# THE PENAL SYSTEM OF ETHIOPIA

By

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## I. The Legal Setting

Before the advent of the seventeenth century, the penal law of Ethiopia was primarily a matter of diverse customary practices, although both the Church,[1] concerning moral matters, and at times, an Emperor, at other times, more localized kings, enforced what might be termed penal sanctions concerning those matters directly affecting their power.[2] No integrated body of penal legislation existed, however, until some time in the seventeenth century when the "Fetha Nagast" or "Law of the Kings" was introduced into Ethiopia.

The Fetha Nagast is a sophisticated compilation of legal prescriptions concerning both religious and secular matters written in approximately the thirteenth century in Egypt as a guide for a Christian population living within Moslem society.[3] Originally written in Arabic, and incorporating law from the Old and New Testaments together with Roman, Canon and some Moslem precepts and the proceedings of the early councils of Nicaea and Antioch,[4] it was translated in Ethiopia into Ge'ez, the ancient Ethiopic language, and applied throughout Christian areas of the country by the Church.[5] As is com-

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1. The Ethiopian Orthodox Church, founded in the fourth century on the doctrines of Saint Mark, is the Established Church of the Empire. Art. 126, Revised Constitution of 1955. In that period of Ethiopian history, the empire was restricted to the central and northern highlands which were almost entirely Christian. Today, however, the country is much expanded and includes large Moslem and pagan populations. See M. Perham, *The Government of Ethiopia* 101 ff. (1948).

2. From the fall of the Axumite kingdom, Ethiopian history has vacillated between centralized control stemming from a capital city and its ruling Emperor, and the constant re-emergence of localized kings and centers of power. The Emperor receives, even today, the Amharic title of "Negusa Nagast" meaning "King of Kings". See "The Chronicle of the Emperor, Zara Yaqob (1434-1468)", 5 *Ethiopia Observer* 152 (1961); The Chronicle of Ba'eda Maryam (1468-1478)", 6 *Ethiopia Observer* 63 (1962); and more generally, Perham, *op. cit.* at 69 ff., 138 ff.; R. Pankhurst, *Economic History of Ethiopia* 119 ff., (1961).

3. The Fetha Negast is reputed by Ethiopian tradition to have been written by "Three Hundred Sages", that is, the Selest Meeti, the 318 Fathers of the Church. See Graven, Introduction, *Le Code Pénal de l'Empire d'Ethiopie* (Centre Français de Droit Comparé, 1959); Amharic and English translations, 1 *J. Eth. L.* 207, 267 (1964).

4. Perham, *op. cit.* at 139

5. The Fetha Nagast is still available only in Ge'ez except for a single translation into Italian published in Naples in 1936 by the scholar, Ignazio Guidi. An English translation by Abba Paulos Tzadua, Dr. Pol. Sc., Dr. Jur., is presently being prepared under the auspices of the Faculty of Law, Haile Sellassie I University.

mon in early criminal legislation, the penal sections of the Fetha Nagast tend to blend with the religious cast of the entire work.[6] Nevertheless, the concepts of penal liability set out in the law were quite advanced for their time.[7]

The Fetha Nagast together with customary law particularly in non-Christian areas of the Empire remained the applicable penal law of Ethiopia until November 2, 1930, the day of the coronation of Haile Sellassie I, when the first modern, codified law, the Penal Code of 1930, was promulgated. The new Penal Code, unlike the Fetha Nagast, set out precise punishments for specifically defined crimes. Punishment was assessed in relation to title and wealth and the individual personality and motives of the offender. The most rigorous punishments were meted out to offenders of title and wealth while decreasingly severe penalties were provided for those whose crimes were attributable to "lawlessness", "pride", "envy", "treachery", "revenge", "intemperance", "quarrelsomeness", "carelessness", and "bullying". The Penal Code of 1930 was said to have been based upon the Fetha Nagast,[8] an assertion quite necessary

6. The Fetha Nagast is composed of two parts, the first dealing with religious matters, the second with civil. The basically religious nature of the work permeates even the civil sections as may be seen by the following chapter heading: XLVI — "The Punishment Reserved for One Who Denies the Highst God, Blasphemes Him and Worships Other..." and XLVII — "Homicide and its Corporal and Spiritual Punishment."

7. The concepts of intent and negligence are rendered by the Fetha Nagast as follows (chap. XLVII):

> "*Part IA*: Concerning one who has no intention to kill or to beat another, his intention, in fact, being directed to the killing of a wild animal or the beating of a beast. If such an individual happens to kill a human being, the consideration of his case falls into two parts. The *first* part concerns the killer who knows that an accident may occur ... as when one shoots an arrow at a bird or a wild animal that has run among people in the middle of town. This man, since his main intention was not to kill a person, ... shall be judged as one who killed involuntarily ... and his guilt is less than one who murders another. Similar cases are those involving toppling walls, ill-natured slaves, beasts which kill, mules and camels which kick and oxen which wound people by use of horns when the owner does not take due care or provide proper warning. The Mosaic law at the end of the Chapter corresponding to Abtehs 38 further provides a similar punishment for those who dig a well in the street without covering it or who make steps for external use without building a railing. The *second* part concerns people who do not know that they can cause death, as one who, with intention to beat a beast, beats a man accidentally whom he did not see or shoots in a desert or lets a wall fall upon someone thinking that it was strong. The punishment of the man who beats or shoots is to be exiled; the man who had no ill-natured slave or dangerous beasts nor was the well in the street nor steps delapidated has no responsibility beyond giving the servant or the beasts to the relatives of the injured person." Trans., Abba Paulos Tzadua.

8. The following representative provisions among the Code's general principles cite for authority not only the Fetha Nagast but the Bible itself:

> "15. Our Lord has said in the Gospel that he who knows much shall be punished much but he who knows little shall be punished little. (St. Luke 12:47).
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> 16. The Three Hundred, knowing that it is not right to punish according to the extent of the wrong but according to the amount of understanding, have distinguished between a sentence passed on a child, a drunken person, a madman and a forgetful person and the sentence passed on a grown person of

for its public acceptance at the time; a comparison of the two laws, however, shows considerable departure, particularly in the Special Part of the Penal Code which specifically prescribed each crime and its penalty. Although the Penal Code of 1930 was considerably more sophisticated than the earlier Fetha Nagast, it remained rather vague and formalistic, lacking well defined general principles and a comprehensive approach to the disposition and treatment of offenders.

It became apparent in the 1940's, after the liberation of Ethiopia, and with the enactment of a number of proclamations in the penal area, that a new, comprehensive penal code to meet the modern needs of developing Ethiopia would have to be drafted. Professor Jean Graven, Dean of the Faculty of Law and President of the Court of Cassation in Geneva, Switzerland was commissioned to draft such a penal code. Work was begun in 1954; an Avant-projet in French was presented by Professor Graven to the Codification Commission, which was composed of distinguished Ethiopians and foreigners, and after considerable discussion and the molding of a final text, the Code was translated into Amharic and English[9] and presented to Parliament. The new Code went from Parliament to His Imperial Majesty for approval, was promulgated on July 23, 1957 and came into force on May 5, 1958.

The Penal Code is composed of 820 articles constituting both a Penal Code and Code of Petty Offenses. The Code is a modern, advanced law which draws upon the legal tradition of Ethiopia[10] while incorporating many of the most recent innovations in continental systems. Clearly, the primary foreign source of the Code is the Swiss Penal Code of 1937, together with the pre-1957 Swiss jurisprudence.[11] There are, of course, secondary sources: primarily

full understanding, and accordingly the code is meant to agree with the Fetha Nagast." (Cf. Fet. Nag. Pt. 47, p.303).

9. Amharic and English are the official languages of the Codes and of the Negarit Gazeta. The Amharic text, however, is the controlling law in case of discrepancy. Art. 125 Rev. Constitution of Ethiopia, Proc. No. 2 of 1942 G.C., Sect. 22. The original texts of both the Penal and Civil Codes are in French. The difficulties of interpreting and reconciling three linguistic texts can, I am sure, be readily imagined.

10. The legal traditions of Ethiopia that have been retained by the Code are primarily the deterrent and expiative functions of punishment, the death penalty and flogging. A number of Special Part offense and several general principles, such as repentance, mistake of law, and aggravating and extenuating circumstances although not by any means unfamiliar in Europe, draw also upon Ethiopian tradition. Graven, *op. cit.* at 27 ff., Eng. trans. at 288 ff.; see also J. Graven, "Vers un Nouveau Droit Pénal Ethiopien: de la Plus Ancienne à la Plus Récente Legislation du Monde" 8 *Revue Internationale de Criminologie et de Police Technique* 250-289 (1954); J. Graven, "L'Ethiopie Moderne et la Codification du Nouveau Droit" 72 *Revue Pénal Suisse* 397-407 (1957).

11. After careful comparison of the General Parts of the Ethiopian and Swiss Penal Codes in French, it is quite clear that the Ethiopian Code is grounded upon the Swiss. Departures are minimal and can usually be traced to the positions of Swiss treatises and jurisprudence. See F. Zurcher, *Code Pénal Suisse, Exposé des Motifs de l'Avant-projet* (French translation, A. Gautier, 1908); P. Logoz, *Commentaire du Code Pénal Suisse* (1942); Thormann and von Overbeck, *Schweizerishes Strafgesetzbuch* (1940); and Hafter, *Lehrbuch des Schweizerischen Strafrechts: Allgemeiler Teil* (1926).

the French Penal Code of 1810 with respect to general format,[12] the Yugoslav Penal Code of 1951 in relation to military offenses, and more generally the Codes of Norway (1902), Italy (1930), Brazil (1940), and Greece (1950).[13]

Aside from notes taken during the disussions of the Codification Commission,[14] there is virtually no legislative history for the Penal Code. The drafter has not made available any *travaux preparatoires* that may exist, nor has he written an *explication de texte*; the records of Parliament are for the most part similarly unavailable. Questions arise as to how ambiguous provisions within the new Code should be interpreted. Article 2 provides that interpretation shall be in accordance with the "spirit", "legislative intent" and "purpose" of the Code. Aside from well-accepted tenets of code interpretation and textual analysis,[15] the question remains as to whether Swiss treatises and jurisprudence should be considered, in those instances in which the Swiss provision is is clearly the source of the Ethiopian, as quasi-legislative intent for purposes of determining the meaning of an article within the Ethiopian Code. Although the spectrum of opinion runs from complete adoption of Swiss jurisprudence, if not with binding effect at least with persuasive effect, to total disregard of possible Swiss sources, the writer believes that a middle position is both possible and sound. In the absence of legislative history and official guidance with respect to the use of Swiss materials, if it appears from comparison of the relevant provisions, that the Swiss Penal Code was clearly the source of the Ethiopian, the meaning attributed to the Swiss provision should be attributed to the Ethiopian provision unless sound reasons relating to Ethiopian legal development or specific needs of the country can be given to justify departure from what can be assumed to have been the drafter's and, therefore, as there are few available debates, the legislature's intent. In a sense this would create a presumption in favor of pre-1957 Swiss interpretation rebuttable by reasons going to the different legal and social needs of Ethiopia. Such a position would allow for some degree of certainty of interpretation together with control of possible judicial arbitrariness, and yet for the quite different history and current development of Switzerland and Ethiopia. Perhaps an example will be helpful. Article 29 of the Ethiopian Penal Code concerning "Impossibility" permits a judge to reduce punishment if an offense can be said to have been "absolutely impossible". The meaning of the words "absolutely impossible" is unclear. There is no legislative history on the subject and rather than

12. The tri-partite division of the French Penal Code into offenses, misdemeanors and contraventions has been abandoned in the Ethiopian Code for a simpler bi-partite division into penal offenses and petty offenses.

13. P. Graven, *An Introduction to Ethiopian Criminal Law* 4 (1965). A strong argument has been made by Mr. S. Tedeschi in a book to be published in 1965 that the Italian Penal Code is an important European source.

14. These notes were taken by M. Philippe Graven, the son of the drafter, in French and are as yet unpublished.

15. See Krzeczunowicz, "Statutory Interpretation in Ethiopia," 2 *J. Eth. L.* 315 (1964).

allow judges simply to create meaning for the term, it is suggested that pre-1957 Swiss sources should be consulted if similar language is used in the Swiss Code. The words "absolument impossible" do appear in the relevant Swiss article,[16] and after consulting the Swiss jurisprudence and treatises,[17] one learns that "absolute" is set off against "relative" impossibility with certain types of cases falling within each category. It is maintained that the Swiss interpretation of these words should be adopted unless good reasons to the contrary exist. Now it may be felt in Ethiopia, despite the objective impossibility of an offense, that an individual who attempts to commit an offense and is prevented by an absolute impossibility of which he had no knowledge, is subjectively quite as dangerous as one who, through better fortune, is able to complete his offense. Further, it may be thought that it is quite necessary in fostering the development of rehabilitation in Ethiopia to treat such individuals in the same manner as if they had completed the offense. These reasons would militate for a very narrow interpretation of "absolute" to limit use of what amounts to a partial defense of impossibility. Such reasons would offset the presumption in favour of Swiss jurisprudence and allow for flexibility within a rapidly changing legal system.

The theory behind the Code's enactment was to have both a nationally unifying force and a guide for the progressive development of the Ethiopian people. If, however, a code of law is distant from prevailing social values, it may remain to a large extent unapplied and serve to undermine the very values being sought.[18] The question arises, therefore, as to how the codes may be brought into closer relationship with developing social values. The inception of the new Faculty of Law is quite important in this respect. Within ten to fifteen years a good number of well-qualified lawyers who have been trained in the theory of their own codes and the problems inherent in their application will be produced. These men will staff ministerial legal positions, the courts, a growing bar and the university law teaching staff. They will help immensely in popularizing the new law and seeing to its application, but this will not be enough. Contrary to practice on the Continent, legislative committees charged with the redrafting of the codes will have to be constantly at work to keep the codes abreast of a rapidly developing society. Further, a balanced position should be worked out with respect to judicial interpretation

16. Art. 23, *Code Pénal Suisse.*

17. See Swiss sources in footnote 12 *supra*; and RO 76 IV 153, JT 1950 74; RO 78 IV 145, JT 1953; RO 83 IV 132, JT 1958 2; M. Waiblinger, "La Tentative, III" *Fiches Juridiques Suisses*, No. 1201, Oct. 1967.

18. Many of the concepts incorporated within the Code are new to Ethiopia, in particular, the ideal of rehabilitation which pervades the Code, the provisions concerning the treatment of juveniles, consent to offenses, probation, conditional release and numerous Special Part offenses. Other principles such as those governing jurisdiction, attempt, participation, guilt, responsibility and concurrence of offenses are complex and not yet widely comprehended.

of the codes. There must be sufficient discretion to allow accommodation to changing ways, particularly with respect to foreign-inspired law, and yet, sufficient certainty and structure to allow for prediction of legal consequences and prevention of potential arbitrariness on the part of judges. Through these means it is hoped that the new codes of Ethiopia will, in time, become increasingly related to functioning institutions and responsive to the changing needs of the country.

## II. The Purposes of Punishment Within the Penal System

Until recently retribution and deterrence seemed to dominate penal philosophy in Ethiopia. The Fetha Nagast had already to some extent moved beyond a rudimentary use of the "lex talionis" by partially individualizing punishment to fit the personal guilt of the offender, but had retained a number of rather crude punishments and a large element of retributive theory. The Penal Code of 1930 further individualized punishment by relating it to the subjective factors of intent, motive and personal status, yet there was no expressed interest in the reform of criminals. There was, however, in this earlier Code considerable concern with the welfare of injured parties. Article 18 of the general principles might well be studied by many modern penal legislators:

> If there be a poor man who has no money with which to pay a fine to the court and damages to the injured person on account of abuse, assault or serious injury, the judge shall pay the money to the injured person from the fines which he keeps as a special fund and shall imprison the person who caused the injury and make him work and so cause him to pay the damages and fine. But the Government is under no obligation to pay from any other source than the money from fines which is kept.

Although the earlier emphasis on retribution is beginning to change today, certain strongly retributive institutions remain, the most obvious of which is flogging. Mutilation had been discontinued a number of years ago; flogging has, however, been retained in the Penal Code of 1957.[19] The drafter had excluded flogging from his original Avant-projet, but the Codification Commission and Parliament reintroduced the penalty. The strongest arguments given in its behalf were that it is in harmony with traditions of punishment, that its use is restricted to very repugnant crimes and that it has a strong deterrent

19. Flogging was also an enumerated punishment in the Penal Code of 1930, but with the proviso in Art. 3 (pt. 1):

> The sentence of flogging is still in use with a few other governments. Though it is certainly our purpose that the sentence of flogging shall in the future be abolished in our country, for the present we have strictly reserved the sentence of flogging, as it has hitherto been administered, for the punishment of those who have committed some great crime which yet does not deserve sentence of death.

effect.[20] After much debate in Parliament it was finally included within the Code as Article 120A[21] and applied only in instances of Aggravated Theft (Art. 635(3)) and Aggravated Robbery (Art. 637(1)). The infliction of flogging is limited to male offenders between the ages of eighteen and fifty and may not exceed forty lashes to be carried out under medical supervision; the flogging may be stopped at any time that the doctor considers health to be in jeopardy. A decree was issued in 1961 extending the punishment of flogging to seven other offenses which the decree categorizes as "offenses to the disturbance of public opinion."[22] The decree states that the High Court may substitute flogging for the penalty provided and that it is to be inflicted in accordance with Article 120A, but not to exceed thirty lashes.

Capital punishment has also been retained by the new Penal Code. The Code provides that it shall be executed by hanging and may, in the discretion of the court, be carried out in public to set an example to others (Art. 116). In the past, tradition and public sentiment in Ethiopia have tended to consider murder a family matter to be disposal of either by payment of "blood money" or revenge on the perpetrator, often in the same manner in which he had killed his victim. These feelings were so strong that it has been reported that after enactment of the 1930 Penal Code, a member of the murdered man's family was allowed, in a prescribed place, to pull the trigger which carried out the court's sentence of death.[23] It must be noted, however, that the death sentence may not be inflicted on persons under the age of eighteen or of limited responsibility (Art. 118), and both traditionally and under Article 59 of the Revised Constitution of 1955, no sentence of death can be executed without the confirmation of the Emperor. According to the Prison Statistics of 1956, E. C. (1963-64 G. C.), 977 persons were held in prison under sentence of death while only thirty-nine death sentences were executed. Although this may partially be due to inefficiency in obtaining confirmations, the more likely reason is the quite traditional leniency of the Emperor in the use of his pardon and amnesty powers.[24]

Although retribution and particularly deterrence remain quite pronounced public values today, the new laws are moving toward more modern and

20. Procès-verbal of the Codification Commission, April 9, 1964 G.C. p. 3; Proceedings of the Senate, Hamle 2, 1949 E.C. (July 8, 1957 G.C.), final resolution, Hamle 8, 1949 E.C. (July 15, 1957 G.C.).
21. It is the only article with an "A" indicating Parliamentary inclusion.
22. Decree No. 45 of 1961 G.C. Under Art. 92 of the Revised Constitution of 1955, decrees having the effect of law may be passed by His Imperial Majesty alone without action by Parliament. Art. 92 provides that this is to be done only in "cases of emergency that arise when the Chambers are not sitting." Parliament has the power to approve or disapprove decrees in their next session, but has not so acted on this Decree. It presumably, therefore, retains its force as law.
23. Perham, *op. cit. at* 142 ff.
24. Annual Report of the Prison Department, Ministry of Interior. See text accompanying note 33, *infra*, with respect to the Emperor's power of pardon and amnesty.

humane disposition of offenders. The Revised Constitution of 1955, among other protections for criminal defendants, provides that "punishment is personal" and that "no one shall be subjected to cruel and inhuman punishment" (Arts. 54 and 57). The Penal Code of 1957 introduces the concept of rehabilitation into Ethiopia while also retaining deterrence as a basic principle. His Imperial Majesty's Preface to the Code states:

> . . . New concepts, not only juridical, but also those contributed by the sciences of sociology, psychology and, indeed penology, have been developed and must be taken into consideration in the elaboration of any criminal code which would be inspired by the principles of justice and liberty and by concern for the prevention and suppression of crime, for the welfare and, indeed, the rehabilitation of the individual accused of crime. Punishment cannot be avoided since it acts as a deterrent to crimes; as, indeed, it has been said, "one who witnesses the punishment of a wrongdoer will become prudent." It will serve as a lesson to prospective wrong-doers.

Article 1, setting out the object and purpose of the Code, also stresses both rehabilitation and deterrence as the underlying purposes of punishment.

Numerous articles of the Code are designed to implement the new concept of rehabilitation. The judge is given broad discretion in his choice of penalty[25] and is specifically cautioned by Article 86 to calculate sentences in the following manner:

> The penalty shall be determined according to the degree of individual guilt, taking into account the dangerous disposition of the offender, his antecedents, motive and purpose, his personal circumstances and his standard of education, as well as the gravity of his offence and the circumstances of its commission.

The criteria above enumerated go directly to rehabilitation of the offender. The Code provides for suspended sentences, probation and conditional release and states in words that catch much of its new spirit: "conditional release must be regarded as a means of reform and social reinstatement" (Art. 206). The Code further sets out specialized penalties for juveniles designed for their reform[26] and provisions for the confinement of irresponsible persons for indefinite duration, although provision is made for judicial review (Art. 136). Treatment for an indefinite period allows the principle of rehabilitation full play, unlike ordinary penalties which emphasize, if anything, deterrence, as they are graded solely on the basis of legislative determination of the

25. See text accompanying notes 29 - 32, *infra*.

26. See text accompanying notes 45 ff., *infra*.

serioneness of the crime: a man ready for release before the set number of years must remain confined; one likely to recommit his crime must be released when his number of years expires. It must be remembered, however, that both rehabilitation and deterrence are stated purposes of punishment and may at times conflict with each other.

First steps have now been taken toward applying the rehabilitative provisions of the new Penal Code; last year the first prisoners were given conditional release. Some difficulties have arisen, however, due to differences in approach between the Ministry of Interior, controlling the prisons, and the Ministry of Justice, controlling the courts. This division of responsibility for the courts and for the prisons also raises other issues. Pre-sentence reports prepared for judges by the police remain in court files; the prison administration is given access to the type of sentence and number of years imposed, but not to the full background of the offender. Post-sentence classification within the prison system conforms to the sentence and, therefore, to the crime committed rather than to the rehabilitative needs of the individual offender. Considerable reorientation of both judicial and penal practice is necessary before the rehabilitative ideals established by the Penal Code of 1957 can be substantially implemented.

## III. Adult Offenders

The only available statistics concerning the number and type of adult offenders in Ethiopia have been collected by local police departments and centralized in the Public Prosecution Section of the Ministry of Justice. These figures are incomplete and, more than likely, rather inaccurate although they are probably reliable enough to uncover broad trends.[27]

In 1954, E. C. (1961-62 G. C.), the last year for which statistics are available, 25,551 convictions are reported, 8,146 of which are attributed to crimes against property and 4,562 to intentional bodily harm. The number of crimes against property in probably greater than indicated as figures are not given for the reputedly large number of offenses against the possession of immovable property (Arts. 649-652). The greatest number of offenses were committed in the provinces of Shoa and Harrar which

27. Statistics are reported for each of the provinces of Ethiopia except Eritrea, which has been separately administered, under twelve specific categories of crime. Convictions for "miscellaneous offences" account for more than 30% of all offenses committed. Indications of inaccuracy are numerous: only one intentional homicide is reported for Addis Ababa during the year 1954 E. C.; figures are given for "burglary" which is not a crime set out in the Penal Code; instances of negligent homicide and negligent injuries are reported by the police before a court has determined the existence of negligence, etc.

is to be expected as each has a concentration of urban population. Statistics are too sparse and unreliable with respect to adult crime to support more than the most tentative hypotheses as to crime causation. Crimes against property may be partially explained by poverty, unemployment due to rapid urbanization, and the traditional high value attached to land ownership. A strong concern with honour and status among persons with volatile personalities may be one of the factors underlying the high rate of bodily injury offenses. Basic criminological and psychological investigation in Ethiopia is urgently needed before intelligent planning of crime prevention and the rehabilitation of offenders can begin.[28]

There is considerable discretion, under the Penal Code of 1957, in the disposition of adult offenders. Each Special Part article which sets out the elements of a specific crime also establishes the discretionary boundaries within which a judge must sentence the convicted offender.[29] Book Two of the General Part provides the broader principles governing punishment and its application.

The Code establishes three basic forms of principal punishment: fine, simple imprisonment and rigorous imprisonment. The amount of fine is determined by reference to the offender's personal situation and his degree of guilt (Art. 88). Time may be allowed for payment, but in default a fine may be successively converted into labour, goods seized or simple imprisonment imposed (Arts. 91-98). The Code also makes provision for restitution to the injured party within the criminal process (Arts. 100-101).[30]

Simple imprisonment, which may extend from ten days to three years, is intended for less serious offenses as a measure of safety for the public and punishment for the criminal (Art. 105). The court may, however, substitute compulsory labour for simple imprisonment when it believes such to be con-

28. Studies concerning the causation of crime in other countries have, I feel, only limited relevance to Ethiopia, a country long isolated and thus with a unique historical and social development.

29. The following are several dispository provisions within the Special Part typical of the breadth within the Code:

> Art. 383 — *Material Forgery* ... is punishable with rigorous imprisonment not exceeding five years or in less serious cases, with simple imprisonment for not less than three months.
>
> Art. 621 — *Incest* ... is punishable with simple imprisonment for not less than three months ... with rigorous imprisonment not exceeding three years. The court may in addition deprive the offender of his family rights.
>
> Art. 634 — *Robbery* ... is punishable with rigorous imprisonment not exceeding fifteen years.
>
> The judge is, however, given some guidance in determining sentence within these established boundaries. See Art. 86, *Calculation of Sentence* and Arts. 79 - 84, *Extenuating and Aggravating Circumstances.*

30. See also Criminal Procedure Code Arts. 154 - 59.

ducive to the rehabilitation of the offender (Art. 106). Rigorous imprisonment, on the other hand, is applicable to offenses of a "very grave nature" and designed for punishment, rehabilitation, strict confinement, and the special protection of society. Rigorous imprisonment is normally for a period of from one to twenty-five years but may be for life when expressly so provided (Art. 107). An offender may be conditionally released upon probation when he has served two-thirds of his sentence if both prison officials and the court feel that his behavior has improved and offers ground for the expectation of continued improvement on probation (Arts. 112, 207).

If the court feels that none of the established penalties will promote the reform of the offender, and the offense for which he was convicted is punishable with fine, compulsory labour or simple imprisonment, the court may suspend sentence and place the offender on probation (Arts. 194-95). The period of probation must be between two and five years in length and both security and rules for good conduct are to be set in each case (Arts. 200-03). Probation has not yet been practically implemented in Ethiopia.

In addition to the principal punishments, the court may apply, together with such punishment, a secondary penalty despite the fact that the Special Part offense does not make provision for any secondary punishment. These penalties include primarily: flogging,[31] reprimand, apology, deprivation of civil, family or professional rights, and dismissal or reduction of rank in the armed forces. The General Part article providing for each secondary penalty sets out the purpose of that penalty and the instances in which it may be imposed (Arts. 120-27).

Further, when the court deems it necessary, it may apply, together with a principal punishment, what is termed a "general measure". There are a number of general measures designed for prevention and protection which include *inter alia*: recognizance of good behavior, the seizure of dangerous articles, suspension and withdrawal of licenses, prohibitions from or obligations to resort to certain places and supervision and expulsion of aliens (Arts. 138-60).

The Code provides for special measures with respect to recidivists, irresponsible persons and young persons.[32] Habitual offenders who show "ingrained propensity to evil doing, misbehavior or incurable laziness or habitually derive livelihood from crime" are to be interned upon commission of a further offense not punishable with more than five years imprisonment. Internment is to take place in a special institution for indefinite duration of not less than two nor more than ten years; at any time after two years, the court, upon recommendation of the director of the institution, may grant conditional release (Arts. 128-32). Financial handicaps have prevented the implementation of these pro-

31. See text accompanying notes 19 - 22, *supra*.
32. See text accompanying notes 45 ff., *infra*.

visions although recidivists are segregated in central prisons where possible. Irresponsible persons, on the other hand, are to be treated in suitable institutions and if not dangerous may be treated as out-patients. Confinement is of indefinite duration but must be reviewed by the court every two years. When cause for the measure has disappeared, the administrative authority must apply to the court for termination of treatment and the court must release the individual to the supervision of a charitable organization for at least one year (Arts. 133-37). Inadequate institutional and psychiatric facilities have as yet prevented wide application of the above provisions.

Offenders who have been incarcerated may, at any time, be granted sovereign pardon or amnesty (Art. 35, Revised Constitution; Arts. 239-240, Penal Code). It is quite traditional for His Majesty, on the anniversary of His coronation and other important holidays, to use these powers liberally. In 1956, E.C. (1963-64 G.C.) prison statistics showed 120 full pardons and 1,184 reductions of sentence.[33]

There are approximately one hundred prisons within Ethiopia, one in each Awradja and a central prison for each Province.[34] In addition, a farm camp has been established at Robi capable of accommodating 450 prisoners. According to the figures of the Ministry of Interior, 17,459 persons were incarcerated in the year 1956, E.C., an increase of 2,089 over the previous year and 5,068 over the year before that.[35] There were only twenty-seven persons imprisoned for life, while 3,866 received sentences of rigorous imprisonment for more than five years and 5,111 simple imprisonment for less than five years. A large number, 7,491, were in prison pending judgment.

The central prison for Shoa in Addis Ababa is the most advanced prison in the country.[36] Prisoners are classified within three sub-categories of rigorous imprisonment and three of simple imprisonment; prisoners pending judgment and those imprisoned for life or awaiting execution are segregated from normal prisoners and do not take part in the programs of the prison. Rehabilitative planning is minimal as the Prison Administration receives no background histories on prisoners from the judiciary and does not itself attempt to construct them.

Programs of elementary education, several correspondence courses and limited library facilities are provided for the prison population, 95% of whom

33. Annual Report of the Prison Department, Ministry of Interior, 1956 E.C.
34. Eritrea, however, continues to administer its prisons separately.
35. Annual Reports of the Prison Department Ministry of Interior, 1954-1956 E.C. For slightly different figures, *see Statistical Abstract* 159-162, Central Statistical Office, Imperial Ethiopian Government (1964). This rise in the number of prisoners may be attributable to more complete reports from provincial prisons in the past two years.
36. Much of the following factual material has been obtained from officials in the Prison Administration, Ministry of Interior and from my own observation after several visits to the central prison in Addis Ababa. See also Andargatchew Tesfaye, "Correction in Ethiopia" in 3 *Current Projects in the Prevention, Control and Treatment of Crime and Delinquency* 7-9 (1963)

are illiterate when they enter prison.[37] A variety of work programs have been instituted which allow for training in skills, primarily farming, that will be useful in obtaining a job upon release. Unfortunately, prisoners have not often been paid for their work as earning schemes have not yet been established. Such a scheme is contemplated however, in a recently drafted Prisons Proclamation which would divide remuneration for work done into three separate accounts: a current, a savings and an indemnification account.[38]

Lack of funds has kept housing in poor condition even in the Addis Ababa prison and has prevented the hiring and training of adequate staff. Recreational, health and therapeutic facilities are limited and no program for after-care has been established. Prisoners are reported to be bitter and to feel that their detention is a miscarriage of justice.[39] Provincial prisons have even fewer facilities and for the most part provide only limited opportunity for work. A beginning is being made with these problems as responsible officials realize the need for good prison administration and the importance of careful planning if the principles established in the Penal Code are to be effectively implemented.

## IV. Young Offenders

As with adult offenders, statements concerning juvenile delinquency in Ethiopia can at best be tentative as there are very few accurate records and no comprehensive studies of the problem.[40] An analysis of the case history material contained in the files of the Training School and Remand Home of Addis Ababa provides, however, some indication as to trends in juvenile crime.

The more important conclusions that may be drawn from this material are summarized in a recent report to the Ministry of National Community Deve-

37. Ato Chanyaleou Teshome, "Memorandum on the Improvement of Prison Administration" 1.

38. It is hoped that the Prisons Proclamation will come before Parliament during its current session. Although the proposed Proclamation tends to be overconcerned with security, there is presently no law in Ethiopia governing the administration of prisons and its enactment will effect a number of advances and be quite helpful in regularizing administration.

39. Ato Chanyaleou Teshome, *op. cit.* at 2.

40. The most complete consideration of juvenile delinquency in Ethiopia has recently been presented by J. Riley, United Nations consultant, as a Final Report to the Ministry of National Community Development. Two other short studies have been completed and are contained in the following unpublished reports: J. Ross, "Juvenile Delinquency in Ethiopia" (1961) and Yeweinishet Beshah-Woured, "Some of the Causes and Contributing Factors to the Making of Juvenile Delinquents and Prostitutes" (1961); see also Andargatchew Tesfaye, *op. cit.* at 9-11.

41. Riley, *ibid.* at 8, 23-25.

lopment.[41] The incidence of juvenile crime is concentrated primarily in a few major cities and although light, is increasing. [42] The most heavily committed offenses are petty theft and vagrancy although the authorities have now decided not to take action with respect to vagrancy except in cases of urgent need.[43] The age group of twelve to sixteen years constitutes the largest portion of male, juvenile offenders and only 18% of these offenders come from families having both parents. Low income, illiteracy and unemployment are also common factors related to juvenile crime in Ethiopia.

It is not within the scope of this paper to deal with the causation of juvenile crime, but a few fruitful areas for investigation might be suggested. The rapid migration to urban areas, especially Addis Ababa, with the consequent disassociation from family and often church, together with the introduction of western educational and economic values is likely to have caused considerable normative confusion to which adolescents are particularly prone. This has led to the breaking down of the traditional authority structure and patterns of social stratification, which has increased the possibilities of juvenile crime. The family has been profoundly affected by these changes, and in Ethiopia where families have traditionally been rather unstable,[44] crime by young persons is likely to have deep psychological roots. Poverty, unemployment and limited educational opportunities may also be substantial causes of juvenile crime, particularly with respect to the high incidence of theft. The fact that juvenile crime is as low as it is in Ethiopia can be partially attributed to the continued strength of traditional institutions. Research is badly needed to corroborate or refute these tentative hypotheses and to introduce others so that a sound framework for comprehensive and creative planning of juvenile crime prevention and treatment can be developed.

The first law dealing with juveniles in Ethiopia was the "Vagrancy and Vagabondage Proclamation of 1917."[45] This Proclamation provided for the detention of persons below the age of eighteen years if found wandering abroad without regular employment or lawful residence,[46] but the enactment of the

42. There are no accurate figures as to the extent of juvenile delinquency. Outside of Addis Ababa, Asmara and Dire Dawa there seems to be very little juvenile crime, which is generally dealt with unofficially by the police. See Riley, *ibid.* at 21-22.

43. The Country Statement of Ethiopia submitted to the Social Defence Meeting in Monrovia in August, 1964 states at p. 2 that "In 78 cases out of 100, boys are committed for petty thefts and vagrancy". Commitments for vagrancy have declined from 50% to 2% in the last year due to the newly adopted policy. Riley, *ibid.* at 9.

44. See Ullendorff, *The Ethiopians* 178 (1960); Lipsky, *Ethiopia* 80 (1962).

45. Proc. No. 89 of 1947 G.C. The Penal Code of Ethiopia (1930) does concern itself with juveniles in passing, see Arts. 21, 150.

46. Upon the first such offense, a juvenile was to be returned to the custody of his parents, Sect. 8.

Penal Code in 1957 repealed this earlier legislation.[47]

Under the Penal Code, infants who have not attained the age of nine[48] are deemed not to be criminally responsible; offenses committed by such infants are to be dealt with by the family, school or guardian concerned (Art. 52). Children between the ages of nine and fifteen are referred to as "young persons" and are not subject to the ordinary penalties applicable to adults (Art. 53). After a determination of guilt, sentence is assessed taking into account the age, character, degree of mental and moral development of the young person and the educational value of the measures to be applied (Art. 54). The court may use one of the measures from a prescribed list, the most important of which are: admission to a curative institution, supervised education by relatives, guardian, adopting family or charitable institution, reprimand or admission to a corrective institution (Arts. 161-69). In special circumstances the court may require the payment of a fine, corporal punishment or even imprisonment if the offense committed is normally punishable with ten or more years rigorous imprisonment and the offender appears incorrigible (Arts. 170-73). Measures for treatment or supervised education are terminated only when the medical or supervisory authority thinks it is necessary or when the young offender reaches the age of eighteen. In the case of young persons sent to correctional institutions, the commitment is for not less than one year nor more than five years; only in exceptional cases may it extend beyond the age of eighteen years (Art. 167). The Code further provides for conditional release (Art. 167) but lack of an organized probation system has prevented implementation of this provision. The Penal Code also establishes a category of offenders between the ages of fifteen and eighteen, and although ordinary penalties are applicable, the court may, in assessing sentence, take into account special mitigating factors (Art. 56).

Before 1961, young offenders were taken before ordinary adult courts where the offense committed was of more importance than the welfare of the

47. The Penal Code of 1957 expressly repeals "the Penal Code of 1930 and all proclamations amending the same". Although Art. 3 retains "police regulations and special laws of a penal nature," the Vagrancy and Vagabondage Proclamation seems to be closer in nature to legislation amending the Penal Code of 1930 than a special law of a penal nature. The new Penal Code regulates the area of vagrancy (Art. 471, *Dangerous Vagrancy*) and the legislature probably intended, therefore, although it did not expressly so state, to repeal earlier legislation dealing with vagrancy. See Consolidated Laws of Ethiopia, Institute of Public Administration, which lists the Vagrancy and Vagabondage Proclamation as impliedly repealed by the Penal Code of 1957. In 1961, however, the Juvenile Division of the High Court did convict two juveniles under Art. 8 of the Vagrancy and Vagabondage Proclamation, High Court, Juvenile Division, Crim. File No. 522/53 E.C. (1961 G.C.), in Lowenstein, *Materials For the Study of the Penal Law of Ethiopia* 189-90 (1965).

48. The French text of the drafter of the Penal Code states "ten" years: "Les disposition du présent code ne sont applicable aux enfants n'ayant pas atteint l'age de neuf ans revolus." The same translation error has been made for each age mentioned in the section on young offenders.

child. In 1961, a special tribunal of three High Court judges was constituted to hear juvenile cases under the new Criminal Procedure Code; this court functioned until December, 1962 when a special juvenile court was established by order of His Majesty to sit twice a week in Addis Ababa. The Director of Social Defense in the Ministry of National Community Development has been appointed a Woreda Court judge for purposes of hearing cases in the Juvenile Court. In the provinces, young offenders are still heard before adult courts.

The Criminal Procedure Code of 1961 sets out special procedural rules in cases concerning young persons (Arts. 171-80). These rules provide for an informal hearing in chambers without a charge framed by the public prosecutor unless the offense committed is punishable with rigorous imprisonment exceeding ten years or death. A complaint is read to the accused and if admitted, conviction may follow. If not admitted, a hearing is held at which all witnesses are interrogated by the juvenile judge and by the defense, who is either a lawyer or guardian. A probation report is prepared by one of two probation officers presently attached to the court, enabling the judge to sentence the offending youth in accordance with the principles established in the Penal Code.[49] As there is as yet no home for girls, they are usually returned to parents or guardians or, in exceptional cases, committed to prison.[50]

The only institution in Ethiopia concerned with the rehabilitation of juvenile offenders is the Training School and Remand Home established in 1942 in Addis Ababa.[51] Until May, 1964 the school was closely connected with the Prison Administration of the Ministry of Interior but consistent with the growing philosophy of education and rehabilitation, it was in 1964 transferred to the Division of Social Welfare in the Ministry of National Community Development.

The institution provides accommodation for one hundred boys either committed or on remand whose ages upon admission range from nine to eighteen years.[52] The school is staffed by a superintendent, two probation officers and a number of teachers who provide elementary education through the Ministry of Education. Aside from some academic training and a small amount of therapy and case work provided by the probation officers, the boys do not receive any guidance and counseling due to the lack of trained personnel. The

49. In 1956 E.C. (1963-64 G.C.), the Juvenile Court judge committed 58.5% of all cases dealt with to the Training School and Remand Home; 13% were placed on probation and 35% were returned to parents or guardians. Riley, *op. cit.* at 20.

50. Ato Andargatchew Tesfaye, the present Juvenile Court judge, states that aside from the lack of an institution for girls, the main problems are poor equipment and a lack of co-operation between provincial police and the Juvenile Court. Interview, Dec. 16, 1964.

51. Young offenders in the provinces are sent to segregated sections of prisons where such facilities exist.

52. In December, 1964, the School was accommodating 138 boys; 126 formally committed and twelve on remand. Riley *op. cit* at 26.

organization of the school and its planning tend to be loose, equipment and housing relatively poor and staff inadequate.[53] There has been almost no after-care or follow-up of juvenile offenders. Those who are now responsible for the school are in sympathy with the principles of rehabilitation, however, and are beginning to make headway. A comprehensive reorganization and development plan for the school has recently been prepared in the Ministry of National Community Development and there is every hope that it will soon be implemented.[54]

The *Second Five Year Development Plan* 1963-1967 *G.C.* includes a statement in principle that the Empire will undertake "the rehabilitation of youth so that delinquency and vagrancy among teen-agers is controlled and such youths are helped to become useful members of society."[55] New legislation is now badly needed to realize this ideal.[56] The Social Welfare Division of the Ministry of National Community Development is initiating and coordinating efforts in this field and is presently drafting a comprehensive Child Welfare Act. The police force has recently opened a special department dealing with juvenile affairs, and the Municipality of Addis Ababa and such organizations as the Y.M.C.A. and Scouts have begun to form community centers, clubs and other facilities to provide activity and training for youths. Although Ethiopia has been slow in realizing the necessity of preventing juvenile crime and caring for young offenders, it is fortunate to have established a good beginning before the problem has assumed serious proportions.

## V. Conclusion

The above is a brief outline of the penal system of Ethiopia. Although a good deal more detail could be added with respect to written law, very little, indeed, is known of the day to day functioning of the system. As has been seen, there is considerable disparity between the principles and ideals set out in the new positive law and their application within the penal system. Both basic research and expanded educational opportunity are very much needed if this gap is to be substantially narrowed. A good start has been made and encouragement can be taken from the growing awareness of the existence of these problems and the desire on the part of many in Ethiopia to see to their eventual solution.

53. See Riley, *idem*, and Singh, "Addis Ababa Home for Juvenile Delinquents" (1959).
54. Riley, *ibid.*, Chap. II.
55. (Addis Ababa, Berhanena Selam Printing Press, 1962) 301.
56. See High Court, Juvenile Division, Crim. File No 522/53 *supra* at note 50 where the Court at the end of its opinion states:

> "The Court considers that a resumé of this judgment should be sent to His Excellency, the Minister of Interior and His Excellency, the Minister of Justice, through the President of the High Court, together with explanations of the difficulties with which the Juvenile Court is faced in dealing with juveniles under the existing legislation."