THE LAW AND PRACTICE OF HANDLING JUVENILES IN THE COURTS OF ADDIS ABABA***

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INTRODUCTION

The courts in Ethiopia have been faced with perplexing problems in adapting their procedures for handling juveniles to the sometimes complex and confusing code provisions that have been adopted for the country and which are based to a great extent upon Western principles. The law in this regard has been admirably set out by Professor Fisher in the Journal of Ethiopian Law.[1] The survey reported in this article was directed to discovering the actual practice of the courts in Addis Ababa in the handling of juveniles with the aim of uncovering problems that the courts were having with the codes. No attempt will be made to restate Fisher in every respect in order to compare his analysis of the law to the actual practice we report. Instead we will largely limit our comparisons to those instances where the practice seems to be clearly out of line with what the law clearly requires. When the law is unclear we will usually merely indicate that fact alongside of our statement of practice.

At the end of the article we will briefly treat the operations of the probation service in Addis.

The data for this Report were gathered from a study of the

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1. See S. FISHER, Criminal Procedure for Juvenile Offenders in Ethiopia, 7 JOURNAL OF ETHIOPIAN LAW [J. ETH. L.] 115 (1970) [hereinafter cited as FISHER].

files of all available cases concerning juveniles brought before the Special Juvenile Court, the High Court and the Supreme Imperial Court in Addis Ababa for the period from September 11, 1969 to February 8, 1971.

In addition, a sample of the files from the Probation Office in Addis from its inception in 1967 to February 8, 1971 was analyzed. Finally, an Amharic-speaking member of the research team spent one month observing each session of the Special Juvenile Court during that period.

This Report will first make observations on the Special Juvenile Court, the lowest court dealing with juveniles in the City, then move to the next level, the High Court, then glance at the Supreme Imperial Court and finally deal with the Probation Office.

SECTION I.
THE SPECIAL JUVENILE COURT, ADDIS ABABA

Creation and Jurisdiction

The Special Juvenile Court in Addis Ababa, the only court of its kind in Ethiopia, was created by administrative fiat. It has no legitimate basis in the codes and is, in fact, exercising jurisdiction that the Criminal Procedure Code explicitly assigns to other courts.[2] Nevertheless, the establishment of this Court represents a judgment by Ethiopian administrators that there was a need for special handling by competent personnel of juveniles in Addis Ababa. A brief look at the evolution of this Court as gathered from correspondence obtained and surveyed for this report would be desirable here as the correspondence suggests that though this Court has no technically legal basis at the moment, the rationale behind it may be sound. If so it should be retained and legally effectuated.

Until shortly before the advent of the Criminal Procedure Code in 1961, criminal jurisdiction over juveniles in Addis was exercised by courts of general jurisdiction. In 1959 complaints began to appear in official correspondence that the

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2. See ETH. CRIM. PRO. CODE art. 172(1).

ordinary courts were handling juveniles contrary to the provisions of the Penal Code.[3] This correspondence generated meetings[4] out of which came a decision to establish a special division in the High Court in Addis to deal with all cases involving juveniles to the exclusion of the courts of general jurisdiction.[5] It was contemplated that this Court be staffed by judges who had "a knowledge and interest in social welfare" and who were "well acquainted with the intricate procedure laid down in the new Penal Code for the treatment of juvenile offenders."[6] It was also contemplated that a member of the Department of Juvenile Correction be present at all court sessions to assist the Court in giving the proper order in all cases.[7]

This special division in the High Court began functioning with the President of the High Court presiding assisted by two other judges.[8] It was contemplated that this special court would sit only until the Criminal Procedure Code was enacted because the people involved in establishing it expected that the Code would create special juvenile courts for the Empire.[9]

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3. Letter No. F/9251, from Ato Demisse Assaye, Acting Director General of the Juvenile Correction Department, Ministry of Interior, to the Minister of Interior, Sene 11, 1951, Ethiopian calendar (unpublished).

4. See, e.g., Letter No. 63/52, from Dr. W. Buhagiar, President of the High Court of Addis Ababa, to the Minister of Justice, Tekemt 30, 1952, Ethiopian calendar (unpublished).

5. Letter No. 7343/25/$\frac{689}{15}$, from the Vice Minister of the Ministry of Pen, to the Minister of State, Ministry of Justice, Sene 14, 1952, Ethiopian calendar (unpublished).

6. Letter No. 6/53, from Dr. W. Buhagiar, President of the High Court of Addis Ababa, to the Ministry of Justice, Meskerem 6, 1953, Ethiopian calendar (unpublished).

7. Id.

8. Letter No. 20, from Dr. W. Buhagiar, President of the High Court of Addis Ababa, to the Ministry of Justice, Hedar 11, 1955, Ethiopian calendar (unpublished).

9. See minutes attached to Letter No. 63/52, from Dr. W. Buhagiar supra note 4.

This did not happen, however. Instead, the Code left juvenile handling in the courts of general jurisdiction. When the Code was enacted in late 1961 administrative authorities, bowing to its dictates, disbanded the special division of the High Court.[10]

So the Woreda Courts began hearing juvenile cases as required by the Code "and the old problems of inconsistency in decisions and law arose."[11] The Acting Director General of the Juvenile Corrections Department complained that the Woreda judges did not have the capacity sufficiently to understand social and economic conditions concerning juveniles and stated his view that the Criminal Procedure Code had improperly vested jurisdiction in those courts.[12] This touched off another series of ministerial discussions culminating in the creation of the Special Juvenile Court.[13]

The Court began functioning on March 12, 1963. It still operates as it did originally, with one judge sitting just two afternoons a week -- on Tuesdays and Thursdays. At its creation, the Addis Ababa Police Commissioner was directed to inform his personnel to take juveniles to the new Court in all cases where the Woreda and Awraja Courts might otherwise have jurisdiction.[14]

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10. See Letter No. 20, from Dr. W. Buhagiar supra note 8.

11. M. YOHANNES, PROCEDURE IN CASES OF JUVENILES IN ETHIOPIA 15 (1965) (unpublished, Library, Faculty of Law, Haile Sellasie I University).

12. Letter No. 6/155/54, from Ato Demisse Assaye, Acting Director General of the Juvenile Correction Department, Ministry of Interior, to the Minister of Interior, Yekatit 22, 1954, Ethiopian calendar (unpublished).

13. Letter No. 8606/25/689, from the Director General, Ministry of Pen, to the Minister of Justice, Hamle 12, 1954, Ethiopian calendar (unpublished); Letter No. 1/J/7379, from the Minister of Justice to the President of the High Court of Addis Ababa, Hamle 20, 1954, Ethiopian calendar (unpublished).

14. Letter No. 1/J/2903, from the Acting Minister, Ministry of Justice, to the Commissioner of the Police, Addis Ababa, Tahsas 12, 1955, Ethiopian calendar (unpublished).

The Code clearly does not envision a juvenile court sitting only two afternoons a week as Article 172(2) calls for arrested young persons to be taken "immediately" before a Woreda Court. Nevertheless, in the absence of procedural laws that comport with the administratively created structure, it would seem that the best that can be done at the moment is for the Special Juvenile Court and the police to follow as closely as possible the scheme set out for the Woreda and Awraja courts.

The "immediate presentation" to the court after arrest is for an initial hearing -- not a full trial.[15] If the court decides that there is a reasonable cause to proceed with the case and the case is serious enough to fall within the jurisdiction of the High Court, it is transferred to the High Court.[16] If, however, the case falls within Woreda or Awraja Court subject matter jurisdiction, the Special Juvenile Court judge is to put the case over for trial in his own court.[17]

The people over whom the Juvenile Court has jurisdiction are "young persons" who have attained their ninth birthday, but who have not attained their fifteenth.[18] Children under nine are not criminally responsible for their acts[19] and persons fifteen or over but who have not attained their eighteenth birthday are to be processed as adults in the courts of ordinary jurisdiction, but there are special provisions for their sentencing.[20]

A Typical Day at the Juvenile Court

(The following description is based upon four weeks of

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15. See ETH. CRIM. PRO. CODE art. 172.

16. See id. art. 172(4).

17. Letter No. 1/J/2118, from the Acting Minister, Ministry of Justice, to Ato Andargachew Tesfaye, Hedar 20, 1955, Ethiopian calendar (unpublished).

18. ETH. CRIM. PRO. CODE arts. 3 & 171; ETH. PEN. CODE art. 53.

19. ETH. PEN. CODE art. 52.

20. Id. arts. 56, 181, 182.

direct observation of the Juvenile Court during March and April, 1971).

Scenario

The courtroom of the Special Juvenile Court is the office of the Superintendent of the Addis Ababa Boys Training School and Remand Home, located at the home. It is a small room of about twelve square meters, almost half of which is occupied by the Superintendent's chair and large desk. To his right is a chair on which the telephone sits and to his left, a bookshelf. A large sofa, a small stuffed chair, and two straight-backed chairs face the Superintendent.

The Superintendent is seated at his desk when the Judge arrives at three p.m. The Judge takes the Superintendent's chair and the Superintendent and Assitant Superintendent take others. The Superintendent and his assistant apparently have no official function to perform during the proceedings of the Court. They are, however, more than passive spectators; they often were observed trying to convince the Court not to commit a boy to the Training School and Remand Home (hereinafter called the "Training Center"). Their reasons were practical: limited facilities, limited financial resources, and fear that the genuine "bad boys" would corrupt those who are in the Training Center for a first offence or minor crime.

The Training Center House Master arrives next. He is the member of the staff who attends all Court sessions in order to help the Court in passing sentence. Any court orders about a boy are transmitted to the Institution through him and he brings to the Court the recommendations the Institution makes about a particular boy.

Until the other participants in the court proceedings arrive, the Judge may be writing decisions on cases that have already been heard. Occasionally the House Master reports to the Court the name or names of inmates who have tried to escape. The Judge calls the boy in and either reprimands him or orders punishment of a certain number of lashes. The compound of the Institution is inadequately fenced, so there are many cases of this type.

The Public Prosecutor enters, bows to the Judge, hands over

his files of accusations against youths who had been recently arrested or complained against and takes his seat. The Clerk and two probation officers generally arrive after the proceedings have begun. The arrival of these people and their greetings disrupts the courtroom procedure, but with their arrival the Court is complete and the formal session begins.

Initial Hearings

The first order of business is the initial hearings regarding youths who have been recently arrested or complained against. The Judge takes the first file that has been given to him by the Public Prosecutor and examines it to determine what court will have jurisdiction if the youth is bound over for trial. Then he asks the youth to be brought in and begins by asking him questions regarding his name, age, occupation and background. He then reads to the youth the accusation filed against him and asks for an admission or denial. All of this is done in a fatherly manner. If the boy denies the charge the Public Prosecutor is asked what evidence he has of the boy's guilt. Sometimes a complainant appears in Court to give his account of the accusation. Often the Prosecutor's response or the complainant's statements are unacceptable to the Judge and the boy is immediately released and the case closed. If the prosecution's statements impress the Judge as having substance, the Judge then questions the parents or other relatives of the boy if they are in Court. The parents do no more than answer background questions about the youth and express feelings such as that "he used to be a good boy." Professional advocates for the youths are virtually never present during these proceedings. However, the Judge is not always neutral. Occasionally he plays the role of defence counsel for the accused.

Normally if the Judge is convinced that the prosecution has some substantial evidence he adjourns the case and orders the Prosecutor to continue his investigation with a full trial to be held in the Juvenile Court at a later date. The probation officers are often directed at this point to conduct a background investigation of the boy for the Court's later use. Regardless of the age of the boy, if the subject matter of the alleged offence is "serious" so that the High Court would have jurisdiction, the Prosecutor is ordered to inform the Prosecution Department of the High Court and the case is thus transferred

In non-serious cases involving fifteen and over youths, the cases are transferred to courts of general jurisdiction. When there is doubt as to the boy's age he is sent to a hospital for a medical opinion.

Disposition of youths pending trial is generally handled by the Court in one of two ways. If the boy has a parent or guardian he is put into their care until the trial date. If he is without a parent or guardian, as is the case with a good share of the "street boys" who appear before the court, he is put into the Training Center (remanded) pending trial.

Trials

Around five p.m. in the afternoon the Court finishes with initial hearings for the day and turns to the trial of pending cases. The Clerk submits the appropriate files to the Judge. When the accused is called he may appear with his parents but usually he is without them. The Public Prosecutor then produces his evidence and the probation officer submits his background report. Again the accused is virtually never represented by counsel.

It is usually not possible to distinguish clearly between the guilt determination phase of the Judge's decision and the sentencing phase. Typically, after hearing all the evidence and reading the probation officer's report the Judge simply announces what the disposition of the youth will be. This usually follows the recommendation of the probation officer and can be (1) commitment to the Training Center, (2) probation, or (3) discharge.

At approximately 6 or 6:30 p.m. after hearing from nine to twelve cases initially or in the trial stage, the Court adjourns for the day.

Police Handling as Reflected in Juvenile Court Files

In Table I of Haile Kebede's article regarding juvenile processing by police in Addis Ababa, appearing in this issue of AFRICAN LAW STUDIES, the recorded ages of youths processed by the Special Juvenile Section of the Addis Ababa Police during the three years preceding this Survey were set out. Two youths in each of the following age categories appeared on that table:

under nine, eighteen, nineteen, and twenty. It would seem that under the law none of these boys should have been presented to the Juvenile Court; the boys under nine because they were not legally responsible for their acts, and the boys eighteen and over because they clearly are to be processed as adults in the courts of ordinary jurisdiction.

In our survey of the Juvenile Court, 320 cases adjudicated between September 11, 1969 and February 8, 1971 were analyzed. This represented all of the adjudicated cases during this period that were made available by Court personnel to the researchers. The following table prepared from this data suggests that at least during the last seventeen months of the three year period of the police survey, no youths in the above age categories were presented to the Juvenile Court.

TABLE ONE

Age of Juvenile Accused

Age	%*	Age	%
9	0	13	23
10	5	14	30
11	6	15	16
12	19	16 or 17	1

*Percentages are rounded to the nearest whole number in all tables in this article.

On the other hand, it will be noted that sixteen per cent (51) of the youths presented were fifteen and one per cent (three) were sixteen or seventeen. These boys also should have technically been presented to courts of general jurisdiction and not the Juvenile Court.[21] But given the difficulties of determining exact age in Ethiopia where there are no public records containing such information and the population is largely illiterate,

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21. Id. art. 52.

the police and the Juvenile Court should be permitted a margin of error. There is little or no harm done by such "errors". The only consequence would appear to be that some boys, not legally entitled to it, may receive the special handling designed to be more advantageous to young people than the procedures specified for adults.

While on the "immediate" presentation theme, however, we should hasten to point out that the Juvenile Court records contain evidence that tends to corroborate the findings of Haile Kebede that many youngsters are detained and investigated, without court approval, far beyond the earliest date that they should have been presented to the Juvenile Court for an initial hearing.

The Court records show quite extensive investigation reports being presented to the Juvenile Court at many initial hearings. Some of these may be explained as arrests on either Thursday evening, Friday, or over the weekend of a parentless juvenile who is potentially dangerous to the public. In such cases detention with investigation until the next court session on Tuesday afternoon may be justified: detention as a precautionary measure to protect the public and investigation to determine if the youth should be released before Tuesday because he was unjustly accused. But surely not all of these complete investigations before presentation would fall into this category.[22]

Recently the newly appointed Juvenile Court Judge ordered a prosecution dropped because the procedural mandates of Article 172(2) were not followed.[23] In dismissing the charges, the Judge noted that the police had arrested the boy and detained him while they conducted their investigation before he was brought before a court. Three weeks later the Judge instructed the public prosecutor that, "no juvenile case should be filed without first asking the court for instructions as to the manner in which investigations should be made."[24]

The Juvenile Court thus is clearly aware of the dictates

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22. FISHER, supra note 1, at 119.

23. Special Juvenile Court -- Addis Ababa Case No. 91/63, (1971) (unpublished)[hereinafter referred to as Juvenile Court].

24. Juvenile Court Case No. 84/63, (1971)(unpublished).

of Article 172(2) and is moving in the right direction toward compliance with the "immediate" presentation requirement. However, his directive may create a dilemma for the police because of the limited sessions of the Court. A recent movement by the authorities to solve this dilemma will be discussed later.

Alleged Offences Presented to the Juvenile Court

Before discussing in the next subsection the procedure in the Juvenile Court, it seems desirable to outline here the types of offences with which those recently subject to that procedure have been charged. When appropriate, we will also venture observations on certain categories of charges.

The charges in the Juvenile Court records are as alleged by the Public Prosecutor. Until sometime in January, 1971, when the Juvenile Court Judge ordered that articles of the Penal Code be cited by the Public Prosecutor, this was not done. Instead, the Prosecutor used improvised, generic terms such as "theft", "damage to property", "assault", and "cheating."[25]

The Prosecutor did, however, include a statement describing the alleged offence. From this and additional information available in the records, we have attempted to designate the offences according to the applicable definition in the Penal Code. The statistics in Table Two are based on the total number of charges brought before the Court. Since several cases included multiple charges the total number, 385, was greater than the total number of cases brought before the Court.

Before looking at Table Two the reader should be cautioned about the distinct possibility that it does not reflect all of the youths accused of offences in Addis Ababa during the period of this Survey. There exists in the City an institution where many youths who are thought to have committed offences are apparently sent without formal charges or trials.

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25. An analysis of the offences using the public prosecutor's terminology, yields the following statistics: Theft -- 69%; Troublemaking -- 10%; Battery -- 9%; Gambling -- 4%; Damage to Property -- 2%; Burglary -- 2%; Robbery -- 2%; Insult -- .5%; Miscellaneous -- 1.5%.

TABLE TWO

Charges Brought Before Special Juvenile Court
(Sept., 1969 - Feb., 1971)

I. Offences Against Property A. Abstractions	Less Than E$10	More Than E$10	Sub-Total	%**
1. Burglary (635-3c)*	22	34	56	15
2. Theft within the family (629, 806-2)	22	28	50	13
3. Petty abstractions (634)[26]	45	0	45	12
4. Theft from employer (635-2d)	10	28	38	10
5. Receiving stolen property (647)	4	8	12	3
6. Robbery (636)	0	5	5	1
7. Theft of more than E$10 covered above (630)	0	74	74	19
Sub-total:	103	177	280	73
B. Damage to property (653)	5	4	9	2
II. Offences Against Individuals				
1. Wilfull injury (539)			30	8
2. Assault, minor acts of violence (543, 544, 794)			8	2
3. Homicide (523)			1	-
4. Attempted homicide (27/523)			1	-
5. Brawling (549)			1	-
Sub-total:			41	10
III. Other Offences				
1. "Troublemaking"			30	8
2. Gambling (744-1b)			9	2

26. To facilitate analysis we have arbitrarily categorized thefts of less than $10 (Ethiopian) as "petty thefts". See ETH. PEN. CODE art. 806 for the less precise definition.

3.	Insult (583)	6	-
4.	Fraudulent misrepresentation (656)	6	-
5.	Miscellaneous	4	-
	Sub-total:	385	100

*Applicable Penal Code Article

**Percentages have been rounded to the nearest whole percentage point.

1. Burglary and Robbery

The alleged burglary offences analyzed ranged from the entering of a compound during the day by a single youth stealing an old pair of pants hanging on a clothes line to more serious, "aggravated"[27] offences, including two youths entering a shop at night and taking some tools, and the breaking and entering of a private home at night by a group of youths who stole several items of clothing, jewelry and more than E$600 in cash. Of the alleged 56 burglary cases, 34, or more than 60 per cent, involved the taking of an item valued at more than E$10. There was no case in which the youths were accused of carrying arms or house-breaking instruments, which would have constituted "aggravation" of the offence.[28]

It is noteworthy that during the year and one-half period covered by this Survey only five youths brought before the Juvenile Court were accused of theft through the use of violence or intimidation, a constituent element of robbery, and no juvenile was accused of committing theft with the use of arms or dangerous weapons, which would have been aggravated robbery.[29] One case of apparent aggravation because of "group" action appeared, however. There a number of young boys were said to have stolen E$600 in jewelry and cash from a woman in the Mercato; while one boy tugged at her coat and called her "mother," the others stole her purse, necklace, rings and other valuables.[30] In two

27. ETH. PEN. CODE art. 635(3)(b) and (c).

28. Id. art. 635(3)(c).

29. ETH. PEN. CODE art. 637.

30. Juvenile Court Case No. 7/62, (1969)(unpublished).

other cases the amount stolen was more than E$100. In the remaining two cases, clothing was allegedly taken from a small child. For example, a fifteen-year-old was accused of forcing a five-year-old to give him his sweater.[31]

2. Theft Within the Family and Offences Punishable Only Upon Private Complaint

The Penal Code stipulates that "a petty theft committed to the prejudice of an ascendant...shall not be punishable."[32] Let us compare this with what our Survey showed regarding theft within the family. In only four cases out of 50 was the item allegedly stolen worth more than E$100 while in 24 cases it was worth between E$100 and E$10. In the remaining 22 cases (44 per cent), the theft involved less than E$10 in cash, clothing, jewelry or household utensils which were sold or the selling of the accused's own clothes or school supplies or those of his brothers and sisters.

"Petty theft" is not defined in the Penal Code in terms of dollar value. Instead the Code merely says that it involves a thing of "small value" and leaves it to the courts to decide what that means based, inter alia, on the "circumstances of the case, custom and the object of the theft."[33] From the records available to this Survey, it was not discernible whether the Juvenile Court consciously considered the "pettiness" of family thefts in determining if a boy should be punished. It was clear, however, that twenty of the 22 who were charged with stealing less than E$10 in value from their family were found guilty and punished.

The criminal prosecution of an offence against property committed within the immediate family is governed by another special provision. Unless the offence involves violence or coercion, prosecution can only be initiated "upon the private complaint of the victim,"[34] i.e., the affirmative, prior consent

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31. Juvenile Court Case No. 196/62, (1970)(unpublished).

32. ETH. PEN. CODE art. 806(2).

33. Id. art. 806(1) and (3).

34. ETH. PEN. CODE art. 629(1)(b).

of the parent, embodied in a complaint, is required before a child can be prosecuted by his parents. This requirement of initiation by private complaint applies to other offences set out in Table Two, above, i.e., willful injury, assault and damage to property, whether committed in or outside of the family.[35] The actual practice before the Juvenile Court conformed closely to the procedure prescribed by the Code. Almost every case punishable only upon private complaint was initiated by a private complainant. In the cases involving family theft the private complainants were the parents, usually the mother. In the other cases the initiators were the victims or their representative.

3. Theft from an Employer

Of the 38 cases alleging theft from an employer, ten involved items valued at less than E$10 and the remainder over that value. Some cases were charges of theft, usually of money, by a garage or shop employee, but the great majority (30) involved alleged theft by a domestic servant. Typically the allegedly stolen items were money and clothing. It is noteworthy that one-third of these defendants responded, in court, that they stole because their employer had not paid them their salary.

4. Damage to Property

These alleged offences, for the most part, reflected damage from a rock thrown by young boys; e.g., broken street lights and windows. In only two of the nine cases did the claimed damage exceed E$100.

5. Offences Against Individuals

Alleged offences against individuals accounted for eleven per cent of the cases handled by the Court. From the records it was impossible to distinguish between common willful injury, negligent injury, assault and minor violence because the accusations and the facts recorded were not sufficient. It was clear, however, that in all but five of these allegations the

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35. See P. GRAVEN, Prosecuting Criminal Offences Punishable Only Upon Private Complaint, 2 J. ETH. L. 121 (1965).

resultant injury was quite minor. Typically the injuries were cuts and bruises to the head and legs caused by stones allegedly thrown by small boys. The other five allegations involved an accidental shooting, an accidental stabbing, a brawl, a homicide and an attempted homicide. The homicide charge against the juvenile accused was dropped when the real culprits were arrested and confessed to the crime. The only other seriously violent offences alleged, attempted homicide and brawling, stemmed from the same incident; a group of boys were throwing stones at each other at school, fighting broke out and one youth was charged with stabbing a fellow student with a knife.[36]

6. "Troublemaking"

The most prominent irregularity uncovered by the analysis of offences brought before the Juvenile Court was in a series of cases labeled "troublemaking" or "uncontrollable", which accounted for more than eight per cent of the total. The common denominator of these cases was that the acts of which the youths had been accused were not prohibited by law. In all of those cases the juvenile was accused of two or more "offences." In almost every case a private complainant alleged that his child or ward refused to go to school. One-half of the cases involved the allegation that the boy left home for a few days at a time or stayed out all night. Other "offences" frequently cited by the complainants included smoking cigarettes and spending too much time, and too much of the family's income, in tea-houses or cinemas. The complainants also often told the Court that they could not control their child and that he associated with friends who engaged in bad conduct.

The essence of these allegations was that the private complainants, as parents, were no longer able to control their child and therefore they had brought him to the rehabilitation center where he could be reformed. Although it cannot be stated with any statistical precision, it is evident from several of the files that poverty and lack of parental concern were also motivating factors -- the parents could not afford or did not desire to care for all of their children and thus they looked to a government institution as a place where their most troublesome child would be adequately fed, clothed and educated.

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36. Juvenile Court Case No. 85/62, (1969)(unpublished).

A typical case is found in Juvenile Court file number 153/62, a 1970 case where a fatherless thirteen-year-old student was brought to the Court by his mother. She accused him of refusing to attend classes, running away from home, and "engaging in bad activities," which were not further elaborated upon. The mother also stated to the Court: "I cannot afford, both economically and maternally, to look after him and reform him. If my son is not sent to the Training School his conduct will grow worse and worse." The boy admitted the accusations but stated that he ran away from home because his mother was always scolding him. Accepting the recommendations of the probation officer, the judge sentenced the boy to three years in the Training Center. The grounds for the sentence were that the boy had admitted to the probation officer that he had run away from home, confessed to several minor thefts, and that the probation officer concluded and reported to the Court that the mother was too poor to care for the boy and could neither control nor reform him.

It should be noted in the above case that though the boy confessed to several minor thefts to the probation officer, no formal charges in that regard were ever lodged. In something less than one-third of these cases there was an accusation of a prohibited offence, usually theft, in addition to the "troublemaking" charges. But more than four-fifths of the juveniles accused of "troublemaking"were adjudicated guilty and three-fourths of those were sent to the Training Center for two or three years.

One other noteworthy case in this category[37] which is representative of a phenomenon that is more prevalent than a solitary prosecution suggests, dealt with a twelve-year-old boy accused of being addicted to sniffing gasoline, i.e., the youth would dip a cloth into gasoline and sniff the vapors. The accusations also included smoking cigarettes and staying away from home at nights. Upon the recommendation of the probation officer, the Court committed the juvenile to two years in the Training Center stating that this time would probably "be enough to reform the young offender of his addiction and bad acts."

In a few "troublemaking" cases, less than ten per cent,

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37. Juvenile Court Case No. 71/62, (1969)(unpublished).

the Court rejected the plea of the complainant and found the accused not guilty, usually ordering the parent to provide and care adequately for the boy under the authority of Criminal Procedure Code Article 178.

Acts such as truancy, smoking, staying out all night, sniffing gasoline, spending too much time in tea houses and cinemas, or refusing to obey parents may be considered undesirable behavior by parents and judges, but these acts are not defined as criminal offences. A child cannot be punished under the law simply because his parents are unable to control him. The most frequently cited "offence" in the "troublemaking" cases, truancy, is not yet a criminal offence in Ethiopia, since school attendance is not compulsory. Likewise smoking cigarettes and spending too much time in cinema halls and tea rooms are not defined offences in the Penal Code nor any other penal legislation[38] or proclamations?[39] The sniffing of gasoline is also not prohibited by the Penal Code.

Article 55 of the Revised Constitution of 1955 declares that "[n]o one shall be punished for any offence which has not been declared by law to be punishable before the commission of such offence, or shall suffer any punishment greater than that which was provided by the law in force at the time of the commission of the offence." Article 54 further declares that, "[n]o one shall be punished except in accordance with the law and after conviction of an offence committed by him." Offence is defined, in Article 23(1) of the Penal Code as "an act or omission which is prohibited by law." These principles are implemented in Article 2(1) of the Penal Code which announces that the "[c]riminal law specifies the various offences which are liable to punishment and the penalties and measures applicable to offenders," and declares that "[t]he court may not treat as a breach of the law and punish any act or omission which is not prohibited by

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38. "Police regulations" and "special laws of a penal nature" may establish additional criminal offences under ETH.PEN. CODE art. 3, but a search turned up no relevant provisions.

39. These offences are not prohibited by the Vagrancy and Vagabondage Proclamation, NEGARIT GAZETA 6th Year No. 89 (1947). The recently appointed judge to the Juvenile Court has refused to hear vagrancy prosecutions.

law. It may not impose penalties or measures other than those prescribed by law." Thus it is certain from these provisions that a court can punish an accused only for those acts which were prohibited by penal legislation in effect when the act was committed.

It should be pointed out here that, although the codes contain special procedures for the trial of young persons and special dispositive provisions for juveniles, "a single substantive law of crimes applies to adults and young persons alike."[40] That is to say, a juvenile in order to be sentenced must first be "convicted of one of the crimes prescribed by the Special Part of either the Penal Code or Petty Offences."[41] Furthermore, although there may be some question as to whether certain constitutional guarantees apply to juveniles because of conflicts with special code provision applicable to them,[42] there are no such conflicts regarding the substantive law of crimes.

In Ethiopia today it may be desirable to have an institution and a procedure whereby "troublesome" boys can be placed by their parents in a rehabilitative center. If so, it may be that, in Addