

# CRIMINAL JURISDICTION IN ETHIOPIA: A COMMENTARY \*

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(Title I, Chapter II, Section 2 of the Penal Code and Book I,  
Chapter 1 and Book IV, Chapter 2 of the Criminal Procedure Code)

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#### I. Introduction

There are two elements involved in the exercise of criminal jurisdiction by the Ethiopian courts. The first element deals with persons subject to the Penal Code of Ethiopia. All persons subject to the Penal Code of Ethiopia are subject to the jurisdiction of the Ethiopian courts, and they may be tried here for violations of the Penal Code. Title I, Chapter II, Section 2 (Arts.

\* The purpose of this commentary is to provide explanatory treatment of this area of law. It is not intended to be a detailed analysis of all the legal problems that may arise and it does not contain a discussion of cases and secondary material.

11-22) of the Penal Code covers the question of what persons are subject to the Penal Code, and hence to the jurisdiction of the Ethiopian courts.

The second element deals with the jurisdiction of courts. It must be determined which court in Ethiopia has jurisdiction to hear the case and in which area of Ethiopia the case must be tried, e.g., should the case be tried before the High Court sitting in Addis Ababa or the Awnadja Court of Debre Berhan Awnadja or the Woreda Court of Guellele Woreda. These questions are covered by Book I, Chapter 1 and Book IV, Chapter 2 of the Criminal Procedure Code. (Arts. 4, 6, 7 and 99-107).

## II. *The First Element: Persons Subject to the Penal Code*

Whether or not a person is subject to the Penal Code depends on (1) the place where the offence was committed, (2) the nationality of the accused and (3) the kind of offence that has been committed. In certain circumstances an accused is said to be subject to Ethiopia's *principal jurisdiction*; in other circumstances, although he is not subject to Ethiopia's principal jurisdiction, he is said to be subject to Ethiopia's *subsidiary jurisdiction*. The conditions for the exercise of jurisdiction differ depending on whether the accused is subject to Ethiopia's principal or subsidiary jurisdiction. Most significantly, where a person is subject to Ethiopia's principal jurisdiction, discharge or acquittal in a foreign country does not prevent a prosecution for the same offence in Ethiopia; it does so if he is only subject to Ethiopia's subsidiary jurisdiction.

### A. *Principal Jurisdiction (Penal Code, Arts. 11-16)*

Principal jurisdiction exists as to an accused who is (1) charged with the commission of an offence in Ethiopia, (2) charged with the commission of certain offences against Ethiopia in a foreign country, (3) charged with the commission of an offence in a foreign country where he possesses immunity from prosecution by virtue of his status as an Ethiopian official, (4) charged with the commission of certain offences in a foreign country while a member of the Ethiopian Armed Forces. First we will consider when an accused is subject to Ethiopia's principal jurisdiction; then we will consider the conditions for the exercise of principal jurisdiction.

#### 1. *Persons subject to Ethiopia's principal jurisdiction*

##### a. *Offences committed in Ethiopia (Penal Code, Arts. 11, 12)*

Article 11 (1) provides that the Code is applicable to *any person who commits any offence specified in the Code on Ethiopian territory*. Territory consists of land, sea and air.

**EXAMPLE:** A national of Kenya, while visiting Ethiopia, allegedly rapes another Kenyan in violation of Article 589. Since the alleged offence was committed on the territory of Ethiopia, the accused is subject to the Code and may be tried in the Ethiopian courts for a violation of Article 589.

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**EXAMPLE:** While a Sudan Airways flight is passing over Ethiopia, a Sudanese national aboard the flight allegedly assaults a fellow passenger, who is also Sudanese. Since Ethiopian airspace is Ethiopian territory, the alleged offence was committed on Ethiopian territory, which subjects the accused to the Penal Code, and he may be tried in the Ethiopian courts for a violation of Article 544.

Certain persons such as diplomatic officials are immune from criminal prosecution in the country to which they are accredited under principles of public international law. Such immunity is recognized under Article 11 (2), and a person enjoying this immunity is not subject to the Penal Code, and thus, not subject to the jurisdiction of the Ethiopian courts.

**EXAMPLE:** The ambassador of a country with whom Ethiopia has diplomatic relations recklessly drives his automobile in Addis Ababa, killing an Ethiopian. Such conduct would constitute homicide by negligence under Article 526. Since under principles of public international law, ambassadors are not subject to the penal law of the country to which they are accredited, the ambassador may not be tried in the Ethiopian courts for a violation of Article 526.

A person who has committed an offence in Ethiopia may have successfully escaped and taken refuge in a foreign country. In such a case the Ethiopian authorities are directed under Article 11 (3) to request his extradition so that he may be tried under Ethiopian law. Extradition is the process by which a person who has committed an offence in one country and has taken refuge in another is returned to the country where the offence was committed in order that he may stand trial there. Unfortunately, Ethiopia does not have extradition treaties with very many countries, and most countries will not permit anyone to be extradited unless there is a treaty with the country requesting extradition. That is the law in Ethiopia; no one may be extradited from Ethiopia except in accordance with international agreement. Rev. Const., Art. 50. See also Penal Code, Art. 21. In light of the absence of extradition treaties, Article 11 (3) is not likely to be very effective.

Where extradition cannot be obtained, Article 12 (1) directs the Ethiopian authorities to request that the offender be tried in the country of refuge. If that request is honored by the country in which the offender has taken refuge, and he is tried and acquitted there, he cannot be tried again for the same offence in Ethiopia if he is subsequently apprehended here. This is also true if his sentence has been remitted there or if enforcement of the sentence is barred by limitation. Penal Code, Art. 12 (2).

**EXAMPLE:** A foreign national suspected of committing homicide in Ethiopia flees to his home country, where he is apprehended. He is not extradited, but upon the request of the

Ethiopian authorities he is tried for the homicide allegedly committed in Ethiopia. He is acquitted and returns to Ethiopia. Since he was acquitted of the homicide charge, he cannot be again tried for that offence in Ethiopia.

**EXAMPLE:** Same facts as above except that the Ethiopian authorities make no request that he be tried in the country of refuge. On their own initiative the authorities there apprehend him and charge him with the homicide allegedly committed in Ethiopia. He is tried and acquitted. Subsequently, he returns to Ethiopia where he is apprehended. Since he was not tried at the request of the Ethiopian authorities, Article 12 (2) is not applicable, and since the general rule is that persons subject to Ethiopia's principal jurisdiction can be retried in Ethiopia though they have been tried and acquitted for the same offence in a foreign country (Penal Code, Article 16 (2), to be discussed more fully), he may be tried again for the homicide in Ethiopia.

Where the offender has been convicted following a request under Article 12 and has served out his sentence, he cannot again be punished in Ethiopia. But if he has been convicted and has not undergone any of the punishment or has undergone only part of it, if he is apprehended in Ethiopia, the remainder shall be enforced in Ethiopia provided that enforcement of the punishment is not barred by Ethiopia's law of limitation. Penal Code, Art. 12(3).

**EXAMPLE:** A foreigner has committed an offence in Ethiopia and has fled to his home country, where he is apprehended. Upon the request of the Ethiopian authorities, he is tried for the offence in his home country, convicted and sentenced to one year's imprisonment. Before serving any of the sentence, he escapes and flees to Ethiopia, where he is apprehended. Once it is proved that he was sentenced for the offence and did not serve any part of the sentence, he may be sentenced to one year's imprisonment, providing that enforcement of the penalty is not barred by limitation.

**EXAMPLE:** A foreigner, who has committed theft in Ethiopia, flees to his home country where he is apprehended. Upon request of the Ethiopian authorities he is tried for the offence, convicted and sentenced to three years' imprisonment. He escapes before he has served any part of the sentence. Fifteen years later he is apprehended in Ethiopia. Under Article 234, Penal Code, enforcement of a penalty of imprisonment for more than one year but less than ten is extinguished after ten years. Since enforcement of the penalty is barred by limi-

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tation under Ethiopian law, he cannot be required to serve the three years imprisonment here.

### b. *Offences committed in a foreign country against Ethiopia (Penal Code, Art. 13).*

This article covers offences committed in a foreign country that have their effect in Ethiopia. *Not all such offences subject the offender to the principal jurisdiction of the Ethiopian courts.* Only the offences prohibited by Articles 248-272 (offences against the Emperor and the Empire, their safety or integrity, and offences against Ethiopian institutions) and those prohibited by Articles 366-382 (offences against Ethiopian currency and official seals) subject the offender to Ethiopia's principal jurisdiction. But when such offences have been committed, the offender is subject to Ethiopia's principal jurisdiction whether he is an Ethiopian or a foreigner.

**EXAMPLE:** In a foreign country, a foreign national conspires with Ethiopian exiles to overthrow the Emperor in violation of Article 249. In furtherance of the plot he also counterfeits Ethiopian currency in violation of Article 266. Since both of these offences are violations of the Articles specified in Article 13, the offender is subject to the principal jurisdiction of Ethiopia and, if apprehended here, may be tried for a violation of those articles.

**EXAMPLE:** In a foreign country, a foreign national tries to prevent the purchase of Ethiopian bonds being offered for sale there by falsely telling prospective purchasers that the Ethiopian dollar is about to be devalued. This constitutes a violation of Article 359. Although such conduct may have a detrimental effect in Ethiopia, since Article 359 is not one of the Articles set forth in Article 13, the offender is not subject to the principal jurisdiction of Ethiopia.

### c. *Offences committed in a foreign country by Ethiopian officials enjoying immunity and by members of the Ethiopian Armed Forces (Penal Code, Arts. 14, 15)*

Ethiopian officials are subject to Ethiopia's principal jurisdiction while abroad; members of the Armed Forces are subject to Ethiopia's principal jurisdiction with respect to certain offences committed while abroad, although with respect to certain other offences they are only subject to Ethiopia's subsidiary jurisdiction. Except for the offences specified in Article 13, other Ethiopians acting abroad are only subject to Ethiopia's subsidiary jurisdiction as provided in Article 18.

Under Article 14, diplomatic, consular and other government officials who commit an offence in a foreign country for which they cannot be pro-

secuted there because they possess immunity under principles of international law, are subject to Ethiopia's principal jurisdiction and may be prosecuted here if the offence is punishable under the Ethiopian Code (other than those offences specified in Article 13, which may in all cases be prosecuted here) and is also punishable under the law of the country where it was committed. In other words, the offence must be punishable under both Ethiopian law and the law of the place of commission. If the offence is punishable only upon complaint under *either* law, proceedings may not be instituted in Ethiopia unless such a complaint has been lodged.

**EXAMPLE:** An Ethiopian ambassador commits homicide by negligence in the country where he is serving. This is a violation of the penal law of the country where he acted and is also a violation of Article 526. Under principles of international law ambassadors enjoy immunity from prosecution in the courts of the country where they are serving. Since the ambassador enjoys immunity in the foreign country and since the act is a violation of the law of the place of commission and of the Ethiopian Code, the ambassador is subject to Ethiopia's principal jurisdiction and may be tried here for a violation of Article 526.

**EXAMPLE:** An Ethiopian ambassador causes a person to suffer common wilful injury in the country where he is serving. This is a violation of the law of the place of commission and of Article 539. Under Article 539 (1) such an offence is punishable only on complaint. Under the law of the place of commission it is punishable in the absence of complaint. No complaint has been filed. Since Ethiopian law requires such proceedings to be instituted by complaint and no complaint has been filed, there can be no prosecution for this offence. The same would be true if a complaint had to be filed under the law of the place of commission, though a complaint did not have to be filed under Ethiopian law.

Article 15 deals with offences committed abroad by members of the Ethiopian Armed Forces stationed there. Unlike officials enjoying immunity, not all offences committed abroad by members of the Armed Forces subject them to Ethiopia's principal jurisdiction. Where a member of the Armed Forces commits an offence against the ordinary law of a foreign country, he is not subject to Ethiopia's principal jurisdiction. He is subject to the ordinary law and territorial jurisdiction of that country. If he has fled to Ethiopia and extradition is not granted, he is to be tried under the provisions of the Ethiopian Code governing the exercise of subsidiary jurisdiction, which will be discussed subsequently.

Where, however, a member of the Armed Forces has committed an offence against international law or a specifically military offence, that is, where he

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has committed a violation of the offences defined in Book III, Titles II and III of the Special Part of the Code (Arts. 281-331), he remains subject to Ethiopia's principal jurisdiction and shall be tried by Ethiopian military courts.

**EXAMPLE:** While stationed in a foreign country, a member of the Ground Forces commits aggravated homicide against a foreign national. Since this is an offence against the ordinary law of the foreign country, he is not subject to Ethiopia's principal jurisdiction and will be turned over to the foreign authorities for trial there. If he escapes to Ethiopia and is apprehended here, he is subject to Ethiopia's subsidiary jurisdiction and, assuming there is no extradition, he will be tried in the High Court for a violation of Article 522.

**EXAMPLE:** While stationed in a foreign country, a member of the Imperial Bodyguard absents himself without leave in violation of Article 301. Since this is a specifically military offence as defined in Article 15, he remains subject to Ethiopia's principal jurisdiction and will be tried by the Ethiopian military courts.

### 2. *Limitations upon the exercise of principal jurisdiction (Penal Code, Art. 16).*

When a person is subject to Ethiopia's principal jurisdiction, this means that Ethiopia is the country most affected by the alleged commission of the offence. Consequently, the limitations imposed upon the exercise of subsidiary jurisdiction (where, by definition, Ethiopia is not the country most affected by the commission of the offence), are not imposed upon the exercise of principal jurisdiction. Most significantly, a person subject to Ethiopia's principal jurisdiction, if found in Ethiopia or extradited here, may be tried for the offence here, *whether or not he was tried in a foreign country for the same offence and if he was tried, whether or not he was discharged or acquitted.* The only limitation imposed upon the exercise of principal jurisdiction is that where the offender has been convicted of the offence in a foreign country, any part of the punishment already served shall be deducted from the new sentence.

In this connection, it should be noted that where the person has been tried abroad at the request of the Ethiopian authorities pursuant to Article 12, he is no longer subject to Ethiopia's principal jurisdiction and that Article 14, which has already been discussed, imposes certain limitations upon the exercise of jurisdiction over government officials enjoying diplomatic immunity.

**EXAMPLE:** While in Ethiopia, a Kenyan national allegedly rapes another Kenyan. He returns to Kenya where he is apprehended. He is tried for the rape there and acquitted. He then returns to Ethiopia. If apprehended here, he may be tried for a violation of Article 589, notwithstanding his acquittal

in Kenya. Since the alleged offense was committed in Ethiopia, he is subject to Ethiopia's principal jurisdiction under Article 11 (1), and Article 16 (2) provides that the discharge or acquittal of such persons in a foreign country is no bar to a trial for the same offense in Ethiopia.

**EXAMPLE:** Some facts as above except that the accused was convicted of the rape in Kenya and sentenced to three years' imprisonment, which he served. If he is convicted here and the court imposes the maximum sentence of ten years' imprisonment authorized by Article 589, it must deduct from the sentence the three years already served for the same offense in Kenya.

### B. *Subsidiary Jurisdiction*

Subsidiary jurisdiction exists as to an accused who is (1) charged with offenses committed in a foreign country against international law and certain offenses against public health or morals, (2) charged with certain offenses committed in a foreign country against Ethiopian nationals and (3) charged with certain serious offenses committed in a foreign country against any person. It also exists with respect to Ethiopians charged with certain offenses committed in foreign countries and with respect to members of the Armed Forces who commit offenses in foreign countries against the ordinary law of that country, but who escape to Ethiopia (see the prior discussion of Article 15 in Part II (A) (1) b, above). As we will see, the limitations upon the exercise of subsidiary jurisdiction are significantly different from those imposed upon the exercise of principal jurisdiction. First we will consider the circumstances in which a person is subject to Ethiopia's subsidiary jurisdiction. Then we will consider the limitations upon the exercise of subsidiary jurisdiction.

#### 1. *Persons subject to Ethiopia's subsidiary jurisdiction*

##### a. *Offences committed in a foreign country against international law or universal order (Penal Code, Art. 17)*

Under this article all persons who commit the offenses specified herein are subject to Ethiopia's subsidiary jurisdiction except Ethiopians enjoying immunity who commit these offenses in a foreign country (they are subject to Ethiopia's principal jurisdiction under Article 14) and members of the Armed Forces who commit violations of Articles 281-331 (they are subject to Ethiopia's principal jurisdiction under Article 15 (2) ). Also, persons who are subject to Ethiopia's principal jurisdiction under the provisions of Article 13, of course, are not subject to Ethiopia's subsidiary jurisdiction.

Any person who, in a foreign country, has committed an offense against international law or an international offense specified in Ethiopian legislation or specified in an international treaty to which Ethiopia has adhered is subject to Ethiopia's subsidiary jurisdiction. Offenses against international law are those prohibited by Articles 281-295. The other offenses referred to here



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would be found in the legislation in the *Negarit Gazeta* and the treaties to which Ethiopia is a party that incorporate penal provisions.

**EXAMPLE :** During a civil war in State A, one side interns all foreign nationals as hostages and periodically executes a number of them. This constitutes a war crime against the civilian population in violation of Article 282. Since the Penal Code defines this as an offence against the law of nations, the persons responsible for the taking and execution of hostages are subject to Ethiopia's subsidiary jurisdiction and may be tried here for a violation of Article 282.

In addition, persons who, in a foreign country, have committed certain offences against public health or morals as specified in Article 17 (1) are subject to Ethiopia's subsidiary jurisdiction. These offences are the violation of Article 510 (narcotics), Article 567 (slave trading), Articles 605-606 (traffic in women, children and young persons), and Articles 609-610 (obscene or indecent publications or performances).

**EXAMPLE ;** In State A, a person procures a young woman to engage in prostitution. Since this is a violation of Article 605, that person is subject to Ethiopia's subsidiary jurisdiction and may be tried here for a violation of Article 605.

### *b. Other offences committed in a foreign country (Penal Code, Art. 18)*

In order for a person to be subject to Ethiopia's subsidiary jurisdiction under this article, two conditions must be satisfied. First, the act for which he is charged must be prohibited by the law of the state where it was committed and by Ethiopian law. Secondly, the act must be of sufficient gravity under Ethiopian law to justify extradition. In order to determine whether the act is of sufficient gravity to justify extradition, the court must look to any extradition legislation and whatever extradition treaties Ethiopia may have. If the act is extraditable under the provisions of any of the treaties or the legislation, it is of sufficient gravity to justify extradition within the meaning of Article 18 (1) (b) and thus subjects the accused to Ethiopia's subsidiary jurisdiction.

There are two types of situations covered by Article 18. The first is where the crime is committed in a foreign country either by a foreigner against an Ethiopian or by an Ethiopian. It is this situation which we shall consider first. In order to subject the accused to Ethiopia's subsidiary jurisdiction, it is only necessary that the conditions referred to previously be satisfied. As long as the offence is of sufficient gravity to justify extradition, it subjects the offender to Ethiopia's subsidiary jurisdiction (if prohibited by the law of the place of commission and Ethiopian law) irrespective of the punishment that is authorized. The questions to be asked in such a situation are: (1) was the offence committed in a foreign country against an Ethiopian or by an Ethiopian;

(2) is the offence prohibited by the law of the country where it was committed and by Ethiopian law; (3) is the offence extraditable under any of Ethiopia's extradition treaties or legislation. If the answer to each of the three questions is in the affirmative, the accused is subject to Ethiopia's subsidiary jurisdiction and may be tried here for the commission of the offence.

**EXAMPLE:** In State A, a foreign national intentionally spreads a communicable disease to an Ethiopian, which is a violation of Article 503. This is not prohibited by the law of State A. Since the act is not prohibited by the law of the place where it was done, that person is not subject to Ethiopia's subsidiary jurisdiction. The same would be true if the act were committed by an Ethiopian, either against another Ethiopian or against a foreigner.

**EXAMPLE :** In State A, a foreign national commits homicide in the second degree against an Ethiopian. This is a violation of Article 523 and the law of State A. He flees to Ethiopia, where he is apprehended. Ethiopia does not have an extradition treaty with State A. It does have an extradition treaty with State B, under which homicide in the second degree is an extraditable offence. The accused is subject to Ethiopia's subsidiary jurisdiction and may be tried here for a violation of Article 523 since (1) the offence was committed against an Ethiopian, (2) the act is prohibited both by the law of the place of commission and by Ethiopian law and (3) the act is of sufficient gravity to justify extradition under Ethiopian law. The same would be true if the act were committed in a foreign country by an Ethiopian who is not subject to Ethiopia's principal jurisdiction.

The second type of situation covered in Article 18 is the commission of a very serious offence in a foreign country by a foreigner. The commission of such an act by a foreigner against anyone in a foreign country subjects him to Ethiopia's jurisdiction if (1) the act is prohibited both by the law of the state of commission and by Ethiopian law, (2) it is extraditable under Ethiopian law and (3) it is punishable under Ethiopian law by death or rigorous imprisonment for not less than ten years. The second situation then differs from the first in two respects: (1) it is not necessary that the offence have been committed against an Ethiopian and (2) it is necessary that the offence is sufficiently serious so that it is punishable under Ethiopian law by death or rigorous imprisonment for more than ten years.

**EXAMPLE:** In State A, a national of that country commits aggravated homicide against another State A national. This is a violation of Article 522 and is prohibited by the law of State A. Under Article 522 aggravated homicide is punishable by death or

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rigorous imprisonment for life. The offender flees to Ethiopia, where he is apprehended. Under an extradition treaty with State B aggravated homicide is an extraditable offence. The offender is subject to Ethiopia's subsidiary jurisdiction since (1) the act is prohibited both by the law of the place of commission and by Ethiopian law, (2) it is extraditable under Ethiopian law and (3) it is punishable under Ethiopian law by death or rigorous imprisonment for life.

### c. *Offences committed in a foreign country by members of the Armed Forces (Penal Code, Art. 15 (1) ).*

When a member of the Ethiopian Armed Forces commits in a foreign country an offence against the ordinary law of that country, he is *not* subject to Ethiopia's principal jurisdiction. But he is subject to Ethiopia's subsidiary jurisdiction, and if he is apprehended here, he may be tried under Ethiopian law. It is important to remember that he is only subject to Ethiopia's subsidiary jurisdiction, since the limitations on the exercise of subsidiary jurisdiction differ from those imposed upon the exercise of principal jurisdiction.

### 2. *Limitations upon the exercise of subsidiary jurisdiction (Penal Code, Arts. 19(3), 20).*

Under Article 19 (3) it is provided that the punishment imposed under the Penal Code when the court is exercising subsidiary jurisdiction, shall not exceed the heaviest penalty prescribed by the law of the country where the offence is committed, so long as that country is recognized by Ethiopia.

**EXAMPLE:** In State A, which is recognized by Ethiopia, a State A national commits aggravated homicide against an Ethiopian, which offence is prohibited by the law of State A as well as by Article 522. State A has abolished capital punishment, and the maximum punishment authorized for homicide by State A law is life imprisonment. Therefore, although Article 522 authorizes the imposition of the death penalty in cases of aggravated homicide, the Ethiopian court can only impose a sentence of life imprisonment.

Article 20 deals with the effect of foreign trial and sentence. When a person is subject to Ethiopia's principal jurisdiction, if he is tried and acquitted in a foreign country for the offence, there is *no bar* to his trial for the same offence in Ethiopia. But where a person is only subject to Ethiopia's subsidiary jurisdiction, Article 20 (1) provides that the person *cannot* be tried in Ethiopia for the offence if he was discharged or acquitted for the same act in a foreign country.

**EXAMPLE:** During military operations in State A, a State A national and a member of the Ethiopian Armed Forces allegedly have engaged in looting. Both are captured, tried in State A and acquitted. When hostilities are ended, both return to Ethiopia, where they are apprehended. The State A national is subject to Ethiopia's subsidiary jurisdiction under the provisions of Article 17 (1). The Ethiopian is subject to Ethiopia's principal jurisdiction under the provisions of Article 15 (2). Since the Ethiopian is subject to Ethiopia's principal jurisdiction, he may be tried for a violation of Article 285, notwithstanding the acquittal for the same offence in State A. Since the State A national is only subject to Ethiopia's subsidiary jurisdiction, he may not be tried again for the same offence in Ethiopia.

Where the offender was tried and sentenced in a foreign country, but did not undergo any or all of his punishment, it is provided under Article 20 (2) that the remaining part, if not barred by limitation, may be enforced in Ethiopia. This is the same kind of provision as is contained in Article 12 (3) where the Ethiopian authorities have requested the trial of an offender subject to Ethiopia's principal jurisdiction, and he has been tried in the foreign country in which he has taken refuge. The previous discussion and examples are equally applicable to Article 20 (2). See II (A) (1), above.

3. *Other matters relating to the exercise of subsidiary jurisdiction (Penal Code, Art. 19 (1) (2) )*

Article 19 (1) sets forth certain presumptions with respect to the conditions necessary for the exercise of subsidiary jurisdiction. Where the filing of a complaint by the victim is a condition for prosecution and trial either under the law of the place of commission or under Ethiopian law, it is presumed that such complaint was lodged. It is also presumed that the offender is in the Empire and has not been extradited or that if he was extradited, it was by reason of the offence committed. Finally, it is presumed that the offence was not legally pardoned and that prosecution is not barred under either the law of the place of commission or under Ethiopian law. These presumptions can be rebutted.

Article 19 (2) provides that prosecutions where the accused is subject to Ethiopia's subsidiary jurisdiction shall be instituted by the Attorney-General after consultation with the Minister of Justice.

C. *Summary*

1. *Principal jurisdiction*

- a. *The following persons are subject to the principal jurisdiction of the Ethiopian courts:*

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- (1) persons who have committed offences on the territory of Ethiopia (Art. 11);
- (2) persons who in a foreign country have committed the offences against Ethiopia that are prohibited by Articles 248-272 and Articles 366-382 (Art. 13);
- (3) Ethiopian officials enjoying immunity who in a foreign country have committed an act prohibited by the law of that country and by Ethiopian law (Art. 14);
- (4) members of the Ethiopian Armed Forces who in a foreign country have committed the offences against international law and the specifically military offences that are prohibited by Articles 281-331 (Art. 15 (2)).

**b. *The following principles are applicable to the exercise of principal jurisdiction:***

- (1) discharge or acquittal in a foreign country is not a bar to further prosecution in Ethiopia except where the person was tried in a foreign country pursuant to a request made by Ethiopian authorities under Article 12 (Art. 16 (1) (2));
- (2) where a person has undergone the whole or part of punishment for the offence in a foreign country, that portion shall be deducted from the sentence imposed by the Ethiopian courts (Art. 16 (3)).

**2. *Subsidiary jurisdiction***

**a. *The following persons are subject to the subsidiary jurisdiction of the Ethiopian courts:***

- (1) members of the Ethiopian Armed Forces who have committed in a foreign country an offence against the ordinary law of that country and who have taken refuge in Ethiopia (Art. 15 (1));
- (2) any person who in a foreign country has committed an offence against international law (Arts. 281-295) or an international offence as specified in Ethiopian legislation and treaties or an offence prohibited by Articles 510, 567, 605, 606, 609 and 610 (Art. 17);
- (3) any person who in a foreign country has committed an offence against an Ethiopian national or an Ethiopian national who in a foreign country has committed an offence that does not subject him to Ethiopia's principal jurisdiction, provided that (1) the act is an offence under both Ethiopian law and the law of the place of commission and (2) the

offence is an extraditable one under Ethiopian law (Art. 18 (1) ;

- (4) any person who in a foreign country has committed an offence that is punishable under Ethiopian law by death or rigorous imprisonment for not less than ten years provided that (1) the act is an offence under both Ethiopian law and the law of the place of commission and (2) the offence is an extraditable one under Ethiopian law (Art. 18 (2) ).

b. *The following principles are applicable to the exercise of subsidiary jurisdiction:*

- (1) the punishment imposed shall not be more severe than the heaviest punishment prescribed by the law of the place of commission (Art. 19 (3) ;
- (2) discharge or acquittal in a foreign country prevents further prosecution for the same offence in Ethiopia (Art. 20 (1) ;
- (3) an offender who has served only part of his sentence in a foreign country may be sentenced to serve the remainder of the sentence in Ethiopia, if enforcement of the punishment is not barred by the Ethiopian law of limitation (Art. 20 (2) ).

### *III. The Second Element: Jurisdiction of Courts.*

To determine which court in Ethiopia has jurisdiction to hear a particular criminal case, it is necessary to consider (1) what level of courts has jurisdiction to hear the case, i.e., is it to be tried before the High Court, the Awradja Court or the Woreda Court, and (2) in what area of Ethiopia the case is to be tried. The first question is referred to as one of jurisdiction over offences, the second is referred to as one of local jurisdiction.

A. *Jurisdiction over Offences (Criminal Procedure Code, Arts. 4, 7, 182 and First Schedule).*

Article 4 of the Criminal Procedure Code provides that the jurisdiction of courts over offences is to be determined in accordance with the First Schedule appended to the Code. The Minister of Justice may alter this Schedule by order published in the Negarit Gazeta. Jurisdiction over offences is allocated among the High Court, the Awradja Court, the Woreda Court and Military Courts. In order to determine which court has jurisdiction over the offence, the prosecutor should consult the First Schedule with reference to the Article or Articles of the Penal Code under which prosecution is brought.

**EXAMPLE:** The accused is charged with breach of trust in violation of Article 641 of the Penal Code. The prosecutor should consult the First Schedule, which provides that prosecutions

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for violation of Article 641 are to be brought in the High Court.

Where the prosecution is for an offence not covered in the Penal Code, e.g., a violation of a subsequent proclamation published in the *Negarit Gazeta*, the jurisdiction of the court depends on the maximum penalty that can be imposed for violation of the law. Where the penalty does not exceed three years of simple imprisonment with or without fine, the prosecution is to be instituted in the Woreda Court. Where it does not exceed five years of imprisonment with or without fine, prosecution is to be instituted in the Awradja Court. Where the maximum penalty is in excess of the above, prosecution is to be instituted in the High Court.

**EXAMPLE:** The accused is charged with the violation of a proclamation, the maximum punishment for which is four years of imprisonment. In the opinion of the prosecutor there are mitigating circumstances, and he does not plan to ask the court to impose a sentence of more than one year of simple imprisonment. Since the penalty authorized for the offence exceeds three years of imprisonment and does not exceed five years of imprisonment, prosecution is to be instituted in the Awradja Court.

It is provided in Article 7 that courts shall exercise appellate jurisdiction in accordance with the provisions of Article 182. Under Article 182 there are two appeals in criminal cases except where prosecution is instituted in the High Court. Where the case is instituted in the Woreda Court, an appeal lies to the Awradja Court, and an appeal from the decision of the Awradja Court lies to the High Court. Where the case is instituted in the Awradja Court, an appeal lies to the High Court, and an appeal lies from the decision of the High Court to the Supreme Imperial Court. Where the case is instituted in the High Court, there is, of course, only one appeal, to the Supreme Imperial Court. It should be noted that under Article 183, an applicant who has exhausted his rights of appeal under Article 182 may still petition His Imperial Majesty's Chilot for a review of the case.

### B. *Local Jurisdiction (Criminal Procedure Code, Arts. 6, 99-107).*

Local jurisdiction refers to the area of Ethiopia in which the case is to be tried. If jurisdiction over the offence is in the Awradja Court, the question is in which Awradja Court the particular case is to be tried. Article 6 provides that the courts shall exercise local jurisdiction in accordance with the provisions of Articles 99-107. The general principle, embodied in Article 99, is that every offence shall be tried by the court within the local limits of whose jurisdiction the offence is committed. In this connection, where an offence is triable before the High Court, which now sits permanently in some of the provincial capitals, the "local limits of whose jurisdiction" should be interpreted to mean

within the local limits of the province in which the High Court is sitting. Thus, an offence committed in Gojjam Province should be brought before the High Court sitting in Gojjam Province rather than before the High Court sitting in Shoa Province.

Where all the operative events involving the offence occurred within the jurisdiction of the court in which it is to be tried, there is no problem. The problem arises when some of the operative facts occurred within the local limits of the jurisdiction of the more than one court. This situation is covered by Articles 100-103.

Under Article 100 it is provided that where the act which caused the harm occurred in one jurisdiction and the harm resulting from the act occurred in another, the offence may be tried before either the court within the limits of whose jurisdiction the act took place or the court within the limits of whose jurisdiction the consequences resulting from the act took place.

*EXAMPLE:* In Begemder Province, the accused prepared a shipment of poisoned fruit and sent it to the victim who resided in Gojjam Province, intending that the victim should be poisoned. The victim died as a result of eating the poisoned fruit. The accused may be tried for a violation of Article 522, Penal Code, either before the High Court sitting in Begemder Province or before the High Court sitting in Gojjam Province.

Certain acts become offences by reason of their relation to other offences. For example, Article 449, Penal Code, prohibits soliciting another to give false testimony. This act is punishable, because it can induce the commission of the offence of perjury. Article 101 provides that where an act is an offence by reason of its relation to another offence, a charge of the first mentioned offence may be tried by a court within the local limits of whose jurisdiction either act was done.

*EXAMPLE:* In Harrarghe Province, the accused persuades another person to give false testimony in a trial that is taking place in Shoa Province, and that person does give false testimony. Violations of Article 449 are triable before the High Court. Since the act of the accused took place in Harrarghe Province, and the act constituting the related offence took place in Shoa Province, the accused can be tried for a violation of Article 449 before either the High Court sitting in Harrarghe Province or the High Court sitting in Shoa Province.

Article 102 deals with the situation where, in the broad sense, the place of offence is uncertain. Where it is factually uncertain in which of several local areas an offence was committed, Article 102(a) provides that it may be tried before the court in any of the local areas.



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**EXAMPLE:** The accused is charged with the abduction of a minor in violation of Article 560, Penal Code. Such offences are triable before the Awradja Court. The child cannot remember exactly where he was at the time of the abduction, but it is clear that he was either within the limits of Debre Berhan Awradja or Debre Sina Awradja. The accused may be tried before either Awradja Court.

The same is true where the offence is committed partly in one local area and partly in another (Art. 102(b) ), where an offence continues to be committed in more than one local area (Art. 102(c) ), and where an offence consists of different acts done in different local areas (Art 102(d) ).

**EXAMPLE:** Near the border between Shoa and Sidamo Provinces, the accused strikes his victim three times with a club and then drags him across the border into Shoa Province, where he strikes him a fourth time. The victim dies after the fourth blow. The accused may be tried for homicide before either the High Court sitting in Shoa Province or the High Court sitting in Sidamo Province, since the offence was partly committed in Shoa and partly committed in Sidamo.

**EXAMPLE:** The accused, contrary to law, arrests a person in Sendafa Awradja and takes him to a police station in Sheno Awradja. The illegal restraint constitutes a violation of Article 557, Penal Code. Since the illegal restraint continued when the victim was taken to the police station in Sheno Awradja, the accused may be tried before either Awradja Court.

**EXAMPLE:** The accused, living in Begemder Province, sends a letter from there to a person living in Shoa Province, stating that he is entitled to certain property possessed by the other person. The accused comes to Shoa Province and obtains the property from the victim as a result of the fraudulent misrepresentations. This conduct constitutes a violation of Article 656, Penal Code. The offence consisted of the writing of the fraudulent letter and the receipt of the property as a result of the fraudulent misrepresentations. Since the writing of the letter occurred in Begemder Province and the receipt of the property occurred in Shoa Province the accused is triable before either the High Court sitting in Begemder Province or the High Court sitting in Shoa Province.

Where an offence is committed while the offender is in the course of performing a journey or voyage, Article 103 provides that the offender may be tried by any court through or into the limits of whose jurisdiction either the offender, the victim or the thing against which the offence was committed pas-

sed during the course of the journey. It is not necessary that the *offence* was committed in the jurisdiction of the court so long as the offender, the victim or the thing passed through the jurisdiction.

**EXAMPLE:** The accused and the victim were passengers on a bus that passed through Guella, Arada, Kebena and Oureal Woredas. The accused boarded the bus in Guella Woreda, assaulted the victim and left the bus, all while it was still in Guella Woreda. The victim continued on to Arada Woreda. Since the victim passed through Arada Woreda during the course of the journey, the accused may be tried for a violation of Article 554, Penal Code, in either the Guella Woreda Court or the Arada Woreda Court.

**EXAMPLE:** Goods were loaded on a lorry in Debre Sina Awradja. The lorry continued through Debre Berhan Awradja and stopped in Sheno Awradja. The accused allegedly committed the theft of the goods while the lorry was stopped. Since the goods were in all three Awradjas during the course of the journey, the accused may be tried for a violation of Article 630, Penal Code, in any of the three Awradja Courts.

Article 104 provides that when an offence is committed outside Ethiopia on an Ethiopian ship or aircraft, it is deemed to have been committed in Ethiopia. This article does not specify in what area the case is triable. However, Article 107 provides that in the cases under Article 100-104 the public prosecutor shall decide the court in which the charge shall be filed, and on the filing of the charge, the court in which the charge is filed shall have jurisdiction. In other words, where the case is triable in more than one court, the decision as to where the case is to be tried rests with the public prosecutor.

**EXAMPLE:** An offence triable before the Awradja Court is committed on an Ethiopian Airlines plane while the plane is flying over the Sudan. Assuming the accused is subject to the Penal Code, the case can be tried in any Awradja Court in Ethiopia in the discretion of the public prosecutor.

Article 106 deals with change of venue. This is the process by which, for valid reasons, a case is transferred from one court having local jurisdiction to another court. Application for a change of venue must be made to the High Court. The transfer, if the application is granted, must be to a court authorized to try the offence under the First Schedule or to the High Court itself. Thus, if according to the First Schedule the case is to be tried in the Woreda Court, the High Court may transfer the case to another Woreda Court or may hear it itself, but it may not transfer the case to an Awradja Court. The order of the High Court granting or denying the application is not appealable.

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Article 106 sets forth four situations in which the High Court may grant the application. They are (1) where a fair and impartial trial cannot be held in a subordinate criminal court, (2) where a question of law of unusual difficulty is likely to arise, (3) where such an order is necessary for the general convenience of the parties or witnesses and (4) where such an order is expedient for the ends of justice or is required by any provision of the Criminal Procedure Code.

**EXAMPLE:** The accused is charged with the theft of a widow's life savings. The theft has caused great resentment in the area. The accused contends that he was somewhere else at the time of the alleged offence, but that witnesses who could testify to this fact will not testify on behalf of the accused because threats have been made against them if they so testify. If the High Court believes this, it can order the case to be tried before another Awradja Court or can hear the case itself.

**EXAMPLE:** The accused is charged with a violation of Article 613. Penal Code, which prohibits the public display of writings that "stimulate unduly ... the sexual instinct." Such cases are triable before the Woreda Court. The defendant maintains that the material displayed did not "stimulate unduly ... the sexual instinct" within the meaning of Article 613. The interpretation of "stimulate ... unduly the sexual instinct" may constitute a question of law of unusual difficulty, and upon application, the High Court may decide to hear the case itself.

**EXAMPLE:** Goods loaded on a lorry that passed through Debre Sina, Debre Berhan and Sheno Awradjas were allegedly stolen by the accused while the truck was stopped in Sheno Awradja. The public prosecutor has elected to file the charges in the Debre Sina Awradja Court. The accused and all the witnesses reside in Sheno Awradja. Upon application, the High Court may decide to transfer the case to the Sheno Awradja Court on the ground that this is necessary for the convenience of the witnesses and the accused.

Article 106(d) gives the Court the discretion to order transfer in any other proper case or where another provision of the Code would indicate that trial in a particular court is required.

Finally, requests for reinstatement are to be brought before the court that passed the original sentence, cancellation of which is now sought. Criminal Procedure Code, Art. 105.

C. *Summary*

1. The jurisdiction of a court over a particular offence is specified in the First Schedule to the Criminal Procedure Code. This schedule determines whether the case is to be tried in the High Court, Awradja Court, Woreda Court or Military Courts (Art. 4).
2. Ordinarily, an offence is to be tried at the place where it is committed, that is, if it is triable before the Awradja Court, it is triable before the Awradja Court within the local limits of whose jurisdiction it was committed (Art. 99).
3. In the following circumstances more than one court has local jurisdiction. The decision as to the court in which the charges are to be filed rests with the public prosecutor (Art. 107):
  - a. Where the act and consequences occurred in different jurisdictions, the charge may be filed in the court in whose jurisdiction either the act or the consequences occurred (Art. 100);
  - b. Where an act is an offence by reason of its relation to another offence, a charge for that offence may be filed in a court within the local limits of whose jurisdiction either offence was committed (Art. 101);
  - c. Where it is uncertain in which of several local areas an offence is committed, where an offence is committed partly in one local area and partly in another, where an offence is continued in another local area and where an offence consists of several acts done in different local areas, the charge may be filed in any court having jurisdiction over any of the local areas (Art. 102);
  - d. Where the offence is committed while the offender is on a journey, the charge may be filed before any court through or into the local limits of whose jurisdiction the offender, the victim or the thing as to which the offence was committed passed in the course of the journey (Art. 103);
  - e. An offence committed aboard an Ethiopian aircraft or ship outside the territorial limits of Ethiopia is triable before any court in Ethiopia before which trial of the particular offence is proper (Art. 104).
4. Change of venue may be ordered in accordance with the provisions of Article 106.