

CRIMINAL PROCEDURE FOR JUVENILE OFFENDERS IN ETHIOPIA

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The purpose of this article is to set out, in summary fashion, the law concerning juvenile offenders in Ethiopia. Our focus will be on procedural¹ rather than substantive aspects—insofar as it is possible to separate the two—and particularly upon the enforcement of constitutional guarantees in the process.

Introduction: Background

The Ethiopian Constitution² provides, in American fashion, specific guarantees of a whole range of individual rights. These go beyond the prerogatives of free speech and press, etc., to include the basic rights of an individual accused of crime. He is guaranteed the equal protection³ and due process⁴ of law, and freedom from improper searches,⁵ seizures, and arrests.⁶ He is entitled to the representation of counsel,⁷ to be presumed innocent until proven guilty,⁸ and to a speedy,⁹ public¹⁰ trial. At trial he is guaranteed the right to confront the witnesses against him,¹¹ and to have compulsory process for obtaining witnesses in his favour.¹² Finally, he is constitutionally protected against punishment twice for the same offence,¹³ cruel and inhuman punishment,¹⁴ punishment without personal guilt and conviction,¹⁵ and punishment under retroactive laws.¹⁶

These impressive guarantees are, by and large, fully implemented by the Penal¹⁷ and Criminal Procedure¹⁸ Codes at least for adults accused of crime. For juv-

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1. Unless otherwise noted all references are to the Criminal Procedure Code, 1961.
2. Revised Constitution of 1955.
3. Art. 37, Rev. Const.
4. *Id.*, Art. 43.
5. *Id.*, Art. 61.
6. *Id.*, Art. 51.
7. *Id.*, Art. 52.
8. *Id.*, Art. 53.
9. *Id.*, Art. 52.
10. Art. 52, Rev. Const., in the Amharic version guarantees the right to a public trial, but the English version does not. Art. 112 in both versions can be seen as guaranteeing the same right, and it is questionable whether its qualifications as to cases endangering public order, etc. apply to criminal as well as non-criminal prosecutions.
11. Art. 52, Rev. Const.
12. *Ibid.*
13. *Id.*, Art. 56.
14. *Id.*, Art. 57.
15. *Id.*, Art. 54.
16. *Id.*, Art. 55.
17. Penal Code of 1957. See, for example, Arts. 2, 4, 5 and 23, Pen. C.
18. See, for example, Arts. 29, 49 and 61.

eniles, however, the situation is different; the statute law frequently denies basic constitutional rights or else grants only a watered-down version of them. Strictly, a young person who is accused of crime would seem fully entitled to the protections of the Constitution. The Civil Code¹⁹ makes the human person the "subject of rights from its birth to its death"²⁰ and asserts for all physical persons "the liberties guaranteed by the Ethiopian Constitution."²¹ The Constitution itself, in Articles 37 ("No one shall be denied the equal protection of the laws.") and 38 ("There shall be no discrimination amongst Ethiopian subjects with respect to the enjoyment of all civil rights."), would seem to enjoin discrimination in the enjoyment of basic rights on the ground of age. Therefore there is no explicit basis in the constitutional law for such discriminations as we find in the codes.²² We can explain them only by reference to the peculiar "punitive" or "non-punitive" philosophy with which the penal law, in Ethiopia and abroad, regards the phenomenon of juvenile crime.

In many countries there has developed, over the past fifty to seventy-five years, an institution known as the "juvenile court."²³ Although local variations are numerous, basically the juvenile court can be described as a special court designed to apply the penal law, or a special modification of the penal law, to children and young persons. The juvenile court grew up as a reaction against the former practice of dealing with juveniles in the same courts, under the same procedural and substantive law, as adults charged with crime. Some of the innovations claimed for juvenile courts have been: specialization of judges, informality of the court-room and of other aspects of the proceedings, rigid segregation of juveniles from adult subjects of the criminal process at all pre-trial and post-trial stages, protection of juvenile offenders from publicity, emphasis on discovering the "causes" of anti-social behaviour in the juvenile, and on rehabilitating him through affecting his environment rather than on fixing his blame and punishment. In some countries the non-punitive philosophy of the juvenile court has led to the discarding of such criminal court nomenclature as "charge," "offence," "plea," "conviction," and "sentence" in favour of more neutral terms. These, it is thought, help protect the juvenile from any connotations of crime and punishment. In other countries, notably the Scandinavian ones, administrative boards deal with juvenile delinquency, in a setting completely removed from that of courts and the criminal law.

But, it can be said generally of all countries, whether juvenile courts or "child welfare boards" perform these functions, that there had been some tension between the non-punitive, rehabilitative *aims* of the system, and the sometimes harsh realities of the dispositions applied to juvenile subjects.²⁴ And in view of

19. Civil Code of 1960.

20. *Id.*, Art. 1.

21. *Id.*, Art. 8.

22. Article 4, Pen. C., specifically allows in general terms for discrimination in offender treatment on the basis of age.

23. An introductory bibliography of writings in English on the subject of procedure in juvenile courts can be found in S. Fisher, *Ethiopian Criminal Procedure* (Addis Ababa, Faculty of Law, Haile Sellassie I University, 1969), Appendix G.

24. A classic example of punishment dressed in the language of "cure" is reported by Professor Francis Allen: playing powerful water hoses on inmates of an institution for juveniles was known to the staff as "hydrotherapy." F. Allen, *Borderland of Criminal Justice* (Chicago, University of Chicago Press, 1964), p. 34.

the fact that despite noble aims and non-punitive philosophy, juvenile courts and boards frequently dispense punishment, there has been concern at the lack of procedural protections for the juvenile who is subject to such treatment.²⁵ In the case of Ethiopia it is just this tension, between, on the one hand, the punitive nature of much of the treatment accorded juveniles under the law, and on the other, the rehabilitative, "curative" philosophy both of the juvenile courts and of the procedures they employ, that undoubtedly explains some of the constitutional anomalies we have alluded to above.

As has been pointed out by one student of the subject, the Ethiopian Criminal Procedure Code "does not envisage a 'juvenile court' as it is known in the western countries. Jurisdiction-wise, the juvenile is, according to this code, at the mercy of the ordinary courts in the Empire, starting from the the Woreda Court."²⁶

This statement is generally²⁷ accurate. But although the "juvenile court" is not specifically known to Ethiopian law, the law gives ample recognition to the special situation of the juvenile accused: there is a special section of the penal law, containing rules of both substance and procedure, exclusively designed for the juvenile offender; and there are special sections of the procedural law likewise designed for the juvenile.

The Penal Code's Special Provisions for Young Offenders.

Age Groups

With regard to the substantive penal law of Ethiopia, we may speak of four separate penal law regimes for the four following age groups: one through eight, nine through fourteen, fifteen through seventeen, and eighteen onwards, inclusive.²⁸

25. See, e.g., *Re Gault* (Sup. Ct., U.S. 1967), *U.S. Sup. Ct. Rep.* (Lawyers ed. 2d), vol. 18, p.527.

26. Mebrahtu Yohannes, *Procedure in Cases of Juveniles in Ethiopia* (1965), unpublished, Archives, Law Faculty, H.S.I.U., p. 14. The present writer wishes to acknowledge his considerable debt to Ato Mebrahtu, his former student, for contributing much useful information used in the writing of this piece.

27. The situation in Addis Ababa is somewhat different. See the discussion in text at notes 101-07, below.

28. There appears to have been some confusion in the past over the question of age categories in the codes. Two scholars have stated the view that the French and English versions of the Penal Code are discrepant in their descriptions of age groups. See S. Lowenstein, "The Penal System of Ethiopia", *J.Eth.L.*, vol. 2 (1965), p. 397, n. 48; P. Graven, *An Introduction to Ethiopian Penal Law* (Addis Ababa, Faculty of Law, H.S.I.U., 1965), pp. 145, 146, and 151.

Certainly the codes could have been a bit more explicit, but the present writer can find no discrepancy. Taking, for example, the French text of Penal Code Article 56, we see that the Code's English translation for "Si, au moment ou il a commis l'infraction, l'auteur etait agé de plus de quinze ans mais de moins de dix-huit ans révolus..." is: "If, at the time of the offence the offender was over fifteen but under eighteen years of age..." We can recognize the correctness of the translation if we keep in mind that, even in English, one's eighteenth "complete" year culminates in one's eighteenth birthday, not one's nineteenth (just as one's first complete year of life culminates in the first birthday). Therefore, both the French and the English texts refer to the person who was, at the specified time, past his fifteenth birthday ("over fifteen," "more than fifteen") but had not yet reached his eighteenth birthday ("under eighteen," "less than eighteen complete years").

Likewise, there is no discrepancy in Art. 52, Pen. C., which translates "enfants n'ayant pas atteint l'âge de neuf ans révolus..." as "infants not having attained the age of nine

The first group, called *infants*²⁹ in the Penal Code, is totally exonerated from application of the penal law on grounds of irresponsibility.³⁰ Society's remedy against anti-social acts committed by infants must be found in the civil law of the Empire,³¹ or else in criminal proceedings against the parents.³²

The nine through fourteen age group,³³ called *young persons* in the codes, is the principal subject of our discussion. For them, the Penal Code provides special punishments and measures upon conviction; the ordinary punishments and measures of the criminal law are not applicable.³⁴ However, none of the special dispositive provisions of the law may be applied unless the juvenile has

years..." Both phrases refer, albeit awkwardly, to children who have not reached their ninth birthday—which comes at the end of one's ninth "complete" year of life.

In an effort to keep the age categories clear in the course of our discussion, we have adopted the use of *inclusive* categories. Therefore, we refer to the infant age group, which has not reached the ninth birthday, as the "one through eight" group; to the young persons group, which has reached its ninth but not its fifteenth birthday, as the "nine through fourteen" group, and to the post-juvenile group, which has reached its fifteenth but not its eighteenth birthday, as the "fifteen through seventeen group."

We also use the terms "juvenile" and "youth" interchangeably with "young person," and "juvenile offender" interchangeably with "young offender."

29. See Art. 52, Pen. C. There is a need to make the various French terms used in the Avant-Projet and final French versions of the Penal Code, consistent with the Amharic and English terms used in corresponding articles. The French principally uses the terms *enfant*, *mineur* and *adolescent*, while the English relies on "infant" (or "child"), "young person" (or "young offender"), with occasional use of "juvenile delinquent" (cf. section title preceding Art. 52). The translations are not always correct, e.g. Art. 163(3) incorrectly translates *mineur* as "infant" instead of "young person."

30. Art. 52, Pen. C. See also Art. 39(1)(b), Crim. Pro. C.

Among the reasons for exonerating infants from penal liability are to give the parents a reasonable opportunity to correct and educate the child, and to keep him in the parental home, which is the most beneficial environment for one of tender years. But one can think of cases where these reasons would not apply: where, for example, the parents were obviously unable to cope with the child or, as is often the case, were providing the very environment (immoral, alcoholic, unloving, etc.) which was driving the child into emotional disturbance and socially harmful behaviour.

An equally fundamental reason is related to the popular association of criminality with blameworthiness, and the feeling that very young children are not "responsible" for their actions, cannot be "blamed" in any serious degree, and so should not be "punished" -- punishment being in most eyes the penal law's essential task. In a *purely rehabilitative* regime, entirely devoted to "social defence", there would be no objection to lowering the age of responsibility to zero, given confidence in the rehabilitative facilities available. The Penal Code's treatment of offenders whose irresponsibility stems from insanity provides a case in point—there the *level* of responsibility is zero, yet they are compulsorily "treated".

31. "Where an offence is committed by an infant, appropriate steps may be taken by the family, school, or guardianship authority." Art. 52, Pen. C.

The infant's father and, in his default, other close relatives, etc. are liable for any civil liability he incurs as a result of his misbehaviour. Arts. 317, 2124-25, Civ. C. In extreme cases of neglect, the natural parents may be removed as guardians, and custody of the infant entrusted to a court-appointed guardian; such a procedure may be instituted by the public prosecutor. See Arts. 231, 233 and 234-35, Civ. C.

These remedies of course also apply to young persons and unemancipated post-juveniles.

32. Criminal prosecutions undertaken against parents whose neglect, abuse or bad influence has directly caused the infant's misbehaviour could conceivably have a deterrent effect on their future conduct as parents. See Penal Code Arts. 548 (*Maltreatment of Minors*), 625 (*Failure to Maintain*) and 626 (*Failure to Bring Up*). See also Arts. 807-08, Civ. C. (on the obligation to maintain). Art. 548, Pen. C. applies also in cases of young persons, and Arts. 625 and 626, Pen. C. might in addition apply in cases of post-juveniles.

33. See note 28, above.

34. Arts. 53, 161-80, Pen. C.

first been convicted of one of the crimes prescribed by the Special Part of either the Penal Code or the Code of Petty Offences, in accordance with the appropriate general part principles of guilt, causation, justification and excuse, etc.³⁵ *In other words, a single substantive law of crimes applies to adults and young persons alike, but once a crime is proven the special dispositive provisions for juveniles become exclusively relevant for the sentencing court.*

Before carrying on with our discussion of the special measures and punishments prescribed for young persons by the Penal Code, let us briefly consider the last two age categories. The age group fifteen through seventeen, inclusive, is unfortunately referred to in the codes only as "young persons between the ages of fifteen and eighteen." This is, of course, an awkward and misleading³⁶ label. For want of a more convenient substitute we shall call them the "post-juveniles."^{*}

Post-juveniles are treated, under the Penal Code, as having the full *prima facie* liability of persons aged eighteen and over.³⁷ However, the Penal Code provides that mitigation of the penalty is always permitted,³⁸ the death penalty may never be imposed,³⁹ and under certain conditions the measure or penalty scheme for young offenders may be applied *in toto*.⁴⁰

The last group of offenders is that of persons eighteen years of age and above, in other words, adults. Since they are the subject of ordinary substantive and procedural law no discussion is necessary here.

Special Measures

Let us resume our discussion of the Penal Code's special provisions for young persons who have been convicted of a criminal offence. In such a case, we have said, the ordinary penalties and measures⁴¹ prescribed by the penal law for the punishment and correction of adult offenders are not available to the sentencing judge; in their place, the judge may choose from a number of special measures designed to rehabilitate the youth. There are also special penalties applicable

35. Art. 53(2), Pen. C.: "No order may be made under Art. 162-73 of this Code unless the offender is convicted."

36. See note 28, above.

37. Art. 56, Pen. C.

38. Arts. 56(2) and 181, Pen. C.

39. Arts. 118 and 181, Pen. C.

40. Arts. 56(2) and 182, Pen. C. See Tieme-Lissan Lemma, *Sentencing Hearing with Respect to Offenders Between the Ages of Fifteen and Eighteen* (1967), unpublished, Archives, Faculty of Law, H.S.I.U.).

41. The Penal Code uses the term "measure" in two different ways. Viewed broadly, a measure is any course of treatment imposed upon an offender by way of sentence after conviction. In this sense, punishment is only one of various possible measures imposed in the interests of crime prevention. See, for example, Part I, Book II, Title I of the Penal Code, entitled "Punishments and Other Measures" But more commonly, measures are *distinguished* from punishments. Although both kinds of disposition serve the end of crime prevention, Art. 1, Pen. C., punishments operate primarily by way of individual and general deterrence. Measures, on the other hand, are designed to prevent crime by changing the offender's environment so as to reduce his opportunities for crime, or by changing his attitudes through non-punitive, educational processes. See H. Silving, "The Rule of Law in Criminal Justice," in G. Mueller, *Essays in Criminal Science* (London, Sweet and Maxwell, 1961). pp. 103-104.

Throughout this discussion we use "measure" in the second, narrower sense.

to young persons, but these penalties may only be ordered "where measures have been applied and have failed."⁴² The words quoted imply that a first conviction may never result in the application of penalties; only a second conviction which in itself might afford evidence of the "failure" of the measures imposed after the first, would presumably permit the imposition of penalties.⁴³

The measures and penalties available to the court afford a wide latitude in sentencing. The measures include medical treatment,⁴⁴ supervised education,⁴⁵ oral reprimand,⁴⁶ school or home "arrest,"⁴⁷ and commitment to a "corrective institution" defined as a "special institution for the correction and rehabilitation of young offenders," where the juvenile will receive education "under appropriate discipline."⁴⁸ Orders for medical treatment and supervised education expire when the young offender becomes eighteen, or before then if, in the sole judgment of the administrative authority concerned, the measure has achieved its purpose.⁴⁹ The duration of school or home arrest is fixed in advance by the sentencing judge.⁵⁰ So, too, is the length of commitment to a corrective institution, which may be within the limits of one to five years, but not longer than the offender's eighteenth birthday.⁵¹ Conditional release with probation is available after one year's detention under the usual conditions.⁵²

42. Art. 170, Pen. C.

43. In other words the court is not free, following a first conviction, to terminate a measure "in the middle" and substitute a penalty on the ground that the measure has "failed." See P. Graven, *An Introduction ...*, cited above at n. 28, pp. 148-49, and our discussion accompanying notes 235 ff., below.

44. Art. 162, Pen. C.

45. Where the young offender is "morally abandoned or is in need of care and protection or is exposed to the danger of corruption or is corrupted...." Art. 163, Pen. C. This measure resembles the "fit person" order of English juvenile offender law. See Children and Young Persons Act, 1933, secs. 57 and 84, 25 Geo. 5 c. 12, *Halsbury's Statutes of England* (2nd ed., 1949), vol. 12, p. 974.

46. Art. 164, Pen. C.

47. Art. 165, Pen. C. This measure resembles the "attendance centre" of English juvenile offender law. See Criminal Justice Act, 1948, Sec. 19, 11 and 12 Geo. 6 c. 58, *Halsbury's Statutes of England* (2nd ed., 1949), vol. 14, p. 999.

48. Art. 166, Pen. C.

49. Art. 167, Pen. C. This contrasts with the law governing the duration of measures applicable to offenders found irresponsible by reason of insanity, under which approval of the court is made a condition of termination. See Art. 136, Pen. C.

50. Art. 165, Pen. C.

51. Art. 167, Pen. C. However, Art. 168, Pen. C. authorizes the court, upon recommendation of the "management of the institution or of the supervising authority," to "vary" any measure ordered, and presumably that power would permit a premature termination of the detention, as well as its extension within the prescribed limits. See note 61, below.

This scheme contrasts with the Penal Code's treatment of insane offenders, whose commitment for cure is of indefinite duration, with court review every two years. Release is ordered upon recommendation of the administrative authorities, with court approval. Perhaps a more truly rehabilitative scheme for juveniles, too, would discard judicially predetermined periods of commitment under Article 166. Instead the court would set only a maximum term within the present limits, but allow prior release on the sole discretion of the administrative authorities, based on their observations of the offender's progress. By this, obviating the need to obtain court approval, unnecessary expense and delay could be avoided.

52. Art. 167(2), Pen. C. Conditional release in Ethiopia must always be approved by the court; the scheme for juveniles is comparatively lenient in that adults are not eligible for conditional release until two thirds of the sentence has been served. See Arts. 112 and 206 ff., Pen. C.

It will be appreciated that some of these measures might be viewed by the juvenile and or his parents as punitive, inasmuch as they result in a forced deprivation of personal liberty. But it is clear that the Code's guiding philosophy here is rehabilitative, not punitive. The court is directed, when assessing the sentence, to take into account the "age, character, degree of mental and moral development, of the young offender, as well as the educational value of the measures to be applied."⁵³ To facilitate such individualization, it is encouraged to order an expert inquiry into the life and personality of the offender, thereby to decide "what treatment and measures of an educational, corrective or protective kind would be most suitable."⁵⁴ A further indication of the Code's rehabilitative purpose is the provision, which we shall discuss below, that young persons sentenced to a measure "shall not be regarded as having been sentenced under criminal law."⁵⁵

Special Penalties

The penalties which may be ordered in respect of young persons are vastly more lenient than those which an adult convicted of crime would ordinarily face. And, like the measures discussed above, they are not, as a rule⁵⁶ "tied" to specific offenses according to gravity. A young person who, following an initial conviction or convictions, has undergone one of the prescribed measures, may upon a new conviction for any criminal offence be sentenced to any of the special penalties provided, if in the opinion of the court the prior measures had "failed."⁵⁷ The special penalties are fine, corporal punishment and imprisonment. Fines are designed for "exceptional cases when the young offender is capable of paying a fine and of realising the reason for its imposition;"⁵⁸ corporal punishment may be a maximum of twelve strokes on the buttocks administered with a cane.⁵⁹ Corporal punishment is to be used only when the young person is "contumacious," and the court considers the punishment "likely to secure his reform."⁶⁰ Fine

53. Art. 54, Pen. C.

54. Art. 55, Pen. C. Presumably the term "protective" here refers to protection of the juvenile from a harmful environment, and not protection of society from the juvenile.

55. Art. 169, Pen. C. See the discussion at text accompanying notes 81-85.

56. The exception is imprisonment ordered under Article 173, Pen. C., which is only available in case of a serious offence. See the discussion below.

