

PROCLAMATION NO.434/2005

THE REVISED PROCLAMATION TO PROVIDE FOR SPECIAL PROCEDURE AND RULES OF EVIDENCE ON ANTI-CORRUPTION

WHEREAS, it has become necessary to amend and regulate the definition of corruption, the procedural and evidential provisions related with the investigation and prosecution of corruption offences in accordance with the penal code;

WHEREAS, it has become necessary to regulate on the right to bail of persons arrested for or accused of corruption offences;

WHEREAS, it has become necessary to amend the provisions on restraining, administering and confiscation of properties of persons accused of corruption offences;

WHEREAS, it has become necessary to amend and revise the provisions of the Anti-Corruption Special Procedure and Rules of Evidence Proclamation in conformity with other laws;

Now, therefore in accordance with article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

Section One

General

1. Short Title

This Proclamation may be cited as the "Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation no.434/2005."

2. Definitions

In this Proclamation:

1. "Corruption offences" means corruption offences provided in the FDRE penal code.
2. "Property acquired by the commission of corruption offence" means any property which the offender owns or possesses directly or indirectly as a result of the commission of the corruption offence, and includes any such property or money which has been donated directly or indirectly by the offender, put under someone's custody or hidden somewhere;
3. "Appropriate Organ" means an organ which is empowered to investigate and/or prosecute corruption offences;
4. "Restraining order" means an order which prohibits the offender from dealing with certain

property and includes the right to transfer, use and destroy the property in any manner;

5. "Person" means any natural or juridical person.

3. Scope of Application of the Proclamation

This Proclamation shall be applicable to corruption cases falling under the Federal and Regional jurisdictions.

Section Two

Bail and Jurisdiction

4. The Right to Bail of Arrested Persons on Corruption Offences.

1. An arrested person for a corruption offence may apply to court to be released on bail. An arrested person charged with a corruption offence punishable for more than 10 years may not be released on bail.

2. The investigator may release, on bail, with or without surety, a person arrested for corruption offenses where;

a. it is doubtful that the offence complained of has been committed, or

b. it is doubtful that the arrested person has committed the offence complained of,
or

c. the offence for which the person arrested is not punishable with rigorous imprisonment.

3. An arrested person who is not released according to sub article 2 of this Article may apply to court to be released on bail.

4. Without prejudice to the provision in sub article 1 of this Article, the court may not allow an application to be released on bail of the accused or the suspect as per sub-article 3 of this article, where;

a. the suspect or the accused, if released on bail, is likely to abscond

b. the suspect or the accused, if released on bail, is likely to tamper with evidence or commit other offences.

5. Right of Appeal

1. Any one aggrieved by the decision of the lower court on the issue of bail has the right of appeal in accordance of Article 4.

2. Where an appeal is taken objecting the decision granting bail or the amount of bail, the decision of the lower court shall stay from being executed.
3. Where the court decides to release the suspect or the accused on bail, it shall state in its decision that the suspect or the accused be released upon completion of the necessary formalities within such reasonable time as it deems necessary unless the investigator or prosecutor produces evidence showing it has lodged an appeal against it in the appellate court.

6. Injunction on the Right of Movement

Where the suspect is released on bail, the court may order the following cautionary measures alternatively or cumulatively as per Article 4 or 5;

- a. restrict the movement of the suspect in a limited region or place;
- b. prohibit the suspect from reaching places where he might tamper with evidence;
- c. instruct the suspect to report to the relevant authority within a prescribed time;
- d. prohibit the suspect from going abroad.

7. Jurisdiction

1. The Federal High Court shall have first instance jurisdiction over corruption offences falling under the Jurisdiction of the Federal Government other than those cases for which the Federal Supreme Court has first instance jurisdiction in accordance with the relevant law.
2. A Regional High Court shall have first instance jurisdiction over corruption offences falling under the jurisdiction of the Regional Government other than those cases for which the Regional Supreme Court has first instance jurisdiction in accordance with the relevant law.
3. Corruption offences committed in connection with the Addis Ababa or Dire Dawa administration shall be that of the appropriate Federal court as the case may be.
4. Matters related with arrest, search, remand, bail, restraining order or any other related matter with investigation of corruption offences shall be made to the court which has jurisdiction to hear cases of corruption offences.

