised Sentencing Manual based on Article 27 (1) of the Revised Sentencing Guideline" and simply imposes 20 (twenty) years rigorous imprisonment against Ato Zenebe Agonafer who has been found guilty of 6 (six) counts of an attempted aggravated homicide making violation Article 27 (1) and 539 (1) (a) of the FDRE Criminal Code, [257] which is not an advisable method of sentencing because it may lead to arbitrary decision neither consistent nor predictable. Similarly, Ato Demese Teshale who has found guilty of 3 (three) counts of an aggravated homicide and 2 (two) counts of an attempted aggravated homicide violating Article 539 (1) (a) and 27 (1) and 539 (1) (a) of the FDRE Criminal Code respectively sentenced to life imprisonment on the basis of the above-mentioned justification.[258]

Generally, rule of absorption is used to sentence the most serious concurrent crimes that the accused found guilty. Hence, in order to apply rule of absorption in a meaningful manner to a particular case, it needs comprehensive understanding of the law stated under Article 184 (1) (a) first and second paragraph of the FDRE Criminal Code in line with the rationales of rule of absorption and purpose punishment. On this regard the *raison d'etre* of the FDRE Criminal Code provides rule of absorption enacted in a way that to aggravate the sentence up to the maximum statutory limit whenever the final sentence has been passed for the most serious crime bellows the maximum penalty provided in the general part of the FDRE Criminal Code.[259] Thus, the aggravation rule stated in Article 184 (1) (a) second paragraph shall be applied on the imposition of final sentence instead of using to aggravate the initial penalty range up to the maximum statutory limit. Furthermore, unless we apply rule aggravation whenever the final penalty imposed against the accused bellows the highest statutory maximum, we can't achieve the

[256] An interview with Belachew Kidanu, head of Amhara National Regional State General Attorney Debrebrhan Permanent Cluster Office, *on the issue of sentencing of concurrent crimes*, 9 June, 2020, [he stated that the Amhara Mass Media Agency Police program prepares documentary on the legality of the sentencing of Getnet Sereke who has been sentenced to 12 years rigorous imprisonment for the commission of two counts of an aggravated homicide and three counts of an attempted ordinary homicide in the year 2009 E.C and the documentary video shows the grievances of the community]

[257] *Public prosecutor v Zeneb Agonafer,* Northern Showa Zone High Court Criminal Bench, 20 Feb. 2011 E.C criminal case no. 0242721 [unpublished]

[258] *Public prosecutor v Demse Teshale,* Northern Showa Zone High Court Criminal Bench, 22 Jun. 2012 E.C criminal case no. 0243832 [unpublished]

[259] The FDRE Criminal Code *Raison D'etre, House Of Peoples Representative, Adis Abeba, raison d'etre on Article 184 (1) (a)* first and second paragraph [unpublished]

rationales of punishment and the purpose and goals of the Criminal Code. To add more, the word "…a sentence of imprisonment…" stated in Article 184 (1) (a) second paragraph indicates the imposition of the final sentence. In all the above-mentioned cases the court interpreted or applied rule of aggravation in wrong way which is contradictory to the spirit of the second paragraph of Article 184 (1) (a). Due to this the court makes punishment unreasonable, disproportional, arbitrary, inconsistent and unpredictable. Therefore, the court shall aggravate the sentence to the extent of the maximum penalty laid down in the general part of the criminal code whenever the final sentence of imprisonment has been passed for the most serious crime bellows the maximum statutory limit on account of the other concurrent crimes that the accused convicted of without departing from the Revised Sentencing Guideline.

The other scenario where principle of absorption is operative stated under Article 187 (1) second paragraph and Article 187 (2) (b) of the FDRE Criminal Code, in a situation, where concurrent crimes are committed negligently. At this time, the sentence is calculated based on Article 22 (1) (b) of the revised sentencing manual, by doing this, the court first determines the maximum penalties among them, and then, the penalty is aggravated by two scales for each offence. The rational of this Article is to make distinction on punishment for concurrent crimes committed through intentional act and negligent one and to justify aggravation where the criminals deliberate and calculated disregard for the law or the clear manifestation the criminal's bad character.[260] Contrary to this, courts sentences concurrent crimes committed by negligence on the basis of the principles of totality. For instance, the Northern Showa Zone High Court sentences Ato Getent Amtate who has found guilty of negligence homicide and injury caused by negligence in violation of Art. 543 (3) and 559 (2) of the FDRE Criminal Code respectively to five (5) years rigorous imprisonment by principle of totality or by adding all penalties the accused has been convicted of.[261] On this particular case, since the concurrent crimes are committed by negligence act, the Court had to calculate the sentence based on rule absorption as has been stipulated in Article 187 (2) (b) of the FDRE Criminal Code and Article 22 (1) (b) of the Revised Sentencing Manual. By doing this the court first determines the penalty of negligence homicide, and then, aggravates the penalty by two scales for the crime of injury caused by negligence instead of adding them. Similarly, the Amhara National regional State Supreme Court Debrebrhan Permanent Cluster Chilot on file no. 02-16648 sentences the accused by adding the penalties where the accused found guilty of concurrent crimes by negligence.[262]

[260] See the FDRE Criminal Code Art. 187 (1)

[261] *Public prosecutor v Getent Amtate,* Northern Showa Zone High Court Criminal Bench, 03 Nov. 2008 E.C criminal case no. 0236965 [unpublished]

[262] *Public prosecutor v Getent Amtate.,* Amhara National Regional State Supreme Court Debrebrhan Permanent Cluster Chilot , 25 Jun. 2008 E.C criminal case no. 02-16648 [unpublished]

C. Critique on Sentencing of Concurrent Crimes on the Basis of Consecutive Sentence

The other prominent problem raised in relation to sentencing of concurrent crime is related with some orders of the court that leads to the application of consecutive sentence against the accused which is not recognized approach under the Ethiopian criminal law. Some court orders passed against the accused who are serving their penalty leads the application consecutive sentence which is not a recognized approach for calculation of concurrent crimes under the Ethiopian criminal justice system. For instance, the Tarmaber Woreda Court orders adjournment to entertain the crime of theft which was lodged against Ato Ayele Hailu after serving all his previous 1 year and 8 months simple imprisonment passed against him for the commission of the crime of an aggravated theft. [263] Similarly, the Debrebrhan City Woreda court orders adjournment to entertain the crime of willful injury which was lodged against Getahun Berhane after serving all his previous 3 years rigorous imprisonment passed against him for the commission of the crime of robbery.[264] Such order of the court widely practiced in Mida weramo Woreda court.[265] In both cases the court entertains the case after the accused served their entire pervious penalty. While so doing the court will renders another sentence with which the accused found guilty of. This leads to the application consecutive sentence against the accused because there were probabilities that sentences are served one after the other or it runs consecutively.

[263] *Public prosecutor v Ayele Hailu,* Tarmaber Woreda Court Criminal Court Division, 15 Jun. 2012 E.C, criminal case no. 0204773 [unpublished]

[264] *Public prosecutor v Getahun Berhane,* Debrebrhan City Woreda Court Criminal Court Division, 07 Sep. 2012 E.C, criminal case no. 0212514 [unpublished]

[265] An interview with Ato Alayu Yetbark, head of Mida Weramo Woreda Court, on the issue of sentence of concurrent crimes, 22 May, 2020

Chapter Four: Conclusion and Recommendation

4.1 Conclusion

The criminal law provides rules as to how a certain person entails liability. The nature of the offence with which the criminal suspect has been charged, the number of offences committed etc. determines the liability and penalties of the criminal act. Ethiopia had practiced its own legal system for centuries. However, the concept of concurrent crime is formally introduced in the 1957 Penal Code. The characterization and the methods of sentencing concurrent crimes is not a crystal-clear concept. It gives rise to both theoretical and practical difficulties.

Under the FDRE criminal code, there are three scenarios where concurrent crimes come in to being. These are 1) material concurrence: these types of concurrence exist when the criminal successively commits many criminal acts producing many different or similar crimes. 2) Notional concurrence: these types concurrence exist when one criminal act violates two or more criminal provisions. It deals the simultaneous infringement of distinct legal provisions. 3) Victim concurrence: It deals with a situation where a single criminal act goes contrary to the interest of two or more persons. At the same time there are instances where the legislators take in to account acts which contain some elements of concurrence crime as a single criminal act. The legal scholars dubbed or named it such crime as imperfect concurrence. There are three scenarios where imperfect concurrence comes in to being. The first scenario describes situations where the act is done in infringement of several legal provisions but one legal provision fully covers the criminal acts. The second scenario describes situations where successive or repetition of wrongful acts punished as a single offence. The third scenario describes situation where several criminal acts are done for the execution of the main designed crime.

Concurrent crime has its own methods of prosecuting and sentencing. It was charged in a way that each offence so charged should be described separately in a separate count of charge. Furthermore, there are three widely used approaches to regulate sentencing of concurrent offences namely principle of totality, rule of absorption and consecutive sentence. There are lots of discrepancies observed on the methods of prosecuting and sentencing of concurrent crimes.

Because of lack of clear understanding on the types of concurrent crimes and the methods of prosecuting such offence, public prosecutors in one hand, frames one count of charge against the

accused instead of preparing multiple count charges for each offence despite the fact that the accused commits concurrent crimes. On the other hand, prosecutors framed multiple counts of charge against the accused where one aggravated legal provision fully covers the criminal act. In effect it brings disproportionate and unreasonable punishment which leads to miscarriage of justice and public anger. At the same time the absence of any governing rule or guideline on the issues of consolidation of charge brings arbitrary, inconstant and non- predictable decisions which have a detrimental effect on judicial economy and on the administration of criminal justice system.

Moreover, sentencing of concurrent crime has been a problematic area in the administration of criminal justice. Thus, it needs a critical understanding of laws dealing with the area of sentencing of concurrent crime together with the goal and purpose of the criminal code in general and principles of punishment in particular. Contrary to this, courts calculate the sentence of one selected crime notwithstanding of the accused has been found guilty of more than one crime in one hand. On the other hand, interpreted and applied rule of absorption in wrong way which is contradictory to the spirit of the law. Due to this the court makes punishment unreasonable, disproportional, arbitrary, inconsistent and unpredictable. In addition to that, some court orders passed against the accused who are serving their penalty leads to the application consecutive sentence which is not a recognized approach for calculation of concurrent crimes under the Ethiopian criminal justice system.

4.2 Recommendation

Based on the finding of the study, the researcher recommends the following measures:

- Without any prejudice to the salient and important elements that constitute material concurrence, it is must that the crime be committed successively, however, no definition has been given to the successive commission of a crime and it is, therefore expedient to define it or the legislator body should provide the definition of successive act.
- There is a recognized mechanism of preparing charges for concurrent crimes, that is, each offence so charged shall be set out in a separate paragraph or counts. Hence, public prosecutors shall prepare multiple counts charges for each offence describing separately in a single indictment.
- The FDRE Criminal Code has made incorporation for the infringement of several legal provisions in to a single aggravated criminal provision which fully covers the criminal acts. Therefore, the prosecutors shall frame one count of charge for such type of crimes taking the nature of the offence and the definitional elements of the specific provision of the special part of the Criminal Code in to account.
- In order to bring consistent and predictable practice for preparation of multiple counts of charges, the Federal general Attorney shall prepare prosecution guideline as to the conditions or circumstances to allow joinder of charges.
- In the Ethiopian criminal justice system, there is no any legal provision that allow mandatory joinders of separate charges which were lodged against the accused together with in what condition and in what stage of the criminal process have been joined. Therefore, in order to avoid the existing legal lacuna, the legislator body should provide a governing rule on the question of consolidation of charges arises from different local jurisdiction or from different tire of courts or from different trial courts together with the specific courts that have jurisdiction to entertain the issue of consolidation.
- When the criminal has been found guilty of concurrent crimes, courts shall strictly follow rule of absorption and cumulating rule for imposing sentence against the accused.
- The second paragraph of article 184 (1) (a) of the FDRE Criminal Code shall be applied to aggravate the sentence to the extent of the maximum penalty laid down in the general part of the criminal code on account of the other concurrent crimes that the accused has

been found convicted of whenever the final sentence of imprisonment has been passed for the most serious crime bellows the maximum statutory limit.

- Where the concurrent crimes are committed by negligence, the penalty shall be calculated on the basis of article 187 (2) (b) of the FDRE Criminal Code and article 22 (1) (b) of the Revised Sentencing Manual, that is, the court first determines the maximum penalty among them, and then, the penalty is aggravated by two scales for each offence the accused has been found guilty of.
- Consecutive sentence is not recognized under the Ethiopian criminal law. Hence, Courts should avoid orders that lead to the application of consecutive sentence against the accused.
- Lastly, in order to get a comprehensive understanding of the concept of concurrence crime together with the method of prosecuting and sentencing of such crime, extensive training and awareness should be created for legal practitioners such as public prosecutors and judges.

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