57. It is difficult to see what criterion might exist to show the success or failure of the measure other than the subsequent behaviour of the juvenile, law abiding or otherwise. But if that were so, it would have been more straightforward for the drafters to have provided explicitly, in Article 170, Pen. C., that penalties may be ordered whenever a youth who had undergone a measure was reconvicted. Presumably, then, a new conviction was not intended to be decisive in itself; a judgment of "failure" is necessary in addition. Thus, cases are conceivable where despite a conviction subsequent to the application of a measure, the court would find the prior measures had not "failed" because, for example, the youth had greatly improved his general course of behaviour and his attitudes, and the new offence was a minor one not connected with his previous way of life.

58. Art. 171, Pen. C. But see also Art. 710, Pen. C., which seems to conflict with the principle of Art. 171 in petty offence cases, in that Art. 710 directs collection of the fine from the juvenile's parents, etc. where he "cannot" pay it. Query whether there is any point in such a fine if the penalty is ultimately enforced against the parents.

59. Art. 172, Pen. C.

60. *Ibid.* There is a discrepancy between the English version of Art. 172(1), and the French and Amharic versions, in that only the English version fails to limit the application of corporal punishment to males. That restriction is also a feature of the flogging penalty for adults, in all the language versions. Art. 120A, Pen. C.

and corporal punishment are the only two penalties which may be ordered for young persons, except in one circumstance: that is where the youth "has committed a serious offence which is normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment." Conviction of such a serious offence renders him liable to be sentenced to imprisonment⁶¹ in one of two classes of institutions: in a "corrective institution," which is the same place to which convicted young persons may be committed as a measure under Article 166 of the Penal Code. There, "special measures for safety, segregation or discipline" can be applied to him.⁶² Or, if the court finds that the youth is "incorrigible and is likely to be a cause of trouble, insecurity or corruption to others," he may be sentenced instead to a "penitentiary detention institution,"⁶³ by which is meant, presumably, an ordinary prison. However, in such a place he must not be in contact with adult prisoners.⁶⁴ A youth sent under Article 173, Penal Code, to a corrective institution may subsequently be transferred to a penitentiary institution in two cases: where his conduct warrants it, and where he reaches the age of eighteen and his sentence was for a term extending beyond his majority.⁶⁵ In the latter case of course, the principle of segregation from adult prisoners will not apply.

It is important to note two facts about the penalty of imprisonment. In the first place, just like the other penalties for young offenders, it may not be ordered following a first offence, even if the first offence was homicide. No *penalty* may ever be ordered unless one of the special *measures* has been tried and has "failed."⁶⁶ In other words, the serious offence must be the subject of at least a second conviction. Secondly, the penalty of imprisonment is not mandatory on the court; even where the new conviction is for an offence defined as "serious,"

61. The law is somewhat ambiguous on the question of whether the predetermined period of enforcement may later be shortened or extended by the court on recommendation of the correctional authorities. Art. 168 Pen. C. authorizes only the variation of "measures", as opposed to "penalties" Article 180, Crim. Pro. C. on the other hand, is ambiguous. While it too authorizes the sentencing court to vary "measures," it probably uses that term in the broad sense, to include penalties as well; see the discussion in note 41, above. Its title, *Variation or modification of order made in respect of young person* (emphasis added), would so indicate. Article 54, Pen. C. also speaks in general terms of variation of the "order to ensure best possible treatment". To preserve the flexibility especially necessary in the treatment of young persons, the broad interpretation should be adopted. But see P. Graven, *An Introduction ...*, cited above in note 28, p. 148, for the contrary view.

62. Art. 173(1)(a), Pen. C.

63. Art. 173(1)(b), Pen. C.

64. *Ibid.*

65. *Ibid.*

Article 173(a), third para. says that in "such a case" the court must "without restriction, take into account in determining the duration of the detention to be undergone, the time spent in the corrective institution and the results favourable or otherwise thereby obtained." There are two ambiguities here. First, does "such a case" refer only to transfers at majority, or does it refer also to transfers for bad conduct? Second, does this provision empower the court to increase, as well as decrease, the original term of imprisonment according to the effect, if any, had upon the youth at the corrective institution? If so, may the court so discount the years already spent in detention there as to bring the total period to be served in both institutions above the ten year maximum imposed by Art. 173(2), Pen. C.? Such an interpretation would have very serious implications, and was most probably not intended. Judicial or legislative clarification, however, is called for.

66. See text accompanying notes 42-43, above.

the law still permits the court to impose merely a measure, or one of the lesser penalties.⁶⁷

A sentence of imprisonment ordered under Article 173, Penal Code, ordinarily will not carry with it a loss of civil rights, but if the court "regards it as absolutely necessary on account of the special gravity of the offence" the Code permits it to order that sanction.⁶⁸ Here one might criticize the law's harshness—it is difficult to visualize any crime committed by a ten or twelve year old which would justify depriving him for life of his right to vote, hold office, or witness a deed.⁶⁹ Giving the court such a power, granted even the unlikelihood of its exercise, is irreconcilable with the Penal Code's paramount aim of rehabilitating the young offender. The same demurrer might be entered with respect to the court's power, under Article 173, Penal Code to order the young offender to serve a sentence of imprisonment in an ordinary prison rather than in a "corrective institution" of the reform school type. No matter how horrible the crime committed, it is hard to accept that society might "write off" a child of ten or twelve years as "incorrigible." Surely, at least until middle adolescence, there is hope that every youth may be salvaged by appropriate care and discipline. Assuming the availability in Ethiopia of the sort of institution envisioned by Article 166, Penal Code,⁷⁰ that is surely a more proper environment for convicted boys than a prison, and the facilities for "appropriate discipline" authorized for the former by Article 166 should, for younger age groups, easily satisfy every reasonable demand for security.

Effects of Conviction and Sentence

In discussing the effect of a juvenile conviction and sentence we must distinguish to some extent between those young offenders sentenced to one of the above-mentioned *penalties*, and those with respect to whom only *measures* have been imposed.

Even as regards the former category, whose cases are the more serious ones, the Code drafters attempted to ameliorate the ordinary effects of criminal conviction in order to ease the young person's eventual rehabilitation. This was done by

67. This is not made crystal clear in the Code, but can be inferred from the use of "may" in Article 173(1), Pen. C. If the drafter had meant to bind the court to order imprisonment in such cases, "shall" would have been used instead.

68. Art. 177, Pen. C.

69. Deprivation of civil rights may be either permanent or temporary, Arts. 123-24, Pen. C., and there is no special restriction on the court's discretion where young offenders are concerned. Of course reinstatement may always be applied for, but this may be granted only on proof of having met fairly rigorous conditions and, in cases serious enough to permit deprivation of civil rights, only if ten years have elapsed since the penalty was undergone Arts. 180 and 242-47, Pen. C. By that time the young offender's opportunities in life will be largely past, and his chances for full rehabilitation substantially reduced. Given the special aims governing the general provisions for young persons it might have been wiser if the Penal Code, in Article 180, had not excluded imprisoned juveniles from the benefits of the special two year period which applies to reinstatement for other young offenders. As M. Philippe Graven has written "It is questionable whether there exist persons such as incorrigible minors." Graven, *An introduction*, ..., cited above at n. 28, P. 151.

70. At present there apparently exists only one, the Addis Ababa Training School and Remand Home, which is generally considered quite inadequate in terms both of physical plant and staff. Juvenile homes are reportedly planned for Asmara and Dire Dawa.

three devices: restrictions on publicity given to the proceedings, restrictions on public access to the offender's criminal record, and easier reinstatement conditions.

Confidentiality of the court proceedings in juvenile cases is the apparent intent of the law's requirement that such proceedings be held in private.⁷¹ This requirement will be discussed below,⁷² but it is appropriate here to question whether the law can achieve its aim by this means. In the first place, there is apparently no legal prohibition upon publicity in newspapers, etc. of the proceedings, nor any law forbidding the police, the injured party or the witnesses from freely communicating to outside parties what has occurred in the court proceedings,⁷³ unless in the particular case the court should make a special order declaring the matters "secret" and forbidding their divulgence and publication.⁷⁴ It is evidently not standard practice at the present time for the court to do this. In the second place, public knowledge of the proceedings and sentence is likely to be widespread, particularly in small communities and where the court imposes measures or penalties which involve restrictions upon the young offender's liberty.

Article 179 of the Penal Code attempts to restrict public access to the young offender's criminal record by providing that in juvenile cases the court may never order the measure of publication of the judgment under Article 159, Penal Code. It also provides that the police record of the sentence imposed on the juvenile "shall be made merely for the information of the official, administrative or judicial authorities concerned, 'and that' in no case shall excerpts ... be communicated to third parties." This provision, somewhat more protective than the rule governing adult cases,⁷⁵ is meant to insure that no unnecessary publicity is given to the juvenile's conviction. Presumably, it forbids official disclosure of the fact of conviction to such parties as prospective employers of the young person, whether they be private or government bodies. It probably also forbids disclosure to government licensing authorities and to the armed forces when these bodies wish to check on the background of a potential licensee (as operator of a taxi, bar, hotel, etc.) or recruit.

Lastly, the convicted juvenile offender enjoys the right to apply for formal reinstatement only two⁷⁶ instead of five⁷⁷ years after⁷⁸ the expiration of any

71. Art. 176(1), Crim. Pro. C.

72. See text accompanying notes 180 ff., below.

73. Article 179, Pen. C., which prohibits "publication of the judgment" in juvenile cases clearly forbids only the judicially imposed *measure* of publication (Art. 159). Article 179 also prohibits communication of "excerpts from the [juvenile's official police] record" to third parties, but this would not seem to cover publication of, e.g., a newspaper interview about the case. Therefore Penal Code Arts. 429, 444 and 445, which punish forbidden reports of judicial proceedings, do not seem ordinarily applicable to such cases.

74. Arts. 429, 444 and 445 of the Penal Code punish publicity, etc. in cases where there is a court "order", "decision" or "declaration" of secrecy with regard to any matter. Presumably the court in a juvenile case is competent to pass such an order.

75. Penal Code Article 160, governing ordinary cases, provides only that "as a general rule" extracts from police records are not to be communicated to "third parties or to offices which are not expressly entitled" to have access to them, but refers us for detailed guidance to subsidiary legislation which has apparently not been enacted.

76. Art. 180, Pen. C.

77. Art. 243(a), Pen. C.

78. Both the English and French versions of Article 180, Pen. C. require the application to be made "within two years" of the enforcement of the sentence, but this would seem to be an error. Compare Art. 243(a) ("at least" five or ten years, depending on the case, must have elapsed since the penalty was served).

measures or penalties which were ordered. Only in cases where he was sentenced to the penalty of imprisonment must he apparently wait longer, *i.e.*, for few years, as must adults.⁷⁹ The effect of reinstatement is to "cancel" the sentence which was undergone, and consequently to restore any civil rights which may have been suspended, to delete the entry in his police record,⁸⁰ hence forward to be "presumed ... non-existent," and to subject any references to the former conviction by third parties to the penalties for defamation.

Thus far we have been discussing the Code's attempt to ameliorate the effects of conviction and sentence upon a juvenile offender sentenced to a *penalty*. In the case where only a *measure* has been imposed, the Code goes even further: Article 169 of the Penal Code declares that the young person "shall not be regarded as having been sentenced⁸² under criminal law." What does this mean? *By whom* and for *what purposes* shall he not be so "regarded"? The apparent intent of the provision is to prevent any stigma of criminality from attaching to the young person, in order to foster his rehabilitation. Therefore, to the extent possible, we ought to interpret Article 169 as having the effect of formal *reinstatement*, which we have discussed above: there should be no entry in the juvenile's police record, and his conviction and sentence should be deemed "non-existent"; reference to them by outsiders should be punishable under the law of defamation. If the offender is at some future time prosecuted and convicted of crime as an adult, his juvenile record should not affect the sentence in any way; his status with regard to the availability of such sentencing choices as suspension of the sentence,⁸³ internment,⁸⁴ and mitigation⁸⁵ or aggravation⁸⁶ of the sentence, should be that of a person who was never the subject of such earlier proceedings.

However, it is clear that Penal Code Article 169 cannot be applied literally in all instances; if the young offender sentenced only to a measure should again be convicted in *juvenile* proceedings, his earlier brush with the law may affect his fate. For example, a penalty could then be imposed on the ground that the earlier measure had "failed,⁸⁷" and such "failure" could be taken as some evidence that the severe penalty of imprisonment was justified because he was "incorrigible."⁸⁸ We thus see that for *some* purposes Article 169 does not obliterate the effects

79. Since Art. 180, Pen. C. does not apply to young offenders sentenced to imprisonment, they are presumably eligible for reinstatement on terms applicable to adults under Arts. 243-44, Pen. C.

80. In view of the fact, however, that revocation of the reinstatement is possible should the offender be sentenced to certain other penalties within five years of the reinstatement decision, it appears that police record entries cannot really be "deleted" until the five years have expired. See Arts. 247 and 245, Pen. C.

81. Art. 245, Pen. C.

82. Note that the word "sentenced" is a translation of the French "condamné", which can also mean "convicted", and has often been so translated in the Penal Code. See, *e.g.*, Art. 245(a) (c), Pen. C. Our discussion which follows assumes that Penal Code Article 169 means to cancel the effects of *conviction* as well as sentence.

83. Art. 195, Pen. C.

84. Art. 128, Pen. C.

85. Where the offender was "previously of good character," Art. 79(1)(a), Pen. C.

86. Where the offender is "particularly dangerous on account of his antecedents, [or] the habitual ... nature of his offence ...," Art. 81(1)(c), Pen. C.

87. Art. 170, Pen. C.

88. Art. 173(1)(b), Pen. C.

of juvenile convictions which result only in the imposition of measures: records of the sentence must be kept in a place and form accessible to the courts,⁸⁹ at least until the offender has reached the age of eighteen.⁹⁰ Thus, even reading Penal Code Article 169 as broadly as possible, *i.e.*, as having the effect of automatic and immediate reinstatement of the juvenile, we see that it does not completely "de-criminalise" him in the eyes of the law.⁹¹

Conclusion

There are other minor facets to the Penal Code's special scheme of measures and penalties applicable to the convicted young person,⁹² but they are not significant. It is sufficient to note, before passing on to procedural matters, that the penal law which applies in Ethiopia to convicted young persons is characterized by mixed aims. All modern penal law, and particularly Ethiopia's recently fashioned code, aims at rehabilitation as well as retribution and deterrence. The extent to which, as a whole, one or the other philosophy is dominant in Ethiopia is open to debate. But it is clear that in the system of measures and penalties applicable to young persons the rehabilitative goals are more prominent than they are in the provisions applicable to adult offenders: the juvenile is recognized as more "treatable," and, hence, there is increased emphasis on supervision, education, and flexibility of treatment. The relative importance of offender rehabilitation as against satisfaction of community demands for protection and revenge is shown by the especially broad discretion given the sentencing judge in deciding on the most appropriate treatment, and to the administrative authorities in recommending when restrictive measures should terminate. It is also shown by the special efforts to ameliorate the effect of a juvenile conviction and sentence, and to facilitate early reinstatement. But at the same time, we also find strong recognition accorded to traditional punitive methods. Juvenile misconduct is generally dealt with in the framework of ordinary criminal law, by the ordinary courts: treatment can only be ordered after the young person has been convicted of a *crime*, and it may consist of penalties in addition to or alongside of "curative and protective measures," if measures alone have been tried and failed. Further, the use of imprisonment for recidivists in "serious" cases for pre-determined periods, possibly extending into majority, shows at best an incomplete commitment to the goal of rehabilitation. It might even be said, in such cases, that that goal has been effectively abandoned.

89. Penal Code Arts. 179-80 indeed do expressly refer to entries in the juvenile offender's police record of "*measures and penalties*" (emphasis added). It is difficult to reconcile this with Article 169, Pen. C., just as it is difficult to reconcile Article 245(b), Pen. C., requiring deletion upon reinstatement of the offender's police record entry, with Article 247, Pen. C., providing for the revocation of reinstatement on the commission of certain new offences within five years, which provision obviously presupposes the keeping of records as to the "deleted" sentence. Where shall such records be kept, and by whom?

90. Up until his eighteenth birthday a convicted offender is eligible, under Art. 182, Pen. C., for the measures prescribed for young persons. Where the court chooses to apply such measures it would seem sensible to regard Article 169, Pen. C. as applicable also.

91. But, then, neither does ordinary reinstatement. See note 89, above.

92. These include provision for the waiving of the penalty under certain conditions where the case is "petty" (*query*: does this refer exclusively to violations of the Code of Petty Offences, or might some Penal Code offences also qualify?), and a special period of limitation, at the discretion of the court, for all crimes committed by young persons. See Arts. 174 and 175, Pen. C.

The Criminal Procedure Code: Special Provisions for Young Offenders

We have noted thus far that, up to a point, the substantive penal law of Ethiopia applies identically to adults and young persons: there is no distinction, in matters of definition of offences, nor in conditions of liability for conviction. But, after the conviction stage, the Penal Code's treatment scheme for adult offenders is put aside, and a comprehensive, self-contained scheme of special measures and penalties for young persons is used exclusively.

The Criminal Procedure Code presents a somewhat murkier picture. A chapter of ten articles⁹³ devoted to "procedure in cases concerning young persons" apparently purports to provide a comprehensive and self-contained guide, covering criminal procedure from the first stages to the last. Complaint and accusation, arrest, investigation, charge and plea, trial, judgment, sentence and appeal — all are apparently meant to be governed by these few provisions. Inevitably, such brief coverage has left many matters unsettled, and it is often problematic whether and how much of the rest of the Code should be used to fill the gaps. We shall, below, discuss some of these difficulties in a step by step consideration of the procedure.

Jurisdiction

Let us consider two aspects of the jurisdiction question: what cases are eligible for treatment according to the special procedure for young persons, and which courts have jurisdiction over those cases.

1. **Eligibility for Juvenile Procedure.** Article 171, Crim. Pro. C., provides that criminal cases concerning "young persons" are to be tried according to the special procedure. A "young person" is defined in Article 3, Crim. Pro. C. as a person "between the ages of nine and fifteen." This language is identical with that used to define young persons in the Penal Code, and is no doubt meant to include juveniles past their ninth birthday who have not reached their fifteenth birthday.⁹⁴

The important question to consider here is: At what time is the juvenile's age relevant -- at the time of the acts with which he is charged, or at the time of the proceedings against him (the arrest, charge, opening of trial, etc.)? Supposing, for example, D is alleged to have robbed Y on the 10th of Tekemt, 1958. On Tekemt 18th he is arrested and brought to the authorities. He passed his fifteenth birthday on Tekemt 16th, so that at the time of the crime he was a "young person," but no longer is. Does the ordinary criminal procedure or the juvenile procedure apply to his case?

93. Arts. 171-80, Crim. Pro. C.

94. See note 28, above.

95. But compare Art. 498 of the Avant-Projet of the Code which stated that the juvenile procedure would apply whenever the actor "ayant plus de neuf ans au moment de l'infraction et moins de dix-huit ans au moment de la poursuite". J. Graven, *Avant-Projet du Code de Procedure Penale Ethiopien* (Dec. 10, 1956, unpublished, Archives, Faculty of Law, H.S.I.U.), cited hereinafter below as *Avant-Projet*.

The Criminal Procedure Code does not give any answer to this question,⁹⁵ but the Penal Code is helpful. Article 56, dealing with the post-juvenile group, specifies that the ordinary provisions of the Penal Code will apply to an offender who was over fifteen but under eighteen "at the time of the offence." Working backwards in time, we can infer from Article 56 that for purposes of applying the Penal Code a "young person" is one who was over nine and under fifteen at the time of the offence he allegedly committed, and *not* at the time of the proceedings against him. Article 52, Pen. C., defining infancy, should be interpreted along the same lines: an infant for purposes of the Penal Code is one who had not reached his ninth birthday at the time of the offence, even though at the time of his apprehension or trial he might be over that age. Theoretical considerations support this interpretation of Article 52. Exoneration of infants from penal liability is based upon their irresponsibility: in the words of Article 52, they are "not deemed to be responsible *for their acts*." (emphasis added). Until the ninth birthday that theoretical irresponsibility persists. It would be incompatible with this theory to allow prosecution of a youth at a later time for an act committed as an infant.

Given the logic of these interpretations, the Criminal Procedure Code terms should be interpreted consistently, so that age is measured at the time of the criminal acts charged.⁹⁶ A contrary interpretation would leave it open to the authorities, by delay tactics, to convert a juvenile case into an adult one. Taking the crucial time for age determination to be the time of the criminal acts charged removes any such incentive for delay.

2. Courts Competent to Try Juvenile Cases

The ordinary criminal courts in Ethiopia have jurisdiction over juveniles and adults alike, with one slight exception. That is, all prosecutions of young persons must originate at the woreda court level.⁹⁷ But, after handling certain preliminary matters such as the recording of the accusation, and supervision of the course of police investigation, the woreda court must transfer the case for trial to whichever court ordinarily has jurisdiction over the offence charged.⁹⁸ Of course, the woreda court will retain jurisdiction for trial over cases of offences within its usual jurisdiction.

This means that the ordinary criminal courts of the Empire must, in the trial and post-trial stages, apply the special substantive and procedural rules for young persons without the benefit of any special training or experience. It is inevitable that the special aims of the law for juveniles are less likely to succeed under these circumstances than if they were in the charge of specialised personnel, alert to the

96. In this connection, we should note the inexact wording of Article 39(1) (b), Crim. Pro. C. which directs the public prosecutor to forego prosecution where the accused "is under nine years of age." It should read "was, at the time of the alleged criminal acts, under nine years of age"

Note also that Art. 181 Pen. C., also employs a test of age "at the time of commission of the offence" with regard to availability of the death penalty.

97. Art. 172(1), Crim. Pro. C.

98. Art. 172(4). The jurisdiction of courts in criminal cases is governed by the First Schedule to the Criminal Procedure Code, and is allocated according to the particular offence charged.

particular needs of young persons.⁹⁹ Furthermore, juveniles tried in the regular courts almost certainly must be forced into frequent contact with adult suspects—at the police station, enroute to and while attending the court, etc. Yet the codes obviously intended to avoid such contacts wherever possible.¹⁰⁰ For these reasons it is a cause for deep concern that the Criminal Procedure Code did not provide for a juvenile court to deal with all cases involving young persons, no matter what the offence charged. In many countries a different system is found, where certain “juvenile courts” are given major or exclusive jurisdiction over offences concerning juveniles. As concomitants, judges serving on those courts are specialised, and other judges, in the ordinary criminal courts, are freed for other business.

That this concern is shared by those involved in juvenile justice in Ethiopia is demonstrated by the actual practice which has been adopted in Addis Ababa. Prior to the enactment of the Criminal Procedure Code in 1961, there was general dissatisfaction with the way in which ordinary criminal courts, not overly familiar with the special aims of the Penal Code in treating juvenile offenders, applied them.¹⁰¹ The government responded by withdrawing from the lower courts in Addis Ababa all jurisdiction over cases involving young persons, which were thereafter tried by a specially composed division of the Addis Ababa High Court. When the Criminal Procedure Code was enacted, vesting jurisdiction in the lower courts for non-serious offences regardless of the age of the accused, it is reported that the lower courts attempted to assert their jurisdiction once again. But, by administrative rule-making (of doubtful legality), the Ministry of Justice adapted the arrangements in Addis Ababa to conform generally, but not wholly, to the Code’s jurisdictional requirements. A person with special training in juvenile welfare was appointed to sit as a *woreda* and *awradja* court judge, with exclusive jurisdiction over all offences ordinarily triable by *woreda* and *awradja* courts under the law.¹⁰² Offences of High Court jurisdiction involving juveniles are, in full accordance with the law, tried by a special, *ad hoc* division of the High Court upon transfer from the special *woreda-awradja* juvenile court; the same special division of the High Court also considers all appeals from that court.

This scheme, which is currently in effect only in Addis Ababa, is a great improvement over what the Criminal Procedure Code prescribes. In effect, it establishes a

99. Further, considerable confusion must result where a court has constantly to switch its procedure and atmosphere from case to case. For example, if it were felt that the “informality” of juvenile proceedings (Art. 176(2), Crim. Pro. C.) required the absence of judicial robes, or seating of judges and other participants around a large table instead of the usual physical arrangements, these changes would have to be made each time a juvenile case appeared on the calendar, and the public would have to be shifted in and out of the courtroom for each change. (See Art. 176(1), Crim. Pro. C.).

100. See, for example, Art. 53(1), Pen. C. (young persons may not be kept in custody with adult offenders); Art. 5, Crim. Pro. C. (young persons may not be tried together with adults).

101. This account of the history and present operations of the juvenile court in Ethiopia is based upon Mebrahtu Yohannes “*Procedure in Cases of Juveniles ...*,” cited above at note 26, pp. 14-16. However, the present writer is alone responsible for the comments which follow.

102. See note 98, above.

specialized bench¹⁰³ to handle all criminal¹⁰⁴ offences normally triable by Woreda and awradja courts. But there are some serious disadvantages, which must be faced. In the first place, this arrangement seems to be unauthorized by law: it circumvents the jurisdictional provisions of the code, by withdrawing from the ordinary woreda and awradja courts their allotted jurisdiction both on trial and appellate matters involving young persons.¹⁰⁵ Specifically, this arrangement conflicts with the law's requirements as to local jurisdiction, and the injunction of Article 172(1), Crim. Pro. C. that the young person be taken immediately, at the start of proceedings, "before the nearest Woreda Court....." (emphasis added). It conflicts with appellate jurisdiction in that appeals from woreda court dispositions are supposed to be heard by the awradja courts, but under the Addis Ababa scheme appeals from the juvenile court sitting in its woreda court capacity go directly to the High Court.¹⁰⁶ Legislative amendment to conform the Code to the practice is therefore urgently required, to avoid the appearance of illegality. Secondly, the scheme is operating only in Addis Ababa. Reportedly, young persons in other parts of the Empire are tried by ordinary, unspecialised criminal courts, often in complete disregard of the special rules which ought to be applied.¹⁰⁷ Lastly, the scheme still leaves many cases to be tried by the High Court, instead of by a juvenile court.

Future legislation to widen the jurisdiction of the Addis Ababa juvenile court and duplicate its services throughout the Empire deserves the most serious consideration. Manpower shortages and the cost of specialised training for judges are obstacles which need to be overcome. Pending any general reform, it is essential to educate all judicial personnel who may come in contact with juvenile cases concerning the law's special aims and procedures for handling them.

103. It is a one-judge court.

104. It is interesting to note that the Addis Ababa "juvenile court" also exercises a *civil* jurisdiction over juveniles, by committing to the Remand Home those who it determines are "uncontrollable" by their parents etc. See Mebrahtu Yohannes, *Juvenile Delinquency in Six Towns in Ethiopia* (1967), (unpublished, Archives, Faculty of Law, H.S.I.U.), Table XV. Since "uncontrollability" is not a penal offence in Ethiopia, one must seek the legal basis of this jurisdiction elsewhere. Art. 231 of the Civil Code permits the removal of a guardian (including the natural parents) where, *inter alia*, the minor has committed a crime and it appears that his behaviour is due to lack of proper care etc. on the part of his guardian. And, by virtue of Art. 214, Civ. C., the court could appoint an "institution of assistance" such as the Remand Home as the new guardian. But apparently the Addis Ababa "juvenile court" has not been following this procedure in "uncontrollable" cases. The exercise of its jurisdiction probably must rest, therefore, upon the Vagrancy and Vagabondage Proclamation, 1947, Proc. No. 89, Neg. Gaz., year 6, no. 9:

Art. 8. (i) A juvenile found wandering abroad without being in regular employment and not resident with his parent or parents or lawful guardian or guardians shall be taken before the court which may issue an order for his return to the custody of his parents or guardians.

(ii) If such juvenile is again found wandering without employment having left such custody he shall be committed to a reformatory school until he attains the age of eighteen years or until such earlier date as the court may order.

(iii) If the juvenile is an orphan the Court may send him to an orphanage.

Art. 2(d) "JUVENILE" means a person of either sex under the age of sixteen.

105. Criminal jurisdiction generally is regulated by Arts. 4, 6-7, and 99-107, Crim. Pro. C. as well as by the First Schedule. A detailed comment is available: R. Sedler, "Criminal Jurisdiction in Ethiopia: A Commentary," *J. Eth. L.*, vol. 2 (1965), p. 467.

106. See Art. 182(1).

107. Mebrahtu Yohannes, *Procedure in Case of Juveniles ...*, cited above at note 26, p. 10.

Pre-Trial Procedure

I. Complaint, Accusation and Arrest

Under the ordinary criminal procedure for adults, a case begins either with the arrest without warrant of an offender "on the spot" by police officer or private citizen, or else by the filing of an information with the police. In the latter case, custody of the accused is then obtained either by the use of a summons, or by arrest with or without a warrant. There are two kinds of information which can be filed with the police: accusations and complaints. An information filed by the injured party relating to an offence punishable only upon complaint is known as a *complaint*. Informations in other cases are known as *accusations*.¹⁰⁸

Article 172(1), Crim. Proc. C. provides that in cases involving young persons the juvenile must "be taken immediately before the nearest Woreda Court by the police, the public prosecutor, the parent or guardian or the complainant." At first glance this language might be taken to mean that juvenile cases are never begun by complaint or accusation to the police, followed by police summons or arrest, but that the victim or citizen eyewitness¹⁰⁹ may immediately take a suspected juvenile into custody and bring him to the nearest woreda court. And, since the provisions make no reference to the Criminal Procedure Code articles which govern summons and arrest for adult suspects, it might be inferred that those articles do not apply at all. But such inferences leave unanswered some critical questions: Upon what criteria may a police officer or private citizen "take" a young person before the court — on what degree of suspicion? Need the "taking" of the juvenile to court be authorized by court warrant in any circumstances? Need not the police try the summons method in appropriate cases before resorting to the drastic measure of achieving custody by force?

108. For a fuller discussion of the Ethiopian law of arrest and summons, see S. Fisher, "Some Aspects of Ethiopian Arrest Law," *J. Eth. L.*, vol. 3 (1966), p. 463, *passim*.

The distinction between complaint and accusation is discussed in P. Graven, "Prosecuting Criminal Offences Punishable Only Upon Private Complaint," *J. Eth. L.*, vol 2 (1965), p.121, n.l. The terminology can be confusing because the codes at times use the terms "accusation" and "complaint" generically to include any information to the police. In this article the generic term "information" is always used, for greater clarity.

109. The term "complainant" in Art. 172(1) is somewhat ambiguous; see note 108, above. if it were taken narrowly to refer only to the injured party in a complaint offence, it might mean that a juvenile offender would be immune from arrest by, e.g., a civilian eyewitness to a murder he committed, or the civilian victim of an attempted robbery. One might argue that Art. 172(1) does not (exclusively) govern the arresting of juveniles, but merely empowers certain persons to present the juvenile suspect to a court in the post-arrest stage. By this reasoning, anyone may arrest a juvenile under the Code provisions governing the arrest of adults, and then hand him over to one of the parties mentioned in Art. 172(1) for post-arrest disposition. (In most cases, that would naturally be the police.) However such an interpretation would still curiously give to the injured party in (minor) complaint offences a power, i.e., presenting the juvenile in court, denied to the injured party in (serious) ordinary offences. Furthermore, it is not consistent with the policy, expressed in Art. 172(1) by the word "immediately", that police custody of juveniles should be avoided to the maximum extent possible: the murder witness or robbery victim would have to bring the youth to the police instead of to court. For these reasons it seems sensible to interpret "complainant" in Art. 172(1) broadly to include any informant even those in cases not punishable only upon the injured party's complaint.

A further complication is presented by the fact that the Amharic version of Art. 172(1) omits the word "complainant" altogether. Presumably, the omission was an error, and the English version will prevail.

These difficulties also have a constitutional dimension. Article 51 of the Revised Constitution commands that no one may be arrested without a warrant issued by a court, except in case of a flagrant and serious violation of the law. Unless one were to argue that the "taking" of a juvenile to court as authorized by Article 172 is not an "arrest", the constitutional standard must be read into the Code as restricting the circumstances under which a "taking" is permissible -- a literal reading of Article 172 as authorising the juvenile's arrest "in any case" would clearly allow the invasion of his constitutional rights. And although Ethiopian law nowhere defines the term, it seems clear that depriving a juvenile of his liberty in order to make him answer a criminal charge, as is envisioned by Article 172(1), constitutes an "arrest"¹¹⁰

If, then, the "taking" of a juvenile to court under the authority of Article 172 legally constitutes an arrest, the Code provisions¹¹¹ which govern the arrest and summons of adult suspects should be applied to juveniles as well. The prosecutor, the police or the complainant may "immediately take" the juvenile before the nearest woreda court only where such arrest is justified under those provisions.¹¹² In those circumstances where Code Article 49 forbids an arrest without warrant for adults, Article 172 should be seen as forbidding arrest ("taking") without warrant of a juvenile. In such cases an arrest warrant must be obtained in the manner prescribed for adult cases. The same penal and civil sanctions which apply to violations of the law of arrest in adult cases¹¹³ should be held applicable where the right of a juvenile are involved. Otherwise there would be few limitations on the power of anyone to interfere arbitrarily with the personal liberty of juveniles.¹¹⁴

It should be emphasized, too, that in cases involving juveniles the police ought to make every possible use of the summons, in order to avoid the unsavory publicity and the adverse psychological effects on the juvenile which are inherent in the use of arrest. Only as a last resort, where clearly necessary, should the juvenile be taken forcibly to court.¹¹⁵

2. Police Investigation

But, it may be asked, aside from flagrant cases which are initiated by an arrest without warrant, how can the police obtain the information necessary to

110. Arrest is broadly defined in *Halsbury's Laws of England* (3d ed., 1955), vol. 10, para. 631 as "the actual seizure or touching of a person's body with a view to his detention. The mere pronouncing of words of arrest is not an arrest, unless the person sought to be arrested submits to the process and goes with the arresting officer." An American writer defines it as "the decision to take custody of a person suspected of criminal behavior" involving "all police decisions to interfere with the freedom of a person who is suspected of criminal conduct to the extent of taking him to the police station for some purpose." La Fave, *Arrest* (Boston, Little, Brown & Co., 1965), pp. 3-4.

111. See Arts. 25-26 and 49-57.

112. The juvenile's parents, of course, are not so restricted.

113. The sanctions which apply against the perpetrator of an illegal arrest are discussed in Fisher, "Some Aspects...", cited above at note 108, p. 475 at n. 51.

114. There might still be penal and civil liability for making a false accusation. See Art. 18, Crim. Pro. C.; Arts. 441 and 580, pen. C.; Arts. 2044 ff., Civ. C.

115. See Fisher, "Some Aspects...", cited above at note 108, pp. 470-71.

a decision to issue a summons¹¹⁶ or to apply for a warrant or arrest?¹¹⁷ According to Article 172 the young person must be taken “immediately” before the nearest woreda court, and there, before the court, the complaint or accusation¹¹⁸ against him will be recorded. Does this mean that the police *must*, without prior investigation, arrest a juvenile suspect of whose alleged offences they learn? *Must* the parent, guardian or complainant “immediately” take the juvenile before the court, without any prior gathering of evidence to ensure that reasonable cause exists to take such steps? May not an informant first approach the police to request action, rather than take it himself?

In order to answer these questions, we might distinguish between two things: filing a technical information with the police, and reporting a crime to the police and asking for assistance. In the procedure laid down for adult offenders, a person who comes to the police to report a crime is by definition technically an “informant” —his statement, whether technically an “accusation” or a “complaint”, is reduced to writing and he must sign it.¹¹⁹ The police then proceed to investigate¹²⁰ the alleged crime, and prepare the police investigation report which will be presented to the public prosecutor for his decision whether or not to institute proceedings.¹²¹

In the case of juveniles, however, the Code expressly forecloses the possibility of a witness, victim, etc. filing an information with the police. Article 16(1) states:

“Any accusation (Article 11) or complaint (Article 13) may be made to the police or the public prosecutor. An accusation or complaint regarding a young person shall be made in accordance with Article 172.”

Article 172, in turn, provides that it is the woreda court which, *after* the young person has been brought before it, records the accusation or complaint against him, and directs the police to conduct any investigations the court thinks necessary. But this should not be taken to mean that a parent, witness or victim may not (or should not) initially *report* the suspected juvenile offender to the police. That is the course most natural for any of us to follow — in a troubled situation we do not think to seek help at the “nearest woreda court” It would seem perfectly proper, in juvenile cases, for the police first to receive the report — often, in fact, it will not be known at that point whether the suspected offender is a juvenile or not — without formally recording it as an information, and without

116. A suspect may not be summoned unless the investigating police officer “has reason to believe” that he has committed an offence. Art. 25.

117. Art. 54, Crim. Pro. C.: “A warrant of arrest shall only be issued where the attendance of a person before the court is absolutely necessary and cannot otherwise be obtained.” The meaning of these criteria is discussed in Fisher, “*Some Aspects*,” cited above at note 108, pp. 469-76.

118. The term “statement” is used in Article 172(2) instead of “accusation”, but the meaning is apparently the same. In Art. 172(3) “accusation” is used.

119. Art. 14.

120. Arts. 22-35.

121. Arts. 36-39.

preparation of a regular investigation report.¹²² Once informed of the case, moreover, it would seem proper for the police to conduct an investigation, where necessary, to determine whether or not there is sufficient probability of guilt to justify issuance of a summons or application for an arrest warrant. For this purpose it might be necessary to visit the scene of the crime, summon and interview witnesses,¹²³ conduct searches,¹²⁴ or obtain a medical examination of the victim.¹²⁵ Any such investigative techniques should be seen as properly undertaken by the police in juvenile cases, without special authority of the woreda court, but *only where their purpose is to help the police decide whether or not the accused juvenile should be taken into custody*. It goes without saying, therefore, that in flagrant cases which *begin* with the arrest of the accused, police investigation may not proceed in the absence of court authorization under Art. 172. It is likewise obvious that the police may *not*, on their own initiative, undertake any investigative steps which involve custody of the accused, such as compulsory medical examination¹²⁶ or interrogation¹²⁷ of him. For, taking such steps without prior woreda court authorization would frustrate the vital and praiseworthy purpose of Art. 172—to avoid the exercise of police custody over young persons. It is that aim which explains the rule of Art. 172 that as soon as the police or others get custody of a juvenile, by whatever means, they must immediately take him before the nearest woreda court. Henceforth, as we shall see presently, he is meant to stay out of police hands.

It remains to note that although the Criminal Procedure Code prescribes that in juvenile cases “The court may give the police instructions as to the manner in which investigations should be made,”¹²⁸ the court in so doing is not an entirely free agent. It would be anomalous to suppose that the court’s instructions could result in depriving the juvenile accused of rights¹²⁹ which the law grants to

122. This suggestion does involve the danger that the police, having no obligation to prepare investigation reports for review by the public prosecutor, will exercise an unhealthy degree of discretion in disposing of informations relating to juvenile crime without ever bringing the cases to the attention of the court. To a considerable extent, it seems the police in Ethiopia do already enjoy such discretion in practice: one study has revealed that in an overwhelming percentage of cases where the police arrest juvenile suspects, the case is terminated by police discharge; only a small percentage of arrestees are brought to court. See Mebrahtu Yohannes, *Procedure in Cases of Juveniles...*, cited above at note 26, Table I, at p. 12. The best answer to this difficulty might be to require the police to report to the “juvenile court” on all cases involving juveniles which terminate in the investigation stage; the court would thus have some control over the exercise of police discretion, without necessitating the bringing of juveniles to court every time an investigation takes place. To this end, the requirement that investigating police officers keep case diaries should apply to investigations of juvenile crime; see Art. 36, Crim. Pro. C.

123. Art. 30.

124. Arts. 32-33.

125. Art. 34.

126. *Ibid.*

127. Art. 27.

128. Art. 172(2).

129. Chapter 2 of Book II, Title I of the Code, called “Police Investigation”, regulates such matters as summons and interrogation of witnesses and of the accused, conditional release of the accused by the police, search and seizure, and physical examination of the accused.

adult suspects. Thus, although the Code does not so specify,¹³⁰ it would be improper for the court to instruct the police to interrogate the accused without cautioning him in the manner prescribed for adult interrogations under Art. 27, Crim. Pro. C., or to use threats or promises in order to induce him to confess (Arts. 31) or to search his home without complying with the requirements of Articles 32-33 on search and seizure.¹³¹ Once the juvenile has been taken into custody and presented before the woreda court, Article 172 gives that court complete control over any subsequent police investigation, but the investigative steps it orders should be seen as restricted by the procedural safeguards which apply to adult suspects. If those safeguards were interpreted as applying only to investigations of offences committed by adults, we would be faced with a sizeable gap in the procedure ordained for juveniles, for Art. 172 is silent on these matters.

3. Pre-Trial Detention and the Right to Bail

The ordinary procedure for adults of pre-trial detention and the right to bail is clear. Once arrested, a suspect may be released on bond by the police in their discretion if his guilt is doubtful or if the suspected offence is not very serious.¹³² If the police do not release him on bond, he has the right, guaranteed both by the Constitution¹³³ and by the Code,¹³⁴ to be brought before the nearest court within forty-eight hours. That court will either (1) release the accused on bail,¹³⁵ (2) order his remand in custody for trial¹³⁶ or (3) grant the police a renewable fourteen-day remand for further investigation.¹³⁷ Prisoners being

130. Article 22(2), introducing the Code chapter on police investigation states that "Investigation into offences committed by young persons shall be carried out in accordance with instructions given by the court under Art. 172(2)." It may be significant that an earlier draft of this provision read: "Nothing in this Chapter shall apply to offences committed by young offenders." *An Intermediate Draft of the Criminal Procedure Code* (1959), (unpublished, Archives, Faculty of Law, H.S.I.U.), Art. 13(2).

131. In most cases a juvenile's domicile will be that of his guardian or of another adult. To permit search and seizure of such premises without compliance with the relevant Code articles would certainly present grave problems of invasion of privacy vis-a-vis the adults concerned. That alone seems a strong argument for "reading in" to the juvenile procedure the search and seizure provisions of the ordinary procedure.

132. Art. 28. See note 135, below.

133. Art. 51, Rev. Const.: "...Every arrested person shall be brought before the judicial authority within forty-eight hours of his arrest. However, if the arrest takes place in a locality which is removed from the court by a distance which can be traversed only on foot in not less than forty-eight hours, the court shall have discretion to extend the period of forty-eight hours."

134. Art. 29. The requirement is qualified insofar as "local circumstances and communications" require, and the article further states that "the time taken in the journey to the court shall not be included" in the forty-eight hours. These qualifications are of doubtful constitutionality in light of the wording of Article 51, Rev. Const., quoted above at note 133.

135. Art. 59. The court decides the bail question under Arts. 63-79, which provide detailed criteria. It is not clear whether the police, in the exercise of their discretion under Art. 28, are similarly bound by those provisions.

136. Art. 59.

137. *Ibid.* But the relationship of this third choice of action to the first and second ones is unclear. See the discussion in Fisher, *Ethiopian Criminal Procedure*, cited above at note 23, pp. 144-46.

held for non-bailable offences,¹³⁸ or who, for some other reason,¹³⁹ cannot obtain release on bail are detained in prison, in facilities and under conditions distinct from those for convicted prisoners.¹⁴⁰ Suspects on temporary remand for further investigation are presumably to be treated like other suspects remanded in custody before trial.¹⁴¹ The Code provides detailed guidance on the administration of bail, and includes a right of appeal against a refusal to grant bail.¹⁴²

Turning to the provisions on juvenile suspects, we find the question treated rather scantily:

“Where the case requires to be adjourned or to be transferred to a superior court for trial, the young person shall be handed over to the care of his parents, guardian or relative and in default of any such person to a reliable person who shall be responsible for ensuring his attendance at the trial.” Art. 172(4).

This seems at first a rejection of the institution of bail for the young person — without requiring him to enter into a satisfactory bond, in default of which he must remain in custody, the Code simply directs that the young person be “handed over” to a parent or relation, etc. The motivation for this approach might be the wish to ensure that young persons are *never* kept in pre-trial custody, not only because such custody is usually incompatible with the rehabilitative aims of juvenile procedure, but especially because custodial institutions in Ethiopia at present lack the facilities necessary to ensure the segregation of juveniles from adult prisoners. This same policy underlies the already-discussed requirement that the police, etc. must bring arrested juveniles *immediately* before a woreda court.

But it is apparent that in practice a scheme for pre-trial release of juveniles which rejects the bail system and does not substitute any alternative system of control cannot be satisfactory. The young person’s parent, guardian or relative may often be totally unsuited to care for the youth while further proceedings are pending:

138. Offences punishable with death or with rigorous imprisonment for fifteen years or more, are non-bailable. Art. 63.
139. Bail may not be granted if certain facts are found by the court, see Art. 67. In many cases bail is granted but the accused is unable to provide an acceptable guarantor or to deposit the required security.
140. In 1965-66, there were 8,713 unconvicted prisoners on remand in Ethiopia’s prisons, or over 35% of the total prison population. Annual Report for 1958 E.C. of the Department of Prisons, Ministry of Interior, Imperial Ethiopian Government (1966. unpublished, Archives, Faculty of Law, H.S.I.U.) This staggering figure suggests a number of possible problems: the high frequency of prosecutions for non-bailable offences, the break-down, with urbanisation, etc. of the traditional system of personal guarantors, without any simultaneous evolution of a viable substitute, and the extreme poverty of most criminal defendants in Ethiopia coupled with a reluctance on the part of courts to release defendants on their personal bonds alone.
141. “Art. 60. Conditions of remand”.
 “Any arrested person shall be detained on the conditions prescribed by the law relating to prisons.” This article, which draws no distinction between suspects in custody because, *e.g.*, their offences are non-bailable and those on “further investigation” remand, would seem to require all remanded suspects to be detained in prison remand facilities. However, the practice is for the police to keep prisoners who have been remanded for investigation in their own custody, in police station cells. This practice is dangerous in that it allows wide opportunity for the use of improper interrogation techniques in attempts to secure confessions. See S. Fisher, “Coerced Confessions and Article 35, Crim. Pro. C.,” *J. Eth. L.*, vol. 3 (1966), p. 330. *passim*.
142. Art. 75.

he might be a person whose lack of interest in or control over the youth contributed to the latter's delinquency. In some cases the parent might himself pose a clear threat to the young person's wellbeing — e.g., where the charge against the latter is incest with the parent, or participating with the parent in some other unlawful act.¹⁴³ In such cases the court will wish to place the youth in custody of another "reliable person", but what such person exist? And is not the use of a bail bond at least one way to ensure the "reliability" of the responsible party? The scheme of Article 172(4) seems to provide no enforceable sanction¹⁴⁴ for the youth's failure to appear — he is not even required to pledge to do so, and it is not provided that custody over him will follow a deliberate failure to appear— nor is any sanction imposed on the parent's failure to produce him.¹⁴⁵

It is therefore submitted that Article 172(4) should be interpreted as leaving open the possibility of the court's "handing over" a young person to his parent, guardian, relative, etc. conditionally, subject to the signing of a bail bond, according to the Code's bail provisions applicable to adults.¹⁴⁶ The only danger in such a reading would be if the courts permitted juvenile suspects to remain in police or prison custody simply for lack of a suitable guarantor. For that reason, unless the court has definite reason to believe that the suitable parent, etc. is *not* willing and able to produce the juvenile at the required time, release should be on the mere oral or written recognizance of that custodian, with no security deposit or third-party guarantor required.¹⁴⁷ But where the juvenile's parent, etc. does not seem trustworthy, *and* where a suitable deposit or guaranty cannot be produced, then the juvenile should not be released into the custody of that party. The only remaining alternatives in such a case are to leave the accused in segregated police or prison custody,¹⁴⁸ or, much better, in the custody of a special corrective institution for juveniles if such is available.

The present practice of pre-trial detention in Addis Ababa provides an interesting, if ironic, illustration of the unanticipated effects that liberal "reforms" can have in this area. We have already noted that only in Addis Ababa has there been an attempt to create a special "juvenile court" with exclusive criminal jurisdiction over juveniles. However, the "juvenile court" sits only two days a week,

143. In other cases returning the juvenile to his home village exposes him to the vengeance of the freinds and relatives of the one whom the juvenile's allegedly criminal act injured. Where a homicide is involved, unless and until "blood money" is paid, the juvenile may be in considerable danger. See note 250, below.

144. Art. 442, Pen. C. (*Refusal to Aid Justice*) would presumably apply if the accused were reached by a summons, but not if he absconded before then.

145. Neither Art. 442, *ibid.*, nor Art. 443 (*Contempt of Court*), would apply to the parent or other "responsible persons."

146. Except for Art. 63(1) concerning "non-bailable" offences. All offences should be bailable for juveniles, who are never liable to a penalty more serious than ten years' imprisonment for any one offence.

147. The Code clearly permits the bailing of (adult) suspects without provision of third-party sureties. See Arts. 28, 63(2). But it is not clear whether the bail provisions foresee the deposit, in such cases, of cash or other collateral by the person being released. Arts. 70(3) and 76(2) speak of the return and forfeiture of "recognisances" which have been "deposited" by guarantors, but do not specifically refer to the deposit of same by the accused himself. Presumably, the court is free to require or dispense with the requirement of deposits, as it deems fit.

148. But see the Amharic version of Arts. 172(4), which expressly forbids the court to "hand over" the accused to prison custody.

on Tuesdays and Thursdays. A young person arrested by the police on a Friday, then, is kept in (often unsegregated) custody at the police station at least until Tuesday morning, when he can be taken to court. In this way the government's special care in setting up the "juvenile court" results in far worse treatment for him than the Code and Constitution permit for his adult counterpart, who is guaranteed presentation in court within forty-eight hours. Of course, the present practice need not necessarily persist. The best solution in many cases would be for the police to summon the juvenile's parents, etc. to the police station and there to release him into their custody, with or without bond, if they promise to present the youth to the court at its next sitting. This would entail the police using a power which, in cases concerning adults, is granted by Code Article 28. Another possibility would be for the police to take all such youths before the nearest (regular) woreda court, in accordance with the ordinary provisions of the Code, and allow that court to release the accused conditionally under Article 172(4) pending the next sitting of the special juvenile court. A third possible solution would be for police, acting under Article 28, to release the accused juvenile into the custody of the Addis Ababa Training School and Remand Home for juvenile offenders, which not only has appropriate facilities for keeping custody of the youth, but is also the actual location of the juvenile court.¹⁴⁹

149. We might note in passing that there seems to be a marked lack of sympathy on the part of the Addis Ababa police with the aims of the juvenile court and especially with the "soft" treatment accorded convicted juveniles in the Addis Ababa Remand Home. This hostility is often expressed by verbal and physical abuse of the juvenile suspect while he is in police custody, and may well result in the intentional prologation of police custody "for investigation." The police seem to reason that, once out of their hands, the juvenile will be "coddled," and therefore that it is their task to mete out the real "punishment" in the period of pre-trial custody. This attitude of the rank and file policemen is mainly attributable to their lack of education in the philosophy and aims of the special penal law regime for juveniles, and it can hence be expected to diminish in future as police cadres are more highly trained. In part, however, it is due to the fact that the Addis Ababa Remand Home has highly inadequate security arrangements, and escapes to the close-by city center are frequent and not even mildly challenging. One reason for the many escapes is reportedly that the guards provided by the Ministry of Interior are old and not very agile; the younger ones are assigned to the prisons. Another is the philosophy of the Remand Home staff, which prefers loose security to the depressing atmosphere of a completely "closed" institution. The matter is further complicated by the fact the police do not readily cooperate with the Home staff in re-arresting escapees, and this knowledge naturally operates as an incentive to escape. Plans have been discussed to ease this problem by moving the Remand Home to a rural area.

In a case observed personally by the present writer in Addis Ababa a thirteen year old boy with a long "record" of convictions for street-boy thefts was arrested *in flagrante* on a Wednesday morning while picking a wallet from a lady's hand-bag. He was taken to the nearest police station, No. 2, and held for a few hours until the Captain arrived to witness the accuser identify the suspect. The boy, together with the victim, was then sent to Police Station No. 6, which is the collecting point for all juvenile arrestees in Addis Ababa. En route, the boy was slapped several times by a policeman, and threatened with dire punishments (such as being disembowelled with the policeman's knife). At the station the victim dictated and signed the accusation. Then, although the "juvenile court" was to sit on the following morning, a Thursday, the victim was informed that the boy would not be present in court before Tuesday, since the police "investigation" could not be finished in time for the Thursday session. The boy was then put into a police cell at the No. 6 station, in the company of adult as well as juvenile prisoners.

The procedure followed in this case was apparently not a typical; see Mebrahtu Yohannes, *Procedure in Cases of Juveniles* ..., cited above at note 26, p. 13. An interesting footnote to the case is that the police never did present the boy in court, but released him after four or five days in the police station. This seemed especially surprising to the

Finally, it should be pointed out that the Code lays down a scheme which denies the police all opportunities for custodial interrogation of the juvenile suspect: arrest is in theory followed by "immediate" presentation in court, which is followed by "handing over" the suspect to his parent or guardian. This scheme is no doubt in serious conflict with the duty of the police to investigate crime, including juvenile crime, and to discover the identity of other lawbreakers or threats to order. The typical juvenile offence in Addis ababa is "street boy" petty theft and purse-snatching. In these offences the boys collaborate in gangs, and there is every reason to suspect that adults are involved in organising and profiting from these activities. The police no doubt feel, and rightly so, that without in-custody interrogation of an arrested juvenile his confederates are likely to escape scot-free. It is difficult to find a satisfactory solution to this conflict, but it seems doubtful that the benefit in crime prevention and detection, weighty as it is, is worth the risks involved in permitting police custody and interrogation, generally under *incommunicado* conditions of nine to fifteen year old suspects.

4. The Decision to Prosecute

A hallmark of the juvenile court reform movement in many countries has been the attempt to transform the proceedings from an adversary process to an inquisitorial one in which the government, represented by the judge, takes the leading part in adjudicating the issues and prescribing the treatment most likely to salvage the juvenile. The roles of defence counsel and prosecuting attorney are, in such a system, radically curtailed. Although the Ethiopian system does not discard the traditional framework of criminal offence, guilt, conviction and sentence, the procedure has been greatly influenced by this "non-adversary" theory. We have already seen this influence at work in the law governing police investigation, wherein police actions are subjected, continental style, to judicial control. It is even more apparent at the stages of the decision to prosecute, the charge, and conduct of the trial. In these areas we find a marked contrast between the adversary system which obtains for adult cases, and the relatively non-adversary system ordained for juveniles. This difference may be laudatory insofar as it results in special protection for the juvenile, particularly in shielding him from the harsher aspects of criminal litigation. But to the extent that this protection is bought at the expense of depriving the juvenile of basic procedural rights guaranteed to adults by the Code or Constitution we need to examine the bargain to be sure it is fair.

Under the procedure prescribed for adult cases, the police investigation culminates in a report to the public prosecutor, who then decides whether or not to prosecute. The Code limits his discretion quite severely, setting out the specific instances in which a prosecution may not be instituted,¹⁵⁰ and providing that on "No other grounds may he refuse to institute proceedings." The only significant discretionary grounds on [which] to base a refusal to prosecute are when the Minister of Justice so orders in view of the public interest,¹⁵¹ and when in the public

present writer, in that the boy was an admitted escape from the Remand Home and had still to serve part of his confinement for a prior theft conviction. The boy was finally arrested on the streets a few weeks later by the Director of the Remand Home himself, and returned to the Home, from which, to judge from his reappearance on the city streets shortly thereafter, he soon escaped again or was released.

150. Arts. 39, 42.

151. Art. 42(1)(d). Presumably the public prosecutor, through his immediate superiors, can initiate and influence the Minister's decision in any given case.

prosecutor's opinion "there is not sufficient evidence to justify a conviction."¹⁵² In cases where the latter ground is given for a refusal to prosecute, but only then, the injured party may proceed further: if the offence complained of is a "complaint offence," *i.e.* an offence punishable only upon complaint by the injured party,¹⁵³ he will be authorized to conduct a private prosecution;¹⁵⁴ if the offence is not a "complaint offence," he may appeal to the court for an order reversing the public prosecutor's decision and requiring that the latter institute proceedings.¹⁵⁵ Following the decision to prosecute, the public prosecutor frames a charge and files it in the court having jurisdiction, which then fixes a date for trial.

The procedure for juvenile cases, on the other hand, is less clear. We can begin with the proposition of Article 40 that "the public prosecutor shall not institute proceedings against a young person unless instructed so to do by the court under Article 172." We might pause here to ask what is meant by the phrase "institute proceedings"? The Code nowhere defines it explicitly, but here apparently means by it the filing in court of a charge or other pleading for trial. Turning to Article 172, we find only the instruction of Article 172(3) that "where the accusation relates to an offence punishable with rigorous imprisonment exceeding ten years or with death ... the court shall direct the public prosecutor to frame a charge," *i.e.* to institute proceedings. In all other, less serious cases, as we shall see below, the juvenile is tried without any formal charge, and usually without the participation of the public prosecutor. But Article 172(3) does not answer two questions which it is important to put here. First, in the serious cases described therein, by what criteria, if any, does the court decide whether or not to instruct the public prosecutor to frame a charge, *i.e.*, how does the court go about making the prior decision whether or not to prosecute? Second, what of the many cases which are not serious enough to fall within Article 172(3), and in which no charge is framed — by what criteria, if any, does the court decide whether or not to try the accused of the crime complained of? As we have seen, in the procedure for adult accuseds it is the public prosecutor who applies specified criteria in the performance of this screening function — he has the discretion, subject to review, to decline to institute proceedings on the ground that the evidence of guilt is insufficient, and in proper cases he may also be able to reject a prosecution on grounds of the public interest. Having eliminated the public prosecutor's part in the decision whether or not to institute proceedings in juvenile cases, has the Code not vested his screening function in any other body?

It would be unthinkable to conclude from the silence of Article 172 that trial of a juvenile must automatically follow the bringing of an accusation or complaint against him, even though the investigation may have revealed no convincing evidence in support thereof. Such a view would deny to juveniles a basic safeguard universally guaranteed to the criminal accused — control of access to the criminal process by administrative and/or judicial authorities. We should therefore infer from the exclusive powers Article 172 gives to the woreda court in the pre-trial

152. Art. 42(1) (a).

153. See note 108, above.

154. Art. 44(1).

155. Arts. 44(2), 45.

stage — power to record the accusation or complaint, to order and supervise police investigations, to direct the framing of charges in serious cases, to transfer or adjourn the case for trial — that the court has also the duty and power to decide whether or not a trial should be held on the allegations made. In so deciding, the judge should follow the same criteria which Articles 39 and 42 of the Code set down for the public prosecutor to follow in cases involving adults, all of which are suitable for juvenile cases except possibly Article 42(1) (d), allowing a refusal to institute proceedings where the Minister of Justice certifies that the public interest would be opposed. But even this provision might be applied without undue difficulties of theory or practice — in deciding whether or not the juvenile should be tried for the alleged offence the woreda court judge acts in the place of the public prosecutor, and should arguably be bound in this function by the Minister's assessment of the public interest.

Lastly, where the woreda court decides to dismiss the information on the ground that there is not sufficient evidence to justify a conviction (Article 42 (1) (a)), and the offence in question is one punishable only upon private complaint, he should be required to authorise the injured party to conduct a private prosecution, if it develops that juvenile procedure permits this institution.¹⁵⁶ Where it is an ordinary offence, the injured party should have the right of appeal from the woreda court's decision to dismiss the complaint. These procedures, modeled on the Code's provisions for cases involving adults, should apply by analogy.¹⁵⁷

5. The Preliminary Inquiry

Article 80(3) of the Criminal Procedure Code states explicitly that the provisions governing the preliminary inquiry do not apply to cases involving juvenile accuseds. This presents no constitutional problems and, since the preliminary inquiry is rarely used in Ethiopia even for cases involving adults,¹⁵⁸ no significant difference between the two procedures results.

6. The Charge and plea

The accused's right to be notified of the precise offence which he is alleged to have committed, and to be acquitted unless every element of that offence is proved at trial, is fundamental to any fair system of criminal procedure. Article 23 of the Penal Code, which certainly applied to juveniles as well as adults accused of crime, defines a "criminal offence" as an act or omission "which is prohibited by law," and declares that it is "only completed when all its legal, material and moral ingredients are present." It further provides that a criminal offence is punishable "where the Court had found the offence proved." These provisions are buttressed by the Criminal Procedure Code's provisions dealing with the charge in ordinary cases. Those provisions require that the charge must be notified to the accused sufficiently in advance of trial to enable him to prepare his defence.¹⁵⁹ It must state the offence with which the accused is charged, its legal and material ingredients, the time and place of its commission, and the law and article of the law which its commission violated.¹⁶⁰ The charge must "describe the offence

156. See text accompanying notes 251-55, below.

157. See Arts. 42, 44-45.

158. See Fisher, "Some Aspects...", cited above at note 108, P. 467 at n. 14.

159. Arts. 109, 94(2) (g).

and its circumstances so as to enable the accused to know exactly what charge he has to answer," and must "follow as closely as may be the words of the law creating the offence."¹⁶¹ Ordinarily if the evidence at trial does not substantially conform¹⁶² to the exact offence charged, the accused will be acquitted¹⁶³ unless the prosecution receives permission to amend¹⁶⁴ or withdraw¹⁶⁵ the charge before judgment. Amendment gives the accused an opportunity to apply for an adjournment so he may have time to prepare to answer the new charge.¹⁶⁶ Withdrawal has the effect of forcing the prosecutor to begin all over again with a fresh charge if he wishes to pursue the matter.¹⁶⁷ At the end of trial, a judgment of acquittal or conviction is entered with respect to the offence charged, and thereafter the accused is protected against a new prosecution based on the same offence.¹⁶⁸ The net effect of the above provisions is to guarantee to the accused that he will know, before trial, exactly what crime he is charged with having committed, so that he can prepare his defence without fear that "new" charges will surprise him at trial. They also require a written record of the exact offence tried and adjudicated, to ensure, *inter alia*, obedience to the principle of legality.¹⁶⁹

The juvenile procedure, in an effort, apparently, to escape the "formality" of charges, is very different. The basic principle is announced in Article 108: "The provisions of this Chapter [dealing with the drafting, contents and filing of the charge] shall not apply in cases concerning young person unless as order to the contrary be made under Article 172." The pertinent provision in Article 172, to which Article 108 obviously refers is sub-article (3): "Where the accusation relates to an offence punishable with reigorous imprisonment exceeding ten years or with death (Article 173 Penal Code) the court shall direct the public prosecutor to frame a charge." In all other cases, according to Article 176(3), the accusation or complaint which the court records when the young person is first brought before it¹⁷⁰ functions in the place of the charge.

With respect to the charge, then, the Code provides a dual system for juveniles: the most serious offences, which carry a penalty of imprisonment and the possible loss of civil rights,¹⁷¹ are tried in the High Court on a formal charge drawn

160. Art. 111.

161. Art. 112.

162. The tests are whether errors or omissions in the charge relate to "essential points," whether the accused was in fact misled, and whether justice "is likely to be thereby defeated." Art. 118.

163. Under certain exceptional conditions the court may convict the accused of an offence with which he was not charged. See Art. 113(2).

164. Art. 119.

165. Art. 122

166. Art. 120. He may also recall any previously examined witnesses to examine them with reference to the amendment, and call any further evidence "which may be material." Art.121.

167. Art. 122(5).

168. Art. 130(2) (b), Crim. Pro. C.; Art. 56, Rev. Const.; Art. 2(3), Pen. C.

169. The principle of legality requires that conviction be of violating a particular, valid provision of the penal law, by specifically alleged conduct, and that this conduct not be punished twice under the same provision. See Art. 2, Pen. C.

170. Art. 172(2).

171. But only if the measures imposed following a previous conviction have failed. See the discussion accompanying notes 66-69, above.

by the public prosecutor. The public prosecutor is bound in such cases by all the above-mentioned safeguards as to the form and contents of the charge; the juvenile accused is given every benefit accorded to the adult. But, in cases which are not so grave, no formal charge is drawn, and the juvenile is treated very differently from the adult.

At this point we should take note of a serious error in the phrasing of Article 172(3), quoted above. That provision requires the framing of a charge whenever the offence is punishable with rigorous imprisonment "*exceeding* ten years or with death" (emphasis supplied), and parenthetically refers to Article 173 of the Penal Code. But the latter article applies to offences which are "normally punishable with a term of rigorous *imprisonment of ten years or more*" (emphasis supplied) or with death. Because of the discrepancy in phrasing, the many offences which are normally punishable with a *maximum* of ten years rigorous imprisonment such as aggravated¹⁷² theft, are serious enough to qualify for the gravest penalties known to the law for juveniles, yet not quite serious enough for the added protection of a formal charge under Article 172 of the Criminal Procedure Code.¹⁷³ This oversight requires speedy correction by Parliament, to conform the two articles to each other.

It remains to discuss the effect on juvenile procedure of discarding the charge requirement in the vast majority of cases — namely, those not sufficiently grave to fall under Article 172(3). As we have said, in such cases the Code substitutes for the charge the accusation or complaint which has been recorded by the court: at the beginning of the trial, "the accusation or complaint under Article 172(2) ... shall be read out to the young person and he shall be asked what he has to say in answer to such accusation ..."¹⁷⁴ That is contained in this "accusation"? Article 172(2) merely states: "The court shall ask the person bringing the young person to state the particulars and the witnesses, if any, of the alleged offence or to make a formal complaint, where appropriate, and such statement or complaint shall be recorded." If under this article the court simply transcribes verbatim the story of the "person bringing the young person" to court, it is difficult to imagine that in most cases the resulting document will be sufficiently precise and comprehensive to serve satisfactorily as the basis of a criminal trial, conviction and sentence. Whether the "person bringing the young person" to court is his parent or guardian, the complainant, or a policeman (in practice it will rarely if ever be the public prosecutor), that person is unlikely to have the legal education and presence of mind needed to give a statement which will satisfactorily substitute for a formal charge. Indeed, it is highly doubtful whether a verbatim record of *any* persons's spontaneous, oral recitation of the circumstances which led him to arrest a youth and bring him to court will be sufficiently relevant, clear and precise to give the accused notice of the offence with which he is charged, and to form a record on which to base a plea, judgment and sentence. Even the decision as

172. "(R)igorous imprisonment ... shall not exceed ten years." Art. 635, Pen. C. See also, *e.g.*, Arts. 642 (*Aggravated Breach of Trust*); 550(2) (*Duels*); 538 (*Grave Wilful Injury*); 273 (*Hostile Acts against a Foreign State*), and many others in the Penal Code, all using the same penalty formula.

173. As will be discussed below, the same point applies with respect to the juvenile's right to counsel in Article 174.

174. Art. 176(3).

to which, if any, provision of the penal law the accused's alleged conduct has violated can often require considerable study by a person well trained in law; such matters can hardly be delegated for determination by the uncounseled injured party, parent etc.

We encounter another serious difficulty with the "charge" stage if we read the juvenile procedure literally. In the ordinary adult procedure, the accused has the right to receive a copy of the written charge in advance of trial, so that he can prepare his defence with the aid of counsel, etc. But the juvenile procedure makes no mention of giving the young person a copy of the accusation against him at any time; Article 172(2) provides for the recording of the accusation, and Article 176(3) provides that at the start of the trial hearing the accusation "shall be read out to the young person" who is then required to answer it. This system would pose serious problems of fairness to the young accused, whose need to know the charges against him in advance of trial is certainly at least as great as the need of an adult accused. And while it is true that the accused will be present in court when the accusation is recited and recorded under Article 172, it would be hardly fair to require him to rely upon his memory of an oral procedure which took place, most likely under conditions of emotional stress. Nor will a juvenile accused likely be represented by counsel at the initial, court-presentation stage of the proceedings, and there is no provision in the Code authorising defence counsel at a later time before trial to inspect the recorded accusation or other documents in the accused's file.

It is difficult to conceive of any advantage or special protection the juvenile accused gains from these particular deviations from the normal course of criminal procedure. The Code's failure to require a detailed and legally sufficient charge, notified to the accused well in advance of trial, seems to prejudice his rights for no good reason. The best solution would be for parliament to amend these provisions to accord with the safeguards guaranteed adult defendants. Pending such legislative correction, it should be the duty of the woreda court judge to protect the juvenile's rights by ensuring that the accusation is recorded in such a manner as to be clear, precise and comprehensive: it should not contain irrelevant or merely evidentiary matter, it should specify the penal provision which allegedly has been violated, mention all the material elements of that offence, and specify whether the accused acted intentionally or negligently; it should specify the time and place of the offence, and all other details considered necessary for a precise description of the offence and its circumstances. Where such matters are not emitted spontaneously by the declarant, they can be elicited through careful questioning by the court. A copy of the accusation should be provided the accused in advance of trial.

Admittedly, the above suggestions accomplish a near "reading in" of the Code's charge provisions for adult cases, without support in the text governing juveniles. But there should be no objection to the notion that the court has both the duty and the power to take guidance from the Code's adult provision in this area. Its duty arises from the need to deal fairly with the juvenile accused; its power, from the fact that the charge stage in juvenile procedure has been designed as relatively "non-adversary", and the woreda court judge has been assigned the functions normally exercised by the public prosecutor, and therefore has a duty to see that the charge against the accused is clear, complete, and fair - that is always the responsibility in criminal cases of the party instituting the proceedings.

Having concluded our discussion of the charge in juvenile proceedings, we need say very little about the plea. Article 176(3) requires that the accusation or complaint under Article 172(2), or the charge under Article 172(3), shall be read out to the accused at the opening of the trial hearing, and "he shall be asked what he has to say in answer to such accusation or charge." Article 176(4) permits the court to convict the juvenile immediately if his answer shows that he "fully understands and admits the accusation or charge." In such case the court must record the juvenile's answer. If, on the other hand, "it is clear to the court from what the accused says that he fully understands and does not admit the accusation or charge," Article 176(5) directs that the trial should commence.

From these provisions it is clear that the juvenile procedure has substantially retained the "plea of guilty" and of "not guilty," but has abandoned that terminology and substituted the terms "admit" and "does not admit" the accusation - charge. One can guess that the drafters' motive for changing this terminology was to make the proceedings somehow less formal and, in the traditional sense, less "criminal." But if that is so it remains unclear why other, equally "criminal" and "formal" terminology has been kept: "accusation", "charge", "judgment of guilty or not guilty", "conviction", "sentence", "Punishment", "imprisonment" etc.¹⁷⁵ It might have been better to leave in the "plea" language, but pay more attention to safeguarding the juvenile's legitimate interests at this stage. We refer to the provisions in the adult procedure which explicitly protect the integrity of the guilty plea and attempt to make sure that a conviction will not be based on a misconceived plea. Thus, Article 134(1) states that the accused may be convicted on his plea only where he "admits without reservations every ingredient in the offence charged," a far more rigorous test than that of Article 176(4), quoted above. Article 134(2) provides that even after the accused has pleaded guilty, "the court may require the prosecution to call such evidence for the prosecution as it considers necessary and may permit the accused to call evidence." The exercise of that power can demonstrate whether, guilty plea or no, the accused is *actually* guilty of the crime, and it can also provide the court with sufficient background information on the nature of the offence to enable it to use its sentencing powers wisely. Lastly, Article 135 provides that even after a plea of guilty, if "it appears to the court in the course of proceedings that a plea of not guilty should have been entered, the court may change the plea to one of not guilty," and in such case the conviction, if any, is set aside and the accused is tried. It would seem that these safeguards provided for adult defendants are especially needed in juvenile proceedings, where the accused is more likely to plead guilty out of fear or ignorance, and is more in need of special protection, than his adult counterpart. Moreover, as we shall see immediately below, the juvenile is less likely than the adult to have the advice of counsel when pleading, another reason for surrounding the guilty plea process with special protections.

Presumably, despite the absence of "plea" language in juvenile cases, Article 185 prohibits an appeal against conviction by a juvenile who "admitted the accusation" against him, and, as in ordinary cases, restricts his appeal to the "extent or the legality of the sentence."

175. For the drafter's view that such terminology was out of place, see J. Graven, *Avant-Projet, Texte Definitif* (annotated) (1958-59), at n. 1 to Art. 154.

7. The Right to Counsel

Article 52 of the Revised Constitution guarantees that every accused person in Ethiopia "shall have the right ... to have the assistance of counsel for his defence, who, if the accused is unable to obtain the same by his own efforts or through his own funds, shall be assigned and provided to the accused by the court." This article does not restrict the benefit of the right to counsel to persons who have reached majority; the juvenile accused has as unqualified a right as any adult defendant. But the Code's provisions on the procedure in juvenile cases seem to qualify his right.¹⁷⁶ Article 174, entitled "*Young person may be assisted by counsel,*" states:

The court shall appoint an advocate to assist the young person where:

- (a) no parent, guardian or other person in loco parentis appears to represent the young person, or
- (b) the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death.

This provision is objectionable for a number of reasons. It makes no mention of the basic qualification for "appointment" of counsel which is specified in the Constitution - that the accused is unable to obtain the same "by his own efforts or through his own funds." While it is true that the overwhelming majority of young defendants will be indigent, and in need of appointed counsel if they are to have any legal representation at all, it is not true that *every* juvenile accused will be too poor to retain his own lawyer. In cases where the accused is not indigent, Article 174 as presently worded may be misleading and perhaps irrelevant: where its criteria are satisfied, there may be no need for the court to appoint a lawyer (and it might be a waste of valuable public resources for the court to do so); where its criteria are not satisfied, a vital question is, whether the accused may have the assistance of his own lawyer in the proceedings, and that question Article 174 does not answer. Is the intent of Article 174 to *exclude* privately retained lawyers from juvenile proceedings except in the relatively rare case where, according to its criteria, the need is overwhelming? One must assume "no" that the drafters did not intend to wipe away the constitutional right to retained counsel, a right especially vital because the enjoyment of so many other rights depends upon it.

Even if we interpret Article 174 as being addressed solely to the right to *appointed* counsel - leaving untouched the juvenile's constitutional right to *retained* counsel where he or his parents can afford to pay one - the provision raises problems in two respects. The first, which we have alluded to above in our discussion of the charge,¹⁷⁷ results from the discrepant wording of Criminal Procedure Code Article 174(b), "punishable with rigorous imprisonment *exceeding ten years,*" and Penal Code Article 173, "punishable with a term of rigorous imprisonment *of ten years or more*" (emphases added).¹⁷⁸ Because of this discrepancy, which

176. By contrast, J. Graven's *Avant-Projet*, Art. 822, authorized the appointment of counsel in juvenile proceedings whenever the "relevant general conditions" for appointment were satisfied.

177. See text accompanying notes 172-73, above.

178. Compare with Article 174 its predecessor, Art. 152 of J. Graven's *Avant-Projet* of the Code-Texte Definitif (1958-59) which says "reclusion pour dix ans au moins ou de mort."

most likely results from an oversight, a juvenile can face the maximum penalties under Article 173, Pen. C. and yet have no right to appointed counsel under Article 174(b), Crim. Pro. C. Hopefully the Parliament will act soon to rectify this inconsistency.

The second, and most fundamental objection, is that Article 174 purports to limit the juvenile accused's constitutional right to appointed counsel. Under Article 52 of the Revised Constitution the juvenile accused has an unqualified right to the benefit of appointed counsel whenever he is unable to obtain his own lawyer "by his own efforts or through his own funds." This means he has a right to representation by state-appointed counsel *whenever* he and his parents are too poor to hire one privately.¹⁷⁹ But Article 174 would permit the court to restrict that right to two instances: (1) where the offence charged is very serious, and (2) regardless of the seriousness of the offence, where he is not represented by his parent, guardian or other person in loco parents. The constitutional right to appointed counsel is therefore reduced to the level of judicial discretion in those cases where an indigent juvenile accused is charged with an offence not serious enough to meet the test of Article 174(b), and his parent or guardian is in court to represent him. In such cases, the Code seems to allow substitution of the services of the parent or guardian for those of defence counsel. Is the substitution fair? Can the juvenile's parent, who will often be illiterate and almost never familiar with legal procedures, properly safeguard the rights of the accused? Why should a parent, who, if he himself were accused in a criminal case would have a recognised need for the assistance of counsel, nevertheless be considered competent to act as counsel for his child?

How can one explain the drafter's adoption of this double standard? One suspects that the curtailment of the juvenile's right to counsel — like the similar tendency already noted in our discussion of the law of arrest, charge and plea— has been influenced by the "non-adversary" theory of juvenile proceedings: it is not that the juvenile's parent can be an advocate, but rather that somehow the juvenile does not *need* an advocate. The casualness of this procedure is rooted in the conception that because the purpose of juvenile proceedings is rehabilitative, rather than punitive, the proceedings need not be as adversary as "ordinary" criminal proceedings. The theory is that we do not need to be very concerned about protecting the juvenile's "rights" because there is no actual threat to his interests: the state is motivated entirely by the desire to achieve a disposition which will favour the best interests of the young person. But as we have remarked before, it is difficult to reconcile this theory with the penal theory and operation of the Ethiopian law we have been discussing: the proceedings are premised upon the belief that the accused has violated the penal law; the court adjudicates guilt, convicts of crime, and sentences to penalties which include, *inter alia*, flogging, fines, imprisonment, and the loss of civil rights. And so whereas the procedural law presupposes a benign non-punitive purpose, the substantive law applied in the end can be harsh and threatening. The result, one fears, may be punishment of the juvenile under a procedure which has not fully safeguarded his rights. The courts

179. The phrase in Article 52 "by his own efforts" presumably refers mainly to politically sensitive cases, where lawyers might be reluctant to accept a private retainer unless ordered to by the court. This is an exceptional circumstance not specially relevant to juvenile proceedings.

should avoid this danger by appointing counsel wherever his services are requested by indigent defendants, rather than only in those circumstances in which the Code makes appointment mandatory.

The Trial Hearing

Perhaps the most marked influence of the non-adversary theory is seen in the procedure of the trial hearing itself. Article 176(2) sets the tone with the general admonition, "All proceedings shall be conducted in an informal manner." As we shall see below, the Code is not always specific about the implications of that policy for particular trial procedures.

1. The Right to a Public Trial

Article 52 of the Revised Constitution, in the Amharic version,¹⁸⁰ guarantees to the accused in all criminal prosecutions the right to a "public trial". Presumably that right belongs to juvenile as well as to adult defendants. But Article 176(1) of the Criminal Procedure Code¹⁸¹ states: "where the young person is brought before the court all the proceedings shall be held in chambers. Nobody shall be present at any hearing except witnesses, experts, the parent or guardian or representatives of welfare organizations. The public prosecutor shall be present at any hearing in the High Court." This provision was probably designed to limit the publicity of juvenile proceedings in order to safeguard the young person's reputation from damage through press and radio reports, gossip etc.¹⁸² Restoration of the juvenile accused to his community, whether he has been found guilty of the offence charged or not, will often be facilitated by ensuring that the proceedings are kept as confidential as possible. But, on the other hand, if this provision for *in camera* hearings is designed for the benefit of the juvenile, it should not be worded so as to deny him any choice in the matter. In the exercise of his constitutional right to a public trial, the accused or his parents might wish in some cases to have the proceedings open to the public, or to have present certain persons other than those named in Article 176(1) (which list, incidentally, omits to mention the defence attorney). The publicity of criminal proceedings serves valuable functions in society, not least among which is the pressure arising out of publicity for fair and equal treatment of the accused. Furthermore, secrecy of the proceedings will often encourage the existence of ill-founded rumours concerning the events in question: as a matter of public confidence, justice should be "seen to be done." And public proceedings give an opportunity to the community, particularly to the injured party and his relations, to give vent vicariously to their hostile feelings towards the accused in an orderly fashion; this outlet is beneficial for society. For these reasons, it is regrettable that the Code lays down a categorical and inflexible rule of secrecy, without preserving to the juvenile and his representatives the freedom to exercise the constitutional right to a public trial.

180. See note 10, above.

181. Article 14(2)(e) of the (Suspended) Courts Proclamation, 1962, Proc. No. 195, *Neg. Gaz.*, year 22, no. 7 provides, less explicitly than the Code, that the court shall sit "in camera" in all juvenile cases. In light of the Code's existing rule, it is difficult to see the wisdom of enacting this superfluous and confusing provision.

182. This policy is also evidenced by Art. 179, Pen. C., which forbids the court to order the measure of publication of the judgment, and restricts public use of and access to the record of the case. See the discussion at text accompanying notes 71-75, above.

2. Examination of Witnesses

Following the accused's failure to "admit" the accusation or charge, the Code directs the court to ascertain the names of witnesses who "should be called to support the accusation or charge," and of defence witnesses, and to summon them: "The young person, his representative, or advocate may cause any witness to be summoned."¹⁸³ This apparently establishes the right "to have compulsory process for obtaining witnesses in his favor, at the expense of Government" which is guaranteed to every accused person by Article 52 of the Revised Constitution.

Another fundamental right of the accused guaranteed by Article 52 of the Constitution is his right "to be confronted with the witnesses against him." The right to "confrontation" here means the right of the young person to *cross examine* the witnesses testifying against him. In the adversary system, which Ethiopia has known traditionally¹⁸⁴ and which is reaffirmed in the Civil Procedure and Criminal procedure Codes, cross-examination is viewed as an essential technique for testing the veracity of hostile testimony. Article 176(6) grants that right, by stating that "all witnesses shall be examined by the court and may thereupon be cross-examined by the defence." But Article 175 provides that the accused "shall be removed from the chambers" while evidence is given or comments made "which is undesirable that the young person should hear." If this provision were interpreted to authorize the accused's removal during the trial testimony of witnesses against him, it would result in the denial of his right to confrontation; obviously, he could not cross-examine a witness whose testimony had been received in his absence. But the drafters undoubtedly did not intend any such denial. Article 175 was probably intended to save the juvenile from having to hear confidential matters regarding his family or others, which information would be relevant to the court's decision on *disposition* of the juvenile, but not to the prior question of his guilt or innocence of the crime charged. The article should therefore be read as giving the court authority to order the juvenile's absence only during parts of the sentencing proceedings. Indeed, for similar reasons, adult offenders are in some legal systems denied access to the sources of confidential presentence reports to the court about their character, etc.

Although in the procedure for adults it is specified that all testimony must be given under oath or affirmation,¹⁸⁵ the juvenile procedure is silent on this matter. Although one could infer from the command in Article 176(2) that all proceedings "shall be conducted in an informal manner" that the oath requirement should be discarded, that might not be the best solution. Since the testimony of witnesses can have very serious consequences for the juvenile, there is as much need here for the solemnity provided by the oath as there is in adult proceedings. Another question which arises is whether the "informality" requirement means that the court in juvenile proceedings need not adhere to the same rules of evidence.¹⁸⁶

183. Art. 176(5).

184. The right to confrontation is apparently of long standing:

"[I]t is not right that you [the judge] decide against one unless both appear together, because if you give your decision in haste, on the basis of what only one of them said when the other party was not present to defend himself, you will deserve the sentence you passed" *Fetha Nagast*, transl. Abba Paulos Tsadua, edited by P. Strauss (Addis Ababa, Law Faculty, H.S.I.U., 1968), p. 258.

185. Arts. 136(2) and 142(2).

as are applied in criminal cases involving adults. Hopefully, the forthcoming evidence law will answer this question. Meanwhile, it would seem that evidence rules which are necessary for the protection of the adult accused are no less necessary to assure a fair trial for the juvenile, and so should be held to apply. The Code does provide that a record be made of all testimony given.¹⁸⁷

A final point regarding the testimony of witnesses arises from Article 176(6): "All witnesses shall be examined by the court and may thereupon be cross-examined by the defence." In contrast to ordinary criminal procedure, it seems that all witnesses in juvenile proceedings, whether called in support of the charge or in defence, are treated as "court witnesses." The court, in every case, conducts the direct examination, and the defence may cross-examine even witnesses called at its request. Is the result that the defence can ask its "own" witnesses leading questions, and also impeach them - tactics ordinarily forbidden in direct examination? Presumably, following the defence "cross-examination" of its own witnesses the court may re-examine the witness concerning matters brought out by the defence in its examination. Such a procedure might often be necessary to ensure that the testimony of defence witnesses is subjected to the sort of rigorous and aggressive cross-examination which the defence is unlikely to provide, and which may be necessary to uncover the truth. That the court, and not the public prosecutor, has this function in juvenile proceedings follows from the fact, previously noted, that juvenile proceedings under the Code are largely non-adversary.¹⁸⁸ The leading, "inquisitorial" role of the court and the correspondingly diminished role of the public prosecutor are major elements in the distinction between juvenile and adult proceedings.

3. The Role of the Public Prosecutor, Defence Counsel and the Court

The distance which in juvenile procedure the Code drafters have come from the adversary system can be measured by recalling the respective role of the parties and the court in ordinary procedure. There, the prosecution and the defence each decide what witnesses, if any, should be called in support of their side.¹⁸⁹ Each party conducts direct and in-direct examination of its own witnesses, and cross-examination of the other's. These rules are qualified only in that the court may call additional witnesses "in the interests of justice,"¹⁹⁰ and may ask questions of witnesses where that "appears necessary for the just decision of the case."¹⁹¹

186. There is still no comprehensive law of evidence in the Empire. However, it appears that the courts do apply some rules of evidence, generally drawn from common law influences. The codes contain some evidentiary rules, and imply the existence of others: thus, Arts. 144-45 of the Criminal Procedure Code regulate the admission into evidence of recorded pre-trial depositions, and Art. 146 provides for objections "to the admission of any evidence." An example of a generally applied exclusionary rule is the one excluding coerced confessions from evidence.

187. Art. 176(6).

188. It is interesting to compare the Code's procedure for juveniles with the procedure for both adults and juveniles in J. Graven's Avant-Projet of the Code. Although the drafters ultimately discarded almost entirely the continental, inquisitorial elements of Graven's system of pre-trial and trial procedures insofar as adult accuseds were concerned, they modified his system only slightly in the sections concerning juveniles.

189. Art. 124.

190. Art. 143(1).

191. Art. 136(4).

The order of proceedings at trial is as follows: the prosecutor's opening speech;¹⁹² examination of prosecution witnesses by the prosecutor, cross-examination by the defence, and, if necessary, re-examination by the prosecutor;¹⁹³ acquittal of the accused if, at the close of the prosecution case, there is not sufficient evidence to convict;¹⁹⁴ opening speech for the defence;¹⁹⁵ statement of the accused if he wishes to speak;¹⁹⁶ examination of defence witnesses by the defence, cross-examination by the prosecutor, and, if necessary, re-examination by the defence;¹⁹⁷ prosecutor's closing speech;¹⁹⁸ closing speech for the defence;¹⁹⁹ and judgment and sentence.²⁰⁰

In juvenile proceedings we find a radically different system. To begin with, except in trials before the High Court, the prosecutor cannot even be present.²⁰¹ It thus falls to the judge, in the great bulk of cases, to perform the functions that the prosecutor would otherwise perform. Put another way, it can be said that most juvenile proceedings are *ex parte*: only the defence and the court have roles to play. Thus, "prosecution witnesses" are called not according to the wishes of the prosecutor, but on the decision of the court after "inquiring"—presumably of the informant in the case—"as to what witnesses should be called to support the accusation or charge." There is no opening speech by any party; the court, not prosecutor or defence counsel, conducts direct examination of all witnesses; "defence witnesses", if we may so refer to those witnesses called at the instance of the defendant, are not cross-examined by any prosecutor; only the defence may deliver a "summing up" speech.

It is not even clear whether the order of testimony is supposed to approximate that of adult proceedings: prosecution witnesses, followed, if the offence charged has been proved, by witnesses for the defence. The Code blurs, or even erases, the distinction between the "prosecution case" and the "defence case"; there seems to be no point at which the defence advocate can move for an acquittal on the ground that the "prosecution case" has not been proved. Must the defence, then, put on its case regardless of the weakness of the evidence in support of the accusation? Indeed, there is no express prohibition against calling the defence witnesses before any others, although this would of course be a most unfair technique. Perhaps in view of the Code's lack of precise direction in these matters it would be safest, and fairest to the juvenile, to fall back upon the procedure for adults in order to fill these gaps. If that were done, then the judge would first call witnesses in support of the charge. If, after hearing their testimony, he found that the charge had not been proved, he would acquit the accused. Only if he found that a case for conviction had been made out, would he call upon

192. Art. 136(1).

193. Arts. 136(2)(3) and 139.

194. Art. 141.

195. Art. 142(2).

196. Art. 142(3).

197. Art. 142(2). The Code does not expressly state that defence witnesses may be cross-examined and re-examined, but this is clearly implied. Arts. 137, 139-40, 142(3).

198. Art. 148(1).

199. Art. 148(2).

200. Art. 149.

201. Art. 176(1).

the defence to answer the charge. Such a procedure seems desirable to avoid forcing the accused to defend needlessly against a charge which is not supported by sufficient evidence.

We have thus far seen how the juvenile trial procedure differs considerably from the adult procedure, particularly in that the public prosecutor does not participate at all, and his functions are assumed by the court. But, as we have noted previously, the Code does make some procedural distinctions according to the seriousness of the offence attributed to the juvenile. Thus, we have seen that both the right to appointed counsel and the right to be accused in a formal charge drawn by the public prosecutor attach mainly²⁰² in serious cases. Another distinguishing feature of "serious" cases is that, at hearings held in the High Court, the public prosecutor "shall be present".²⁰³ However, it is not clear why, in such cases, the public prosecutor should be present. Has he any functions? The Code provisions neither specify nor even vaguely hint that he does. Presumably, the "non-adversary" procedure of Article 176 applies to juvenile cases tried before the High Court as elsewhere, and the trial judge exercises the functions usually reserved to the public prosecutor. But then why should the latter be present?

One can only guess that Article 176(1) requires the public prosecutor to be present at High Court trials of juveniles because the offences within that court's jurisdiction are the most serious and/or the most complex in the Penal Code.²⁰⁴ Therefore, we can suppose, the High Court may wish to consult with the public prosecutor and to receive his advice and opinion on important questions. But this explanation is somewhat disturbing because of its implications for the juvenile's own needs in the High Court. We have seen that only in "serious" cases has the indigent young accused an absolute right to appointed counsel, and many High Court cases are not sufficiently "serious" to qualify under the test for counsel in Article 174(b).²⁰⁵ And in such cases, also, the juvenile has no right to be accused in a formal charge drawn by the public prosecutor, because the identical test of Article 172(3) will not be met.²⁰⁶ We thus confront the irony that High Court cases are considered sufficiently important and difficult to demand the presence of the public prosecutor, but neither sufficiently difficult nor important to entitle the juvenile accused to such basic safeguards as an adequate charge and a defence lawyer. It can only be hoped that until this anomaly is rectified by legislative revision, in the interests of justice the courts will grant these safeguards in High Court cases even though the Code does not explicitly so require.

202. The right to appointed counsel also attaches in less serious cases where no person in loco parentis appears to represent the juvenile.

203. Art. 176(1).

204. See the First Schedule to the Criminal Procedure Code. By virtue of Art. 106 (*Change of Venue*), cases which are not ordinarily of High Court jurisdiction may be transferred to the High Court. Presumably, however, only cases which under Art. 106(b), present "some question of law of unusual difficulty" will be taken for trial by the High Court.

205. For example, the offences of usury (Art. 667, Pen. C.), extortion (Art. 668, Pen. C.) or blackmail (Art. 669, Pen. C.), none of which are punishable with "rigorous imprisonment exceeding ten years or with death."

206. *Ibid.*

4. The Role of the Accused

In Ethiopia an adult accused's role at his trial is possibly unique in contemporary legal systems. Apparently,²⁰⁷ he may not testify as a *witness* — *i.e.* he may not be sworn, questioned by defence counsel and cross-examined by the prosecutor. The Code seems in this respect to have chosen the continental rather than the modern²⁰⁸ common law approach. However, unlike the regime in continental²⁰⁹ systems, the accused need not submit to questioning by the court or prosecutor — he has an absolute privilege of silence and of refusal to be questioned. In this respect, the common law has been followed. Apparently, the sole avenue of participation open to the accused in Ethiopia is to make an unsworn *statement*, subject not to cross-examination but only to clarifying questions from the court if such are necessary.²¹⁰ The motivation for disqualifying the accused as a witness in his own behalf was apparently to remove the danger that he would testify falsely and thereby commit the offence of perjury.²¹¹

Turning to the procedure for juveniles, we find no guidance at all on the role of the accused; there is no hint as to whether he may testify as a witness or not, or as to whether or not he may make an unsworn statement. In this situation it seems most logical to apply the adult rule, since there seem to be no policy considerations militating for a distinction between adult and juvenile proceedings in this respect.

5. Judgment and Sentence

After all the witnesses have been heard in juvenile proceedings, and the defence has been given an opportunity to sum up its case, the Code directs that the court "shall give judgment."²¹² The term "judgment" is slightly ambiguous. Interpreted narrowly, it refers solely to the court's verdict on the charge: "guilty" or "not guilty." But it is sometimes used more broadly, in the Code and elsewhere, to refer both to the verdict and, in case of guilt, to the sentence. In the Code provisions governing the adult procedure, these two concepts are kept fairly distinct: Article 149 is entitled "Judgment and sentence," and deals in turn first with judgment

207. The Code neither explicitly disqualifies nor permits him to testify; the only reference to the accused, Art. 142(3), states: "The witnesses for the defence may be called in any order: Provided that, where the accused wishes to make a statement, he shall speak first." By contrast with other codes which have obviously been consulted by the drafters, the omission to specify that the accused may give testimony under oath seems to indicate their intention. Compare Sec. 181, Criminal Procedure Code of the Federated Malay States (Kuala Lumpur, Government Press, 1951); Sec. 272, Ghana Criminal Procedure Code (Act. 30, 1960). Code Arts. 85 and 86, concerning the preliminary inquiry hearing, likewise contrast the accused's "statement" with the "evidence" of "witnesses". However, in light of the fact that the courts, either as a carry-over from the era of British influence in the judicial system or from customary practice or both, seem generally to permit the accused to testify, perhaps the ambiguity in the Code will eventually be interpreted along common law lines.

208. In England prior to 1878 the accused could not give sworn testimony in his own behalf.

209. Some former Commonwealth countries, such as India, have codes which incorporate the continental practice of subjecting the accused to judicial questioning. See Sec. 342, Indian Criminal Procedure Code (Act. V, 1898).

210. Art. 142, para. 2.

211. See M. Pieck, "The Accused's Privilege Against Self-incrimination in the Civil Law," *American J. Comparative L.*, vol. 11(1962), p. 586; A. Vitu, *Procédure Penale* (Paris, Presses Universitaires de France, 1957), p. 212.

212. Art. 176(7).

(i.e. verdict), then sentence.²¹³ The corresponding provision in the juvenile procedure, Article 177, is somewhat less satisfactory. Entitled simply "Judgment", it provides in sub-article (1) for the verdict and, where guilt is found, the sentence. Sub-arts. (2) and (3) then speak of hearing witnesses on the "character and antecedents" of the young person, and sub-article (4) states: "Judgment shall be given as in ordinary cases. The court shall explain its decision to the young person and warn him against further misconduct." An unwary reader might conclude that the *verdict* may thus *follow* the taking of evidence as to antecedents and character, but a closer analysis reveals that the witnesses heard under sub-articles (3) and (4) are heard only *after* a judgment (verdict) of "guilty". It would clearly be impermissible to prejudice the case by hearing evidence on character and antecedents before the charge had been found proved. That is why Article 55(1) of the Penal Code declares that the court may require the submission of such evidence "for the purpose of assessing sentence," and why Article 177(3), Crim. Pro. C. provides that after the testimony of the character witnesses "the defence shall address the court as to *sentence*."²¹⁴ It is necessary to stress these points because, unlike the Code's provisions for adult trials,²¹⁵ in the juvenile provisions there is no express prohibition against the disclosure of the accused's antecedents to the court before conviction.²¹⁶

Following a judgment of acquittal, the juvenile accused must be "set free forthwith."²¹⁷ Following a judgment of guilty, the court proceeds to sentence him.²¹⁸ But, as we have just noted, prior to doing so the court is empowered to take evidence on the character and antecedents of the convicted accused. If expert opinion is deemed desirable, the court may first "order the young offender to be kept under observation in a medical or educational centre, a home or any other suitable institution"²¹⁹ Subsequent expert testimony on the physical and/or mental condition of the young person is, insofar as it concerns "definite scientific findings," binding on the judge in deciding upon the appropriate disposition.²²⁰ What procedure is to be followed in all these proceedings? Presumably, because it seems that the prosecutor is given no role in the process, the decision to commit the accused for pre-sentence observation will be made by the judge on his own motion, or on motion of the defence. As for the taking of evidence on character and antec-

213. But the term "judgment" is used again in the broad sense in Art. 149(7): "After delivery of judgment the prosecutor and the accused shall be informed of their right of appeal."

214. Emphasis supplied.

215. Art. 138.

216. It is reported that in practice the pre-sentence report is prepared prior to trial, but not consulted by the judge unless the accused is found guilty. Mebrahtu Yohannes, *Procedure in Cases of Juveniles* ..., cited above at note 26, p. 19.

217. Art. 177(1).

218. *Ibid.*

219. Art. 55(2), Pen. C.

220. Art. 55(3), Pen. C. This provision has been criticised because it leaves the court free to ignore, in the words of the Penal Code, "the appreciation of the expert as to the legal inferences to be drawn" from the definite scientific findings. P. Graven, *An Introduction* ..., cited above at note 28, p. 150. According to the criticism the judge should be bound, in effect, to delegate the sentencing function to the expert, who will know more about juvenile delinquency than the judge. In a purely rehabilitative scheme that solution might be fine, but it is hardly consistent with the present system, which retains a strong punitive element; in that sphere, the judge is by definition more competent than the "expert".

edents, the Code expressly gives the court power to call witnesses before it to testify, and "after these persons have been heard, the defence may reply and call his witnesses as to character;" these defence witnesses are "interrogated by the court."²²¹ But it is not clear (a) whether the defence may "in reply" cross-examine the court's character witnesses, as it may do with regard to witnesses called in support of the charge, and (b) whether or not the defence character witnesses are, either prior to or following the court's "interrogation," examined by the defence. Presumably the defence may examine both categories of witnesses. Otherwise, there would be the danger that valuable information in their possession would not be brought to the court's attention. After the conclusion of testimony the defence "shall address the court as to sentence."²²²

The Code then provides that judgment shall be given "as in ordinary cases," which phrase no doubt is intended to refer to Article 149 of the adult procedure. That article requires that the judgment be "dated and signed by the judge delivering it," that it "contains a summary of the evidence," "reasons for accepting or rejecting evidence," "the provisions of the law on which it is based and, in the case of a conviction, the article of the law under which the conviction is made." In the case of an acquittal, the judgment must "contain an order of acquittal and, where appropriate, an order that the accused be released from custody." These requirements as to the form and contents of the judgment are valuable safeguards which must be strictly followed in juvenile as well as adult cases.

We have previously discussed the dispositional choices available to the court in sentencing the convicted young offender.²²³ We need add only a few remarks here. Conditional suspension of the penalty as provided for adult offenders may also be applied to juveniles,²²⁴ the only difference being that in the case of juveniles the period of probation must be fixed between one and three years,²²⁵ in contrast to the ordinary limits of two to five years.²²⁶ The court also has the special power to "warn, admonish or blame the parents or other person legally responsible for the young person where it appears that they have failed to carry out their duties."²²⁷ Furthermore, where because of such persons' "failure to exercise proper care and guardianship" the court commits the juvenile to the care of another person or to an institution, the former may be ordered to bear all or part of the cost of his up-keep and training.²²⁸ Unfortunately the Code does not indicate whether the persons affected by such an order may participate in the proceeding: May they present evidence on the question of fault? May they appeal the court's finding of fault, or the scope and duration of the required contribution?²²⁹ What if they are financially unable to comply with the order?

221. Art. 177(3).

222. *Ibid.*

223. See text accompanying notes 41-67, above.

224. Art. 176, Pen. C.

225. *Ibid.*

226. Art. 200(2), Pen. C.

227. Art. 178.

228. Art. 179.

229. In an earlier draft of the Code the parents, etc. were given the right to appeal. See *An Intermediate Draft of the Criminal Procedure Code (1959)*, cited above at note 130, Art. ... 157(3).

Lastly, although the juvenile procedure is silent on the question of *costs*, presumably the ordinary procedure applies, and the costs of prosecution are borne by the government unless "exceptional costs have been incurred. for a reason attributable to the convicted person and he is a person of property," in which case the court can tax him with all or part of the prosecution costs.²³⁰

Appeal and Other Post-Sentence Proceedings

The juvenile procedure does not mention the question of appeal, but it is clear from other Code provisions that the right of appeal applies just as in ordinary cases.²³¹ Article 181 permits appeal from any "judgment of a criminal court whether it be a judgment convicting, discharging or acquitting an accused person," and Article 185(4) states that an appeal "by a young person ... shall be through his legal representative." But what is not clear is whether the non-adversary aspect of juvenile pre-trial and trial procedure carries through to the appeal stage. That is, are criminal appeals from juvenile case verdicts "adversary"? In appeals by the young person, is there a respondent?²³² If so, who is it? In High Court cases, where the public prosecutor has participated, it would seem logical to give him such a role on appeal. But what of all other cases, which, as we have noted above, are tried *ex parte*? Surely the trial court judge is not supposed to appear and argue as respondent. We meet this issue again when we turn to ask whether the government may appeal in such juvenile cases.²³³ If so, who undertakes prosecution of the appeal? Or should we conclude from the general non-adversary nature of juvenile proceedings that the government has no right to appeal, at least in cases not tried in the High Court? Presumably, there is an equal need for the right to such appeal in juvenile cases as in others — to correct errors committed by the trial court — and so the best solution might be to provide for the public prosecutor's participation at the appeal stage, as in ordinary cases, even though he did not participate earlier.

Regarding post-sentence proceedings other than appeal, we shall discuss two types:²³⁴ variation of measures and penalties prior to their normal expiration, and reinstatement.

We have noted before that the substantive penal law applicable to juveniles allows the court a certain amount of flexibility in the treatment stage: the court has a general power to "vary or modify" its sentence²³⁵ at any later time if the interest of the young person so requires. Such power includes, but is not limited

230. Art. 220.

231. Criminal appeals are considered in Current Issue, "Criminal Appeals," *J. Eth. L.*, vol 1 (1964), p. 349, and in Fisher, *Ethiopian Criminal Procedure*, cited above at note 23, Chapter 17.

232. In ordinary cases appeals are adversary, and the respondent must appear in oral argument before the appeal court. Art. 192.

233. In ordinary cases the prosecutor, public or private as the case may be, has a right of appeal "against a judgment of acquittal, discharge or on the ground of inadequacy of sentence." Art. 185(2), (3).

234. Other sorts, such as revision by Chilot, habeas corpus, pardon, and amnesty, are presumably available to juveniles on the same terms as they are to adults. See, generally, Fisher, *Ethiopian Criminal Procedure*, cited above at note 23, Chapter 18.

235. Art. 180. This general power apparently includes the power to vary penalties as well as measures, and even to substitute a penalty for a measure if the juvenile has been convicted more than once. See note 61, above.

to, the power to convert a penalty of time into arrest,²³⁶ to shorten or extend a period of arrest, committal or imprisonment,²³⁷ to order conditional release,²³⁸ to transfer a juvenile from one type of institution to another,²³⁹ and to revoke probation imposed pursuant to conditional release or to suspension of the penalty.²⁴⁰

What procedure is to be followed in such cases? Book VI, Chapter 2 of the Criminal Procedure Code, entitled "Variation of Orders Contained in Sentences" provides a Procedure for such cases. Article 217 provides for an application by the party wishing an order to be varied, notice to affected persons, court-directed inquiries into the facts, a hearing, and recording of the proceedings and of the court's decision. Appeal is expressly denied. Article 216 impliedly invokes this procedure for various types of situations including conditional release and revocation of probation. But doubt is raised as to the applicability of this procedure to juvenile cases by Article 216(3): "Orders made in respect of young persons may be varied in accordance with the provisions of Art. 180 of this Code." Looking to Article 180, we find only the statement that "any court which has sentenced a young person to a measure may at any time of its own motion or on the application of the young person, his legal representative or the person or institution to which he was entrusted, vary or modify such order if the interest of the young person so requires." But of notice, investigation, hearing, recording appeal, no guidance is given. In such circumstances we ought to fill in the gaps by applying the procedure of Article 216, which seems quite as suitable for juvenile cases as for others. And, we might add, the juvenile's right to counsel ought to be assured at this stage as well as earlier.

We have already discussed²⁴¹ the availability and effects of reinstatement. The Penal Code directs that "the young offender or ... those having authority over him must apply for reinstatement to "the competent authority,"²⁴² but omits further procedural guidance. The juvenile provisions of the Criminal procedure Code are completely silent. In this situation, as with applications to vary or modify the sentence, the procedure prescribed by Criminal Procedure Code Articles 218-19 for ordinary cases should be followed: the application should be made to "the court having passed the sentence the cancellation of which is sought" (the "competent authority"); it should be in writing, give reasons, and be accompanied by documents which enable the court to judge the application; the court may order the production of further information, and it decides the issue (in a hearing open to both parties?) sitting in chambers; the decision is in writing, must give reasons, and is not appealable. An application rejected on the merits may not be renewed before two years have elapsed.

There is one aspect of the ordinary reinstatement procedure which perhaps should not apply to juvenile cases: publicity of the court's ruling. Article 219(4) requires that the court's decision on an application for reinstatement "shall be

236. Arts. 171(2) and 710(2), pen. C.

237. Arts. 54 and 168, Pen. C.

238. Arts. 167(2) and 173(3), Pen. C.

239. Art. 173(2), Pen. C.

240. *Ibid.*; Arts. 176, 204 and 211, Pen. C.

241. See text accompanying notes 76-81, above.

242. Art. 180, Pen. C.

read out in open court, and shall be published in a newspaper." In the first place, it is questionable whether Article 219(4) makes any sense at all in light of Article 219(1), which in requiring the court to consider the application *in camera*, shows an understandable sympathy with the need for secrecy in reinstatement proceedings. This is so because the applicant, who has already served the penalty for his crime and may be fairly well integrated into the community, might be harmed by a revival of public attention to his past criminal conduct. A different situation results if the court *grants* reinstatement, because publicity of that fact may have a positive effect on the offender's rehabilitation, and in any event may be necessary to give third parties due warning not to defame him by any "reproach referring to an old conviction," a punishable offence.²⁴³ Therefore the publicity ordained by Article 219(4) is defensible in the case of an adult offender only where the *in camera* proceedings have resulted in a decision favourable to him, and indeed one suspects that the Code drafters failed to provide thus by oversight.

But in the case of juveniles it would be wrong to allow even grants of reinstatement to receive the publicity, including newspaper publication, that Article 219(4) requires. It is not reasonable to publicize the offender's reinstatement more widely than his conviction, and, as we have seen,²⁴⁴ the law allows strict limits on the extent of the latter in juvenile cases. Publication in a newspaper of the young person's rehabilitation could thus defeat the policy which may have originally prevented publication of his conviction on court order. Therefore in juvenile rehabilitation procedure publicity even for successful applications should be ordered only at the offender's request.

Special Proceedings

1. The Role of the Injured Party: Private Prosecutions and Joinder of the Civil Claim in the Criminal Proceedings

In ordinary criminal proceedings under Ethiopian law the injured party may have the opportunity to participate in two special ways, aside from participation as a witness. In a very limited class of cases, the injured party may institute the criminal proceedings as a private prosecutor if the public prosecutor refuses to prosecute.²⁴⁵ And in all criminal cases, whether instituted as public or private prosecutions, the injured party²⁴⁶ may "apply to the court trying the case for an order that compensation be awarded for the injury caused."²⁴⁷ In juvenile cases Article 155(1)(a) expressly forbids joinder of the injured party's civil claim together with the criminal case. Probably, private prosecutions are forbidden as well.²⁴⁸

243. Art. 245(3), Pen. C.

244. See text accompanying notes 71-75, above.

245. Private prosecution is authorized only where the public prosecutor refuses to institute proceedings with regard to an offence punishable only upon complaint, on the ground that there is not sufficient evidence to justify a conviction. Arts. 42, 44(1). In certain specified cases someone other than the injured party himself may initiate the private prosecution. Art. 47.

246. Or those claiming under him, Arts. 100, Pen. C. and 154, Crim. Pro. C.

247. Art. 154.

248. See the discussion below.

It is difficult to fathom the drafter's motives for not allowing joinder of the injured party's civil claim in the criminal trial. It would seem that all the arguments which justify allowing such joinder in trials of adult accuseds apply to juvenile cases: joinder saves time and expense to the state, the injured party, and the accused by attempting²⁴⁹ to settle all the outstanding issues which have arisen out of the alleged crime. It can contribute to the guilty defendant's rehabilitation, by making provision for his recompense to the victim of his crime and to society simultaneously. It also serves the extremely vital function of providing an outlet, sanctioned in Ethiopia by long tradition, for the injured party's passion for participating in the criminal case. To the extent that such participation allows the injured party to sublimate his instincts for "blood revenge", its value is inestimable. Juvenile accuseds are apparently by no means immune from involvement in the the blood feud syndrome.²⁵⁰

It cannot be objected that introduction of the civil claim might confuse or complicate the criminal trial, because in any case where that is likely the court always can (and should) deny the application; in this respect juvenile and adult cases are not distinguishable, and the criteria already established for adult cases seem perfectly adequate. Therefore, it may have been unwise to deny the possibility of joinder in juvenile cases.

Because the Code nowhere expressly settles the question, it is not absolutely certain that the Code forbids private prosecution of young persons,²⁵¹ but it would be difficult to justify allowing it. In ordinary procedure, private prosecution is only possible for "complaint offences" (which are relatively minor), and even then only if the public prosecutor has declined to prosecute for the reason that the evidence is not sufficient, in his view, to support a conviction. Private prosecutions are permitted, within these strict limits, probably for two reasons: to provide an outlet for the injured party's desire to see his alleged assailant punished; and to check possible abuses of discretion by the public prosecutor. These aims are admittedly of great importance in all criminal cases, and, as we have seen, the first has apparently been sacrificed in juvenile cases by forbidding joinder of the civil claim. But permitting private prosecutions also has negative aspects, which are perhaps especially important in juvenile cases. Criminal prosecutions, whether private or public, bring great difficulty and embarrassment to the accused person: his life is disrupted, he is subjected to severe emotional stress, and he acquires a stigma of criminality which, regardless of attempts to keep the proceedings "secret" and even if he is ultimately acquitted, he may not lose for some time. Where a young person is the accused, these effects may have a particularly severe

249. If the defendant is acquitted or discharged the criminal court may not adjudicate the injured party's civil claim but must refer him to the civil courts. Art. 158.

250. See the homicide case discussed by Mebrahtu Yohannes, *Juvenile Delinquency in Six Towns* . . . , cited above at note 104, pp. 137-38, where the eleven year old defendant discharged by the court was afraid to return to his village because "blood money" had not been paid. See also the other cases discussed by Mebrahtu Yohannes, *id.* at pp. 136-37, *Public Prosecutor v. Aberra Lametcha* (High Ct., Addis Ababa, 1965), Crim. Case No. 533-57, unpublished, Library, Faculty of Law, H.S.I.U.

251. The Code's failure to deal expressly with the question contrasts with its clear approval of private prosecution in petty offence proceedings ("The public or private prosecutor shall apply..." Art. 167(1), and its clear refusal to permit joinder of the injured part's civil claim in juvenile criminal proceedings (Art. 155(1) (a)).

impact on him and on his chances of successful adjustment to life. To subject him to these strains in cases *where the public prosecutor had formally stated that the available evidence does not justify a prosecution* seems foolish; in juvenile cases private prosecution could jeopardize greater values than it serves.²⁵²

Then too, it is difficult to imagine how the role of private prosecutor could be accommodated in the special “non-adversary” procedure prescribed for juvenile trials. The Code provides that the private prosecutor will have all the “rights and duties” at trial as a public prosecutor would have,²⁵³ but as we have seen, in juvenile cases not tried in the High Court (and cases sufficiently minor to admit of private prosecution are never of High Court jurisdiction) the public prosecutor has *no* duties — in fact he cannot even attend the trial hearing.²⁵⁴ This, together with the fact that the Code’s juvenile provisions refer expressly to the public prosecutor but never to the private prosecutor,²⁵⁵ bolsters the view that the Code does not permit private prosecution in juvenile cases.

2. Petty Offence Procedure

Just as the Code provides a special procedure for cases involving juveniles, so it provides one for the trial of petty offences.²⁵⁶ Unfortunately it is not clear which special procedure applies when a juvenile is accused of having committed a petty offence. It would seem that there is no possibility of conflict insofar as pre-trial procedure is concerned, because the petty offences procedure is addressed only to the stage of institution of proceedings and beyond; initiation of the proceedings and the police investigation stages must be conducted according to the regular juvenile procedure.²⁵⁷ As for the trial itself, it would at first blush seem sensible to apply the petty offences procedure, which differs from ordinary procedure chiefly in that it is less formal, and that the accused can plead guilty in writing and thus avoid a court appearance in suitable cases.²⁵⁸ Such procedural short-cuts would be wholly appropriate to the trial of petty offences if the relatively

252. The fact that the private prosecutor must bear all the costs of the prosecution, including, where the court finds that the charge “was not made in good faith,” possibly all or part of the costs incurred by the accused (Arts. 154 and 221), would seem to be neither a very effective deterrent to baseless private prosecutions nor adequate solace to the acquitted accused.

253. Art. 153(1).

254. Art. 176(1).

255. Arts. 172(1), (3) and 176(1).

256. Arts. 167-70.

257. This is not stated explicitly. But we can infer it from the initial provision for summoning of the accused on application to the court “by the public or private prosecutor” (Art. 167(1)). We know that there cannot be a “private prosecutor” until after the initiation and investigation stages (concerning a “complaint offence”) have been concluded, and the public prosecutor has decided on the basis of the police investigation report not to institute public proceedings under Article 42(1)(a). Therefore, the Code chapter entitled “Procedure in Cases of Petty Offences” chronologically presupposes the conclusion of all stages prior to and including the public prosecutor’s decision whether to institute proceedings, and we must presumably look to the ordinary Code provisions for regulation of those stages. (The “summons issued by the court under Article 167 is a summons to appear for *trial*, and serves the function of the *charge* in regular procedure (Art. 167(2)). This is in clear contrast to the Chapter “Procedure in Cases Concerning Young Persons,” which is clearly meant to govern matters from the earliest stages, and includes provision for initiation of the case and police investigation.

258. See Arts. 168-70.

innocuous measure/penalty scheme of the petty offences Code²⁵⁹ applied in case of conviction. But it seems clear that it does *not* apply. The General Part of the Penal Code, in providing a special and exclusive set of measures and penalties for convicted juveniles, expressly makes those treatment provisions applicable to offences "provided by the Criminal Code or the *Code of Petty Offences*",²⁶⁰ and Article 702(2) of the Petty Offences Code specifically reserves the applicability of juvenile "forms of punishment." Article 696(3) of the Petty Offences Code providing that the petty offence provisions "shall also apply to young persons,"²⁶¹ seemingly refers only to those provisions which define criminal *liability* for petty offences: Petty Offences Code *treatment* provisions must give way to those prescribed for juveniles in the Penal Code itself, unless they can be reconciled with the latter's scheme.

Thus, Articles 702(2) and 703 of the Petty Offences Code, which together make arrest "the only penalty involving deprivation of liberty which may be imposed in the case of petty offences," must refer to the direction in Penal Code Article 161 that when a young person commits "an offence provided by the ... Code of Petty Offences" "the Court *shall* order one of the following measures ..." which category includes commitment to a corrective institution for up to five years. And because that category also includes corporal punishment, that penalty is arguably available even though Petty Offences Code Article 702(1) expressly excludes it in petty offence cases. Article 167(2). A preferable view is that Article 702(2), read together with Article 702(1), does not permit corporal punishment because it is not a "special form" of one of the penalties permitted by Articles 703 ff. We can easily reconcile Article 706(2), Pen. C. (Code of Petty Offences) (arrest in juvenile cases shall not exceed fifteen days' duration, etc.) with Article 165, Pen. C. (duration of arrest shall be determined by the court "in a manner appropriate to the circumstances of the case and the degree of gravity of the offence committed"), since the former article expressly refers to the latter and is more specific.²⁶² Likewise, we could read Article 780, Pen. C. (Code of Petty Offences) as limiting the amount of fine which can be imposed on a juvenile petty offender to three hundred dollars although Article 171, Pen. C. only directs that the amount "be proportionate to his means and the gravity of the offence."²⁶³

Seeing that the ordinary measure/penalty scheme applies generally to juvenile offenders, whether the offence is ordinary or merely petty, it becomes clear that there is no justification for an "abbreviated" procedure in petty offence cases: the procedure should match the aims and possible consequences of the proceedings, and these do not differ substantially for the juvenile accused of an ordinary or petty crime. He is equally liable, for example, to corporal punishment and to

259. See Arts. 702-20, Pen. C. (C. Pet. Off.).

260. Art. 161, Pen. C. (emphasis supplied).

261. Note incidentally that the reference in Art. 696(3) to Penal Code Art. 52 is clearly erroneous; it is Art. 53 which defines "young person". Art. 52, which defines "infant", is irrelevant.

262. Although "arrest" in the Code of Petty Offences is a *penalty*, and "arrest" in the vocabulary of juvenile treatment is a *measure*, the two are clearly equivalent in substance and should be so treated.

263. We have already pointed out the fundamental inconsistency between other directions as to fines for juveniles contained in the Penal and Petty Offences Codes, respectively. See note 58 above.

committal to a "corrective institution" for a term of years as is the juvenile charged with a much more serious crime; only the penalty of imprisonment (along with deprivation of civil rights) is forbidden to the court.²⁶⁴ Therefore the juvenile procedure, not the special petty offences procedure, should always govern the trial of young persons accused of petty crime.

This conclusion leads us to question the wisdom of Article 698, Pen. C. (Code of Petty Offences), which directs that the expert inquiry which the court is encouraged²⁶⁵ to undertake before sentencing a convicted juvenile, should not be ordered in petty offence cases unless "the offender's responsibility cannot otherwise be decided by the court." This would make sense if the offender were subject only to the relatively mild measures and penalties prescribed by the Petty Offences Code, but makes no sense in juvenile cases where the possible consequences of the court order are indeed grave; the court should not in such cases be encouraged to make its decision as to treatment "blindfolded", as it were.

But, more fundamentally, we should seriously question the legislature's decision, if such it was, to apply the Penal Code's special juvenile treatment provisions to young petty offenders. Is it not unfair to the juvenile to subject him to a possible penalty of commitment to a "corrective institution" for up to *five years*²⁶⁶ following a conviction of such petty crimes as stealing fifty cents²⁶⁷ or defacing a park bench?²⁶⁸ An adult who committed the same acts could only be punished with loss of liberty for *fifteen days* in the first case,²⁶⁹ or *three months* in the second.²⁷⁰ It can be objected that in practice a court would never impose such a grave sentence in such a minor case, and that on appeal the sentence would certainly be reduced if it did. But if that is so then it is surely appropriate to ask why we give the court such a broad discretion in the first place vis-a-vis the juvenile petty offender when we refuse to allow it vis-a-vis the adult? If we are willing to place our trust in the good sense and restraint of courts, why do we set limits throughout the Penal Code on the amount of permissible penalty according to the gravity of the particular crime? The answer is surely that we do not "trust" the courts to such an extent, and that we feel it is right and fair to limit maximum penalties, at least in part, according to the degree of harm threatened or achieved by the offender. How can we justify taking a different course where juveniles are concerned?

We submit that this cannot be justified on any basis other than a denial that commitment for five years *e.g.*, to the Addis Ababa Remand Home, is "really" punishment, because the legislature's aim in such cases is to reform, not hurt, the accused. But, as we have already noted, this view partakes heavily of wishful thinking. To take a misbehaving ten year old boy from his home envir-

264. Because the penalty of imprisonment may only be ordered where the offence committed is "normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment." Art. 173, Pen. C.

265. Art. 55, Pen. C.

266. Art. 167(2), Pen. C.

267. Art. 806, Pen. C. (C. Pet. Off.).

268. Art. 811, Pen. C. (C. Pet. Off.).

269. Art. 806, Pen. C. (C. Pet. Off.).

270. Arts. 810-11 and 703, Pen. C. (C. Pet. Off.).

onment and put him in the custody of a state institution which he may not leave without government permission may be wholly justified as a protective and beneficent deed in many cases, but to the individual boy, his family and his friends, it is surely punishment. The state's sincerely benevolent aims on his behalf do not erase the boy's sense that he is being forcibly deprived of his normal life, no matter how impoverished or harmful the latter may seem to us. If nothing else, the high escape rate of Remand Home inmates should satisfy us as to that. But even as viewed by the state, it is difficult to maintain that in society's eyes the boy is not being dealt with as a "criminal": we have accused him of violating a specific provision of the Penal Code, and have "convicted" him in a court of law for this offence. He has then been "sentenced" to serve a number of years in "corrective" confinement. Even if we call that treatment a "measure" rather than a "penalty", the aura of punishment persists. After all, we purport to include "rehabilitation" and "correction" among our aims in locking up adult convicts too,²⁷¹ but we do not for that reason deny the treatment's punitive nature. Forcible deprivation of liberty pursuant to a criminal conviction simply cannot escape the label of punishment, nor should we permit it to.

If our discussion so far is based on a correct reading of the law, then it must be said that this state of affairs illustrates all too well our central theme that the Ethiopian legislator's worthy efforts to provide a specially "enlightened" and protective scheme of treatment for the juvenile has led, ironically, to a smaller measure of justice for him than is accorded his adult counterpart. In the effort to distinguish the juvenile's case from the adult's in order to alleviate the rawness of criminal justice, little care had been taken to assure him equality of treatment with regard to those rights and safeguards we deem absolutely essential for the rest of us.

3. Default Proceedings

As a general rule in Ethiopian Criminal Procedure the accused's presence at trial is a requirement. In exceptional cases, where the offence charged is very serious, the accused can be tried in his absence and a judgment "in default" pronounced.²⁷² However, the Code specifically excludes juvenile accuseds from the application of those provisions which allow default proceedings.²⁷³ Therefore, it would seem, no juvenile may be tried for a criminal offence in his absence. Should he fail to appear on the day fixed for the hearing, the proper procedure is for the court to secure the attendance of the person in whose custody the juvenile was released under Article 172(4), and require him to produce the juvenile. Should he fail to do so, the appropriate remedy, if any, is contempt proceedings, unless a bail bond exists and can be levied upon.²⁷⁴

271. Art. 1, Pen. C. But compare Penal Code Art. 86, which refers to Art. 1, with Penal Code Art. 105, stating the purpose of simple imprisonment as "a measure of safety to the general public and as a punishment to the offender," with no reference to reform or rehabilitation. Art. 107, Pen. C. (rigorous imprisonment) does however mention rehabilitation.

272. See Arts. 160-70.

273. Art.160(1)

274. See the discussion on bail at text accompanying notes 142-48, above.

Conclusion

Ethiopian law treats the juvenile offender ambiguously: in part, as a criminal meriting punishment; in part, as an irresponsible child needing guidance and support. This ambiguous attitude is not uniquely characteristic of Ethiopia — other countries have been struggling with the same problem, often in similar ways. As urbanisation rapidly increases in Ethiopia, juvenile crime will increase, and public demands for action to curb the depredations of “street boy” gangs can be expected to exacerbate the punitive attitudes of law enforcement personnel. In such an atmosphere it will be easy to lose sight of the need to treat the juvenile accused with strict justice, but we must not let that happen. The Criminal Procedure Code’s special provisions for the trial of juveniles are generally unsatisfactory, chiefly because they are too sparse. Too many gaps have been left. Hopefully, in filling them, the Code’s ordinary procedure for adults will be taken as a model.

But a more basic problem is that the procedural rules which do exist seem to presuppose a benign substantive law, whereas, in effect if not design, that law is often severely punitive. The legislature might reconsider this procedure from the point of view of giving justice to the juvenile accused, paying particular attention to ways in which the present system may unfairly deny him basic constitutional rights.

APPENDIX

CODE ARTICLES APPLICABLE TO JUVENILE OFFENDERS

PENAL CODE

TITLE I

Section II. - Infants and Juvenile Delinquents

Art. 52. Infancy: Exoneration from Criminal Provisions.

The provisions of this Code shall not apply to infants not having attained the age of nine years. Such infants are not deemed to be responsible for their acts under the law.

Where an offence is committed by an infant, appropriate steps may be taken by the family, school or guardianship authority.

Art. 53. Special provisions applicable to young persons.

(1) Where an offence is committed by a young person between the ages of nine and fifteen the penalties and measures to be imposed by the Court shall be those provided in Book, II, Chapter IV of this Code (Art. 161 - 173).

Young persons shall not be subject to the ordinary penalties applicable to adults nor shall they be kept in custody with adult offenders.

(2) No order may be made under Art. 162 - 173 of this Code unless the offender is convicted.

Art. 54. Assessment of Sentence.

In assessing the sentence the Court shall take into account the age, character, degree of mental and moral development of the young offender, as well as the educational value of the measures to be applied.

The Court may vary its order to ensure the best possible treatment. (Art. 168).

Art. 55. Expert evidence and enquiry.

(1) For the purpose of assessing sentence the Court may require information about the conduct, education, position and circumstances of the young offender. It may examine his parents as well as the representatives of the school and guardianship authorities.

The Court may require the production of any files, particulars, medical and social reports in their possession concerning the young person and his family.

(2) The Court before passing sentence may order the young offender to be kept under observation in a medical or educational centre, a home or any other suitable institution.

The Court may require the production of expert evidence regarding the physical and mental condition of the young person. The Court shall put such questions as may be necessary to any expert for the purpose of informing itself as to the physical and mental state of the young person and inquire what treatment and measures of an educational, corrective or protective kind would be most suitable.

(3) In reaching its decision the Court shall be bound solely by definite scientific findings and not by the appreciation of the expert as to the legal inferences to be drawn.

Art. 56. Offenders over the age of fifteen.

(1) If at the time of the offence the offender was over fifteen but under eighteen years of age he shall be tried under the ordinary provisions of this Code.

Chapter IV. MEASURES AND PENALTIES APPLICABLE TO YOUNG PERSONS

Section I. - Period between ages of nine and fifteen

Paragraph 1. Ordinary Measures

Art. 161 Principle.

In all cases where an offence provided by the Criminal Code or the Code of Petty Offences has been committed by a young person between the ages of nine and fifteen years (Art. 53) the Court shall order one of the following measures, having regard to the general provisions defining the special purpose to be achieved (Art. 54) and after having ordered all necessary enquiries for its information and guidance. (Art. 55).

Art. 162 Admission to a Curative Institution.

If the condition of the young offender requires treatment and where he is feeble minded, abnormally arrested in his development, suffering from a mental disease, blind, deaf and dumb, epileptic or addicted to drink, the Court shall order his admission to suitable institution where he shall receive the medical care required by his condition.

His treatment shall where possible include education and instruction.

Art. 163 Supervised Education.

(1) If the young offender is morally abandoned or is in need of care and protection or is exposed to the danger of corruption or is corrupted, measures for his education under supervision shall be ordered.

He shall be entrusted either to relatives or, if he has no relatives or if these have proved to be incapable of ensuring his education, to a person (guardian or protector), a reliable family, home or organization for the education and protection of children.

The relatives, person or organization of a public or private nature responsible for the education under supervision of the young offender shall undertake in writing before the Court that they will, under their responsibility, see to the good behaviour of the young offender entrusted to them.

The local supervisory authorities (Art. 213) shall be responsible for the control of the measure.

(2) Specific conditions such as regular attendance at a school or the obligation to undergo an apprenticeship for a trade, the prohibition to associate with certain persons or resort to certain places, the obligation to appear personally before, or to report on certain dates to, the supervisory authority may be imposed.

Such conditions may, according to their nature and purpose, be ordered either in respect to the young person or to the persons who vouch for his good conduct.

(3) A recall or a formal admonition may, if necessary, be sent to such persons by the supervisory authority or the Court.

The custody and education of an infant may at all times be withdrawn from the person or organization entrusted therewith if they prove to be incapable of discharging their trust in a proper manner.

Art. 164 - Reprimand; Censure.

(1) When such a course seems appropriate and designed to produce good results the Court may reprimand the young offender.

It shall direct his attention to the consequences of his act and appeal to his sense of duty and his determination to be of good behaviour in the future.

(2) This measure may be applied alone when the Court deems it sufficient for the reform of the young offender, having regard to his capacity of understanding and the not serious nature of the offence.

If expedient, it may be coupled with any other penalty or measure.

Art. 165 School or Home Arrest.

In cases of small gravity or when the young offender seems likely to reform, the Court may order that he be kept at school or in his home during his free hours or holidays and perform a specific task adapted to his age and his circumstances.

CRIMINAL PROCEDURE FOR JUVENILE OFFENDERS

The Court shall determine the duration of the restraint in a manner appropriate to the circumstances of the case and the degree of gravity of the offence committed.

It shall order the necessary steps for ensuring strict enforcement under supervision.

Art. 166. Admission to a Corrective Institution.

Where the character, antecedents or disposition of the young offender is bad, the Court may order his admission into a special institution for the correction and rehabilitation of young offenders.

The young offender shall there receive, under appropriate discipline, the general, moral and vocational education (apprenticeship), needed to adapt him to social life and the exercise of an honest activity.

Art. 167. Duration of the Measures.

(1) Measures for treatment (Art. 162) and supervised education (Art. 163) shall, as a general rule, be applied for such time as is deemed necessary by the medical or supervisory authority and may continue in force until the young offender has come of age (eighteen years).

They shall cease to be applied when, in the opinion of the responsible authority, they have achieved their purpose.

(2) The sending to a corrective institution (Art. 166) shall, as a general rule, be ordered for a period of not less than one year nor exceeding five years; in no case shall it extend beyond the coming of age of the young offender.

The judgment shall fix the duration in each case.

Conditional release by way of probation after detention for one year may be ordered under such general conditions as are provided by law (Art. 210) and subject to the application of rules of conduct and submission of the released offender to the control of a charitable supervisory organization (Art. 213) during the fixed probation period.

Art. 168. - Variation of the Measures.

On the recommendation of the management of the institution the Court may vary an order made under the preceding Article when such variation will benefit the young offender.

Art. 169. Legal Effect of the Measures.

A young person in regard to whom one of the aforesaid curative, educational or corrective measures has been ordered shall not be regarded as having been sentenced under criminal law.

Paragraph 2. Penalties

Art. 170 - Principle.

The Court may sentence a young offender to one of the following penalties, after having ordered such enquiries to be made as may seem necessary (Art. 55), where measures under Art. 162-166 have been applied and have failed.

Art. 171 Fine.

(1) In exceptional cases when the young offender is capable of paying a fine and of realising the reason for its imposition, the Court may sentence him to a fine which shall be proportionate to his means and the gravity of the offence.

A fine may be imposed in addition to any other penalty.

(2) The ordinary provisions governing the redemption of a fine and the consequences of non-payment (Art. 92-94) are not applicable to young offenders.

Should a young offender deliberately fail to pay the fine within a reasonable time fixed by the judgment the fine may be converted into arrest (Art. 165) for such time as shall be fixed by the Court.

Art. 172 Corporal Punishment.

(1) Where a young offender is contumacious the Court may, if it considers corporal punishment is likely to secure his reform, order corporal punishment.

Corporal punishment shall be inflicted only with a cane and the number of strokes shall not exceed twelve to be administered on the buttocks. Only young offenders in good health shall be subjected to corporal punishment.

(2) The Court shall determine the degree of punishment taking into account the age, development, physical resistance and the good or bad nature of the young offender, as well as the gravity of the offence committed.

Art. 173 Imprisonment.

(1) When a young offender has committed a serious offence which is normally punishable with a term of rigorous imprisonment of ten years or more or with capital punishment the Court may order him to be sent:

(a) either to a corrective institution (Art. 166) where special measure for safety, segregation or discipline can be applied to him in the general interest; or

(b) to a penitentiary detention institution if he is incorrigible and is likely to be a cause of trouble, insecurity or corruption to others. The principle of segregation shall be applied in this case. (Art. 109(2)).

(2) The Court shall determine the period of detention to be undergone according to the gravity of the act committed and having regard to the age of the offender at the time of the offence. It shall not be for less than three years and may extend to a period of ten years.

When the offender was sent to a corrective institution he shall be transferred to a detention institution if his conduct or the danger he constitutes render such a measure necessary, or when he has attained the age of eighteen years and the sentence passed on him is for a term extending beyond his majority.

In such a case the Court shall, without restriction, take into account, in determining the duration of the detention to be undergone, the time spent in the corrective institution and the results favourable or otherwise thereby obtained.

(3) Detention shall take place under the regime of simple imprisonment (Art. 105) and conditional release may be granted under the usual conditions provided by law (Art. 112) if the young offender appears to have reformed.

Art. 174 Petty Cases; Waiving of Penalty for Definite Reasons.

When six months at least have elapsed since the offence was committed, the Court may order no measure or penalty if it appears to be no longer necessary or expedient.

Such shall be the case in particular when educational or corrective measures or suitable punishment have already been imposed by the parental or family authority, or when the young offender is of good behaviour and seems to be reformed and no longer to be exposed to a risk of relapse.

Art. 175 - Special Period of Limitation.

(1) When half the normal period of limitation (Article 226) has expired since the day on which the offence was committed, the Court may, if circumstances seem to justify such a decision, renounce imposing any measure or penalty except in the cases of serious offences mentioned in Art. 173.

(2) In such cases the general rules governing the limitation of the prosecution and the sentence shall apply subject to reduction by half of the ordinary and absolute periods.

Art. 176. Suspended Sentence and Period of Probation.

In case of prosecution the general rules regarding the suspension of the sentence or of its enforcement with submission for a specific time to a period of probation under supervision (Art. 194-205) shall, as a general rule, remain applicable to young offenders if the conditions for the success of such a measure seem to exist and subject to the rules concerning serious offences as defined in Art. 173.

The duration of the period of probation shall be fixed between one and three years.

CRIMINAL PROCEDURE FOR JUVENILE OFFENDERS

Art. 177. Effect of Condemnation upon Civil Rights.

The measures and penalties imposed upon a young offender shall not result in the loss of his civil rights for the future, save in exceptional cases where the court regards it as absolutely necessary on account of the special gravity of the offence committed within the meaning of Art. 173.

Art. 178. Preventive and Protective Measures of a General Nature.

The provisions concerning forfeiture to the State (Art. 99), the seizure of dangerous articles (Art. 144) as well as the prohibition from resorting to certain places (Art. 149) shall be applicable to young offenders.

The Court may in addition order the expulsion (Art. 154) of an alien under age who proves to be unamenable to reform and dangerous for the community, at the end of the period of corrective internment or detention.

Due notice shall be given to the appropriate guardianship authority (Art. 158) of all measures taken and penalties imposed upon young offenders.

Art. 179. Publication of Judgment and Entry in Police Record.

The publication of the judgment (Art. 159) shall never be effected in respect to young persons.

The entry in the Police record (Art. 160) of the measures and penalties affecting them shall be made merely for the information of the official, administrative or judicial authorities concerned. In no case shall excerpts from their record be communicated to third parties.

Art. 180. Cancellation of Entry and Reinstatement.

On the application of the young offender or of those having authority over him the competent authority may order the cancellation of an entry in his personal Police record of measures or penalties applied to him, except imprisonment, within two years from their enforcement if the normal conditions for reinstatement (Art. 242-247) are fulfilled.

Section II. Period between ages of fifteen and eighteen.

Art. 181. Normal case.

In the case of an offence committed by a young person belonging to the intermediary age group extending from the end of criminal minority (15 years) to legal majority (18 years), the court applying the ordinary provisions of the law (Art. 56), may reduce the penalty within the limits it specifies (Art. 184), if the circumstances of the case seem to justify such a reduction.

In no case may death sentence be passed upon an offender who had not attained his eighteenth year of age at the time of commission of the offence (Art. 118).

In the carrying out of penalties entailing loss of liberty the rule of segregation until majority (Art. 109 (2)) shall be strictly observed.

Art. 182. Special Case.

(1) When the young offender is undeveloped physically or mentally for his age or did not commit a serious offence and, according to expert opinion, still seems amenable to curative, educational or corrective measures provided in respect to young offenders (Chapter 1) the Court may by stating its reasons therefore, instead of mitigating the ordinary penalty in accordance with the preceding provision, order one of the aforesaid measures or penalties, in particular his despatch to a curative or corrective institution, or corporal punishment.

(2) The curative, educational or corrective measure may under no circumstances be extended beyond legal majority (Art. 167).

The Court may, before the end of the term, review its order where, in view of the length of the penalty imposed, it appears expedient to order detention in a penitentiary establishment (Art. 173 (2)) upon release from the corrective institution.

Chapter II. LIABILITY TO PUNISHMENT.

Art. 696 Punishable Acts and Persons.

(3) The provisions relating to petty offences shall apply also to young persons within the meaning of the Penal Code (Art. 52).

Art. 698 Measures for Purposes of Clarification.

Measures for the taking of expert advice and the carrying out of enquiries provided in respect to ordinary criminal offences (Art. 51 and 55) shall be ordered only if questions as to the offender's responsibility cannot otherwise be decided by the court.

TITLE II

RULES GOVERNING PENALTIES

Chapter I. - PENALTIES AND MEASURES APPLICABLE

Section I. Principal Penalties

Art. 702 Exclusion of Ordinary Criminal Penalties.

(2) The only penalties which may be imposed for petty offences are those specified in the following provisions subject to the special forms of punishment applicable to military offenders or young persons.

Art. 706 - Methods of Enforcement: Special Case of Members of the Armed Forces and Young Persons.

(2) Young persons sentenced to arrest shall undergo their punishment either by school or home arrest under the conditions provided for their case (Art. 165) or, when this is impracticable, under the supervision of an institution, a charitable organization or a reliable person appointed by the court.

Arrest in their case may be served at different times: Provided that no period of arrest shall be for less than three hours and the total period shall not exceed fifteen days.

Art. 710 Recovery of Fine: Special case of members of the Armed Forces and Young Persons.

(2) In the case of a young offender the fine shall be fixed by the court within appropriate limits, taking into special account the gravity of the offence, his material circumstances and the greater or lesser need for the warning constituted by the penalty.

Where the fine cannot be paid by the young offender, his parents or family shall be answerable for the payment in accordance with the ordinary rules of civil law. Where the young offender has neither next-of-kin nor sureties who can answer for him the court shall convert the fine into arrest for young persons on such terms and conditions as it shall consider appropriate in the circumstances.

CRIMINAL PROCEDURE CODE

BOOK I

JURISDICTION OF COURTS,

Art. 5 Persons to be tried.

(1) No young person (Art. 53 Penal Code) may be tried together with an adult.

Chapter 2. POLICE INVESTIGATION

Art. 22. Principle.

(1) Whenever the police know or suspect that an offence has been committed, they shall proceed to investigate in accordance with the provisions of this Chapter.

(2) Investigation into offences committed by young persons shall be carried out in accordance with instructions given by the court under Art. 172(2).

Art. 39 Closure of police investigation file.

(1) The public prosecutor shall close the police investigation file where accused: (b) is under nine years of age.

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Chapter 3. - INSTITUTION OF PROCEEDINGS

Art. 40 Duty to institute proceedings.

- (1) Subject to the provisions of Art. 42, the public prosecutor shall institute proceedings in accordance with the provisions of this Chapter whenever he is of opinion that there are sufficient grounds for prosecuting the accused.
- (2) The public prosecutor shall not institute proceedings against a young person unless instructed so to do by the court under Art. 172.

BOOK III

PRELIMINARY INQUIRY AND COMMITTAL FOR TRIAL

Art. 80 - Principle.

- (1) Where any person is accused of an offence under Art. 522 (homicide in the first degree) or Art. 637 (aggravated robbery) a preliminary inquiry shall be held under the provisions of this book:

Provided that nothing in this Article shall prevent the High Court from dispensing with the holding of a preliminary inquiry where it is satisfied by the public prosecutor that the trial can be held immediately.

- (2) Where any person is accused of any other offence triable only by the High Court no preliminary inquiry shall be held unless the public prosecutor under Art. 38 (b) so directs.
- (3) The provisions of this Book shall not apply to offences coming within the jurisdiction of the High Court which have been committed by young persons.

Chapter 3. THE CHARGE

Art. 108. Principle.

- (1) No person may be tried for an offence other than a petty offence unless a charge has been framed in accordance with the provisions of this Chapter.
- (2) The provisions of this Chapter shall apply to all charges framed:
 - (a) by the public prosecutor, whether the case is to be tried by the High Court or a subordinate court; and
 - (b) by the private prosecutor, where he has been authorised to conduct a private prosecution.
- (3) The provisions of this Chapter shall not apply in cases concerning young persons unless an order to the contrary be made under Art. 172.

Chapter 6. INJURED PARTY IN CRIMINAL PROCEEDINGS

Art. 155 - Application dismissed.

- (1) The court shall consider the application and shall of its own motion or on the request of the prosecution or the defence refuse the application where:
 - (a) a young person is the accused;

TITLE II

SPECIAL PROCEDURES

Chapter 1. PROCEDURE IN CASES OF DEFAULT

Art. 160 Principle.

- (1) The provisions of this Chapter shall apply where the accused fails to appear whether the prosecution is public or private but shall not apply to young offenders.

Chapter 3. - PROCEDURE IN CASES CONCERNING YOUNG PERSONS

Art. 171. Principle.

Criminal cases concerning young persons shall be tried in accordance with the provisions of this Chapter.

Art. 172. Institution of proceedings.

- (1) In any case where a young person is involved, he shall be taken immediately before the nearest Woreda Court by the police, the public prosecutor, the parent or guardian or the complainant.
- (2) The court shall ask the person bringing the young person to state the particulars and the witnesses, if any, of the alleged offence or to make a formal complaint, where appropriate, and such statement or complaint shall be recorded. The court may give the police instructions as to the manner in which investigations should be made.
- (3) Where the accusation relates to an offence punishable with rigorous imprisonment exceeding ten years or with death (Art. 173 Penal Code) the court shall direct the public prosecutor to frame a charge.
- (4) Where the case requires to be adjourned or to be transferred to a superior court for trial, the young person shall be handed over to the care of his parents, guardian or relative and in default of any such person to a reliable person who shall be responsible for ensuring his attendance at the trial. The witnesses shall be bound over to appear at the trial.

Art. 173. Summoning of young person's guardian.

Where the young person is brought before the court and his parent, guardian or other person in loco parentis is not present, the court shall immediately inquire whether such person exists and shall summon such person to appear without delay.

Art. 174. Young person may be assisted by counsel.

The court shall appoint an advocate to assist the young person where:

- (a) no parent, guardian or other person in loco parentis appears to represent the young person, or
- (b) the young person is charged with an offence punishable with rigorous imprisonment exceeding ten years or with death.

Art. 175. Removal of young person from chambers.

Where any evidence or comments are to be given or made which it is undesirable that the young person should hear, he shall be removed from the chambers while such evidence or comments are being given or made.

Art. 176. Hearing.

- (1) Where the young person is brought before the court all the proceedings shall be held in chambers. Nobody shall be present at any hearing except witnesses, experts, the parent or guardian or representatives of welfare organisations. The public prosecutor shall be present at any hearing in the High Court.
- (2) All proceedings shall be conducted in an informal manner.
- (3) The accusation or complaint under Art. 172 (2) or the charge under Art. 172 (3) shall be read out to the young person and he shall be asked what he has to say in answer to such accusation or charge.
- (4) If it is clear to the court from what the accused says that he fully understands and admits the accusation or charge, the court shall record what the young person has said and may convict him immediately.
- (5) If it is clear to the court from what the accused says that he fully understands and does not admit the accusation or charge, the court shall inquire as to what witnesses should be called to support such accusation or charge. The young person, his representative or advocate may cause any witnesses to be summoned.
- (6) All witnesses shall be examined by the court and may thereupon be cross-examined by the defence. All dispositions shall be recorded.

CRIMINAL PROCEDURE FOR JUVENILE OFFENDERS

- (7) When the evidence is concluded, the defence may sum up and thereafter the court shall give judgment.

Art. 177 Judgment.

- (1) The judgment shall specify the provisions of the law on which it is based. Where the young person is found not guilty, he shall be acquitted and set free forthwith. Where he is found guilty, the court shall impose the appropriate measure or penalty under Art. 162 et seq. Penal Code.
- (2) The court may call before it any person or representative of any institution with a view to obtaining information concerning the character and antecedents of the young person so as to arrive at a decision which is in the best interest of the young person.
- (3) After these persons have been heard, the defence may reply and call his witnesses as to character, who shall be interrogated by the court and thereupon the defence shall address the court as to sentence.
- (4) Judgment shall be given as in ordinary cases. The court shall explain its decision to the young person and warn him against further misconduct.

Art. 178 Orders which may be made against parents and guardians.

Where it thinks fit the court may warn admonish or blame the parents or other person legally responsible for the young person where it appears that they have failed to carry out their duties.

Art. 179 Cost of upkeep of young person in certain circumstances.

- (1) The parents or other person legally responsible for the care of a young person may be ordered to bear all or part of the cost of his upkeep and training where owing to their failure to exercise proper care and guardianship the court has ordered the young person to be sent to the care of another person or to a corrective or curative institution.
- (2) The scope and duration of such obligation shall be specified in the judgment.

Art. 180 Variation or modification of order made in respect of young person.

Any court which has sentenced a young person to a measure may at any time of its own motion or on the application of the young person, his legal representative or the person or institution to which he was entrusted, vary or modify such order if the interest of the young person so requires.

Art. 185 Appeal against conviction and sentence.

- (3) An appeal by a young person or by an incapable person shall be through his legal representative.

Art. 216 Principle.

- (3) Orders made in respect of young persons may be varied in accordance with the provisions of Art. 180 of this Code.