Section Three

Restraining

8. Principle

1. Without prejudice to Article 10 of this Proclamation, a court may issue a restraining order against any property acquired by the commission of corruption offence.

2. An investigator or a prosecutor may, supported by an affidavit, apply to the court for a restraining order against any property acquired by the commission of corruption offence.
3. An application for a restraining order may be made before or after the institution of a criminal proceeding

9. Conditions for Restraining Other Properties

1. Notwithstanding that there is no evidence that the property is acquired as a result of the corruption offence, where an investigator or prosecutor made an application for a restraining order supported by an affidavit indicating that the suspect is enriched or others suffered as a result of the corruption offence being investigated or charged, the court may give a restraining order prohibiting the sale, assignment and/or transfer of any money deposited in any bank in the name of the suspect or any other property of the suspect proportionate to the amount of enrichment by the suspect or injury suffered by others.
2. Unless it is impossible to execute, the restraining order given according to sub article 1 of this Article may not affect the right to use of the suspect.

10. Property not Subjected to Restraining Order

Properties that are necessary for the accused to earn his livelihood may not be subject to restraining order. It shall, in particular, include the following:

1. The necessary wearing-apparel, cooking vessels, bed and bedding of the suspect/accused and his family;
2. Such amount of money or property as may, in the opinion of the court, be necessary for the accused and his family for a period of three months.
3. Simple tools and instruments or implements used by the accused in his profession, art or trade.
4. Where the accused and his family do not have property other than the restrained property as a source of income, such amount of money, in the opinion of the court, necessary to provide for their necessities.

11. Contents of the Application

1. An application for a restraining order, supported by an affidavit, shall contain:
 - a. the facts of the case and the measures that have been taken; where a criminal

proceeding has not been instituted, an information about the status of the case;

b. indicating information which shows that the property against which a restraining order is requested is acquired by the commission of corruption offence or the suspect is unlawfully enriched or damage ensued as a result of the commission of the corruption offence;

c. detail description of the properties and their location.

2. Any application that supports the request for a restraining order shall be stated in detail in the affidavit in a complete and precise manner.

3. Where the situation requires the issuance of an additional restraining order, the investigator or the prosecutor may apply to the court.

12. Issuing of Restraining Order

1. Without prejudice to article 10 of this Proclamation; the court may, after having examined the application and the document, issue a restraining order where it is convinced or issuing such order.

2. Where a restraining order is issued ex parte, the investigator or the prosecutor shall serve copies of the order and the affidavit on the defendant or on any other person specified in the order. He shall also notify any person affected by the order.

3. Unless the court decides otherwise, a restraining order issued ex parte shall be effective.

13. Appointment of Receiver

With respect to the custody of the property against which a restraining order is issued, the provisions of Articles 17 to 21 of this Proclamation shall apply.

14. Responsibility of the Appropriate Organ

1. The appropriate organ;

a. shall follow up that the receiver is properly administering the property.

b. may report to court with tangible reasons where it has reasonable ground to believe that the receiver is not administering the property properly.

2. The court may give an order as it thinks fit on the report submitted by the appropriate organ.

15. Termination of Restraining Order

1. The restraining order shall be terminated where a confiscation order is issued.
2. Where the case is withdrawn or the defendant is acquitted or is not found guilty, the accused may apply to the court for the termination of the restraining order.
3. Where an application for the termination of the restraining order is submitted according to sub article 2 of this Article, the court shall notify the prosecutor to submit its opinion. After reviewing the opinion submitted by the prosecutor, the court may give an order that the restraining order will terminate or stay in force.

16. Withdrawal or Amendment of a Restraining Order

1. Any person who has been served or notified about the restraint order may apply to the court for withdrawal or amendment of the order.
2. Where the court accepts the application and the evidence submitted in accordance with sub-article (1) of this Article, it shall serve same on the prosecutor.
3. Where the court believes that the application for the withdrawal or amendment is based on reasonable grounds, it may amend or allow the withdrawal of the order.
4. The court may assign experts in order to reach a decision under sub article 3 of this Article,

Subsection One

Appointment of Receivers

17. Condition for Appointment of Receiver

1. Where it appears to the court to be just and convenient, it may, with respect to the property on which a restraining order is issued,
 - a. appoint a receiver of the property;
 - b. remove any person from the possession or custody of the property;
 - c. commit the same to the possession, custody or management of the receiver;
 - d. confer upon the receiver the power for preservation, management and improvement of the property.
2. The court may confer upon the receiver all such powers, as to bringing and defending suits, and for the collection of the rents, profits and any other income thereof, the investment and disposal of such rents, profits, or income, for useful purposes, or such

other powers as the court thinks fit.

3. Upon issuing an order in accordance with sub-article (1) and (2) of this article, the court shall have regard to the amount of the probable costs of his appointment and may, before making the appointment, direct such inquiries on these or other matters to be made as it thinks fit.
4. If the person to be appointed as a receiver pursuant to sub-article (1)(a) of this article is a natural person, such person shall be of good character, with integrity and who has no bond of relationship by consanguinity or affinity or conflict of interest.
5. If a person to be appointed as a receiver pursuant to sub-article (1)(a) of this article is a juridical person, it has to be verified that its financial account for the last three years is clean and there is no conflict of interest.
6. To appoint a receiver under this article, the investigator, the prosecutor, or the accused may present candidates. The court, by hearing the opinion of the other party, as the case may be, appoints the appropriate one.

18. Remuneration of the Receiver

The court may, by general or special order, fix the amount to be paid as remuneration from the restrained property for the services of the receiver.

19. Transfer of Property

The court may fix the amount to be paid and the manner of payment to cover the expense for the transfer of the property to the receiver from the restrained property.

20. Duties of the Receiver

Any receiver appointed under article 12 shall have the following duties:

1. Furnish such security to account for what he shall receive in respect of the property;
2. Submit his accounts as such periods and in such form as the court directs;
3. Pay the amount due from him as the court directs; and
4. Be responsible for any loss occasioned to the property by his gross negligence or willful default.

21. Enforcement of Receiver's Duties

1. Where a receiver causes damage to or loss of the property by his gross negligence or

intentionally, the court may order him to pay the amount due.

2. If the receiver fails to observe the order of the court, the court may direct his property to be attached and sold and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance, if any, to the receiver.

Sub-Section Two

Affixing of Seals and Making of Inventories.

22. Principle

1. Where it is necessary to affix seals on the property on which a restraint order is issued, the following provisions of this sub-section shall apply.
2. Unless the court decides otherwise, no person may remove or open the seal. Any interested person may apply for the removal of the seal.

23. Application for Affixing of Seals

1. An application for affixing of seals may be made to the court by the prosecutor upon satisfying the court by affidavit or otherwise that the property should be preserved.
2. An order for the affixing of seals may be made at any stage of the proceedings by the court of its own motion or on application.
3. On making an order for the affixing of seals, the court shall appoint such person (hereinafter referred to as the "official sealer") as it thinks fit to carry out such order.

24. Record

1. The official sealer after having affixed seals in accordance with the order of the court, shall prepare a dated and signed record showing;
 - a. the order of the court and the date therefore;
 - b. a list of the property to which seals have been affixed and the place where such property is to be found;
 - c. a list of the articles to be sealed which cannot be found; and
 - d. the name and address of the caretaker, if any, in charge of the premises where the sealing has taken place.
2. The official sealer shall hand over to the registrar of the court all the keys of the locks he

has sealed.

25. No Seals to be Affixed on Certain Property

1. No seals shall be affixed to the following property;
 - a. perishable goods;
 - b. any property to which the affixing of seals might cause deterioration;
 - c. any property required for the use of a party to the suit specially exempted from sealing by the court.
2. Details of property on which the court has ordered not to affix a seal, in accordance with sub-article (1)(c) hereof, shall be submitted to the court by the sealer.
3. The court may order goods indicated in sub-article (1)(a) to be sold by auction and have it deposited.

26. Wills and Other Documents

1. Where the official sealer finds wills, sealed papers or other documents, he shall make a list of such papers and shall place them in a sealed bundle and forward such list to the court for instructions.
2. The court shall make such order for the custody such documents as it thinks fit.

27. Removal of Seals

1. Where an application for the removal of seals is made or where the court finds it necessary to remove such seals, all interested parties shall be informed of the day when the order will be made; and if they appear, they may be heard.
2. When an order for the removal of seals has been made by the court, the official sealer shall remove the seals and shall make a dated and signed report to the court giving particulars of all property which he has unsealed.

28. Making of Inventory

1. The court may, where it thinks necessary to prepare an inventory of property, appoint a person (hereinafter referred to as the "official recorder") to carry out the inventory and submit record.
2. The official recorder shall, in the presence of not less than two independent witnesses,

prepare an inventory of the property specified in the order of the court, containing

- a. a reference to the order of the court; and
- b. an accurate description of each article entered in the inventory and the estimated value thereof.

3. Where the court so orders, the estimation of value shall be made by an expert, appointed under article 131 of the Civil Procedure Code, whose report, dated and signed, shall be attached as an annex to the official recorder's report.
4. The report of the official recorder, dated and signed, shall be forwarded to the court and, after being registered by the registrar of the court in a special inventory register, shall form part of the record of the case.

Section Four

Confiscation Procedure

29. Confiscation of Property

The court shall issue a confiscation order proportionate to the property acquired by the corruption offence, where the accused is found guilty.

30. Postponement of Confiscation

1. Where the court considers that it requires additional information to determine whether the defendant has benefited from any criminal conduct or the amount to be recovered, it may postpone the determination for a period not exceeding six months from the date of conviction.
2. A postponement may be made in accordance with sub-article (1) of this article on application by the prosecutor or by the court of its own motion.

31. Application for Confiscation of Property

1. Where confiscation of property is not ordered by the court, it may be entertained by the application of the prosecutor.
2. An application for confiscation of property may be made after conviction.

32. Informing the Relevant Person

Where the property acquired by corruption offence is a property of a public office or public enterprise or any other person, the appropriate organ shall inform such person to sue for the recovery of the property. The appropriate organ shall follow up the civil

suit instituted by the public office or the public enterprise.

33. Standard of Proof

The standard of proof required to determine any question arising as to whether a person has benefited from criminal conduct, or the amount to be recovered shall be that applicable in civil proceedings.

34. Property or Benefit to be Recovered and the Manner of Recovering

1. The defendant shall return the property acquired by the commission of the crime and the benefit derived from the property acquired by the commission of the crime.
2. The amount of benefit to be returned according to sub-article 1 of this article shall not exceed the benefit or the amount that might be realized.
3. The manner in which property confiscated by court order shall be transferred to the government shall be subject to Regulations to be issued.

Section Five

Preparatory Hearing

35. Principle

Where it appears to a court that a charge of corruption offence reveals a case of such complexity and as a result of which the trial is likely to be of such length, and where the purposes mentioned in Article 36 herein under is going to be likely fulfilled, it may order a preparatory hearing shall be held.

36. Purpose and Proceedings of Preparatory Hearing

1. The purpose of the preparatory hearing are the following:
 - a. to identify issues which are likely to be material to the case;
 - b. to assist the parties in comprehending the issues;
 - c. to facilitate the proceedings;
 - d. to assist the court in the management of the trial.
2. In the proceeding of a preparatory hearing, the court shall make ruling with respect to:
 - a. any question as to the admissibility of evidence;

b. any question of law which is found necessary to give ruling before the trial starts.

37. Obligation of the Prosecutor

The court may order the prosecutor;

1. To give the court and the accused a written statement of the matters falling under article 33 of this proclamation;
2. To prepare the prosecution evidence and any explanatory material in such a form as appears to the court to be likely to assist the proceeding and submit same to the court and the accused;
3. To give to the court and the accused a written notice of documents the truth of the contents of which ought in the prosecutor's view to be admitted and of any other matters which in his view ought to be agreed;
4. To make any amendments of any written statement given pursuant to sub-article (1) of this article that appear to be appropriate, having regard to objections made by the accused.

38. Written Statement of the Prosecutor

The written statement to be submitted in accordance with sub-article (1) of article 32 shall contain the following:

1. the principal facts of the case for the prosecution;
2. unless it is deemed necessary to keep secret the identity of the witnesses upon the application of the prosecutor and court authorization, the witness who will speak to those facts;
3. any exhibits and documentary evidence relevant to those facts;
4. any provision of the law on which the prosecutor propose to rely;
5. any matter falling within proceeding sub-articles or that appear to the prosecutor to flow from same.

39. Obligation of the Accused

Where the prosecutor has complied with the order of the court, the court may order the accused:

1. to give the court and the prosecutor a written statement setting out in general terms

the nature of his defense and indicating the principal matters on which he takes issues with prosecution.

2. to give to the court and the prosecutor a written notice of any objections that he has to the case statement;
3. to give the court and the prosecutor a written notice of any point of law and the admissibility of evidence which he relies on;
4. to give to the court and the prosecutor a written notice stating the extent to which he agrees with the prosecutor relating to documents and other matters referred to in sub-article (3) of article 32.

40. Appeal

An appeal may lie against the decision given in accordance with sub article 2 of Article 36 of this Proclamation. The court may continue a preparatory hearing notwithstanding such appeal.

41. Conditions to Initiate a New Charge

A closing of the file at the preliminary hearing as a result of inadmissibility of evidence may not be a bar to institute a new charge on the same matter after gathering other evidences.

Section Five

Rules of Evidence

42. Request for Evidence

1. An investigator or a prosecutor may apply to the court to obtain or gain access to relevant material, from any person other than the suspect, in order to establish whether the suspect has benefited from criminal conduct or to get evidence regarding the amount of benefits or its whereabouts
2. If the court is satisfied, it may, without requiring the appearance of the person concerned, order the person who is in possession or who appears to be in possession of the material, to produce it to an investigator or prosecutor or give access to same or order the appearance of the person concerned before the court within the period determined by it.
3. The court may order a third party to hand over to the investigator or to the prosecutor any evidence under his possession or to allow access to inspect same.

43. Immunity from Prosecution

1. Any person who has been involved in corruption offence and who, before the case is

taken to the court, provides substantial evidence as to the offence and the role of his partners, may be given immunity by the Commissioner of the Federal Ethics and Anti-Corruption Commission or the Head of the Appropriate Organ.

2. For the purpose of this Article "Substantial Evidence" means evidence;
 - a. sufficient to bring conviction, or
 - b. that serves as a basis to lead to other evidences, or
 - c. corroborating other evidences, sufficient to bring conviction and in its absence, conviction is unlikely.
3. Where the suspect is given immunity, the appropriate organ shall certify it in writing. The appropriate organ may not use the evidence acquired in accordance with this Article against the suspect.
4. Where the suspect fails to provide the evidence or give testimony according to the agreement, the decision to give immunity shall be revoked.
5. The testimony of the person who has been given immunity from prosecution shall have equal weight as the testimony of ordinary witness.
6. Any person who is given immunity according to this Article shall, however, be made to return the benefits he derives therefrom.

44. Hostile Witness

1. The court may allow the party who called the witness to raise leading questions to a prosecution or defense witness who, being unwilling to tell the truth, has given a statement contradictory from his previous statement.
2. The court shall, before allowing the leading question, ask the witness whether he has given contradictory statement or not. If he admits, the leading question shall be allowed.
3. The Court shall decide whether or not the witness has given a contradictory statement where the witness denies that he has given contradictory statement.

45. Document produced by a Computer

A statement in a document produced by a computer may not be admissible as evidence of any fact stated if it is shown that:

1. There are reasonable grounds for believing that the statement is inaccurate because of

improper use of the computer: and

2. At all material times, the computer was not operating properly, or while the computer was not operating or was out of operation, was such as to affect the production of document or the accuracy of its contents.

46. Interception of Correspondence and Letters

1. Where it is necessary for the investigation of corruption offence, head of the appropriate organ may order the interception of correspondence by telephone, telecommunications and electronic devices as well as by postal letters.
2. Where it is necessary, evidence gathered through video camera, sound recorder, and similar electronic devices may be reproduced as evidence.
3. An order given in accordance with sub-article (1) of this Article shall indicate the offence which gives rise to the interception, and the duration of the interception, and, if it is a telephone or telecommunication, the link to be intercepted. Unless head of the appropriate organ decides otherwise, the duration of the interception may not exceed four months

47. Recording

1. The organ which implements the order for recording of correspondence shall draft an official record of each interception and the time the recording operation takes.
2. The organ to which the order is given shall transcribe and present to appropriate organ the correspondence that is useful for the discovery of the truth.

Section Seven

Protection of Whistle-blowers

48. Objectives

The objectives of the protection are:

1. To encourage the disclosure of corruption offences;
2. To give appropriate consideration to the rights and interests of the person who made the disclosure.

49. Making of Disclosure

1. A disclosure of corruption offence may be made with or without the name of the person who makes the disclosure.

2. If a disclosure is properly made to the appropriate organ, the disclosure shall be deemed to have been received by such organ.

50. Exemption from Liability

Any person who has an obligation to maintain confidentiality under a law, oath or an agreement, the disclosure of such evidence to the appropriate organ shall not be considered as a violation of law, oath or agreement.

51. Organ Receiving Information

1. The appropriate organ has an obligation to receive any disclosure made by any person about corruption offence.
2. The appropriate organ to which the disclosure is made shall keep record about it.
3. The appropriate organ shall, with respect to the disclosure, have the responsibility:
 - a. To submit report to the organ to which it is accountable;
 - b. To give the necessary information to the person who made the disclosure.
4. No information may be given in accordance with sub-article (3)(b) of this article, if the information would be likely to adversely affect any body's safety or the investigation of an offence.

52. Particulars to be Entered in the Record

The appropriate organ shall, with respect to disclosure received by it, keep a record that includes the following particulars:

- a. the name of the person making the disclosure, if known;
- b. the information disclosed; and
- c. any action taken with respect to the disclosure.

53. Illegality of Reprisal

1. Any reprisal taken against a whistle-blower or witness for making or attempting to make a disclosure or a testimony shall be illegal.
2. Every government office shall establish a procedure to protect its employees from reprisal.

54. Suspension of Reprisal Measure

1. Where the person against whom a reprisal measure has been taken is an employee, he may apply to the court or to any appropriate organ for a suspension.
2. Where the court or the appropriate organ which has received the application in accordance with sub-article (1) of this Article has ascertained the existence of a reprisal measure; it shall give forthwith a provisional ruling to suspend such measure.
3. Where the appropriate organ instituted a criminal charge against the person who has taken a reprisal measure, the suspension order shall remain in force until the case is disposed.
4. Any party aggrieved by the injunction order may apply to court. Until the court disposes the case, the suspension shall remain in force.

Section Eight

Miscellaneous Provisions

55. Applicable Laws

The criminal procedure code, the civil procedure code, the penal code and any other relevant laws shall be applicable in so far as they are consistent with this proclamation.

56. Penalty

1. A defendant or any person against whom a restraint order is issued and refuses to comply with such restraint order shall be punished with imprisonment not exceeding 2 years and with a fine not exceeding birr 10,000 for contempt of court.
2. Unless a higher penalty is provided for in the Penal law; a person who intentionally removes or opens a seal, or does damage or occasions a loss to the property violating the provisions of Article 21(1) and 22(2) of this Proclamation shall be punished with imprisonment not exceeding 3 years and a fine not exceeding 20,000 birr.

57. Transitory Provision

1. Until the coming into force of the 2004 FDRE Criminal Code, the meaning of corruption offence shall be as provided in Proclamation no. 236/93.
2. Unless otherwise proved, where the material elements of a corruption offence is proved, the mental

element is presumed to exist.

58. Repealed and Inapplicable Laws

1. Proclamation no. 236/93 is hereby repealed.
2. All laws which are inconsistent with this proclamation shall not apply on matters covered under this proclamation.

59. Effective Date

This proclamation shall come in to force as of the 2nd february 2004.

Done at Addis Ababa this day of 2nd february 2004

GIRMA WOLDEGIORGIS

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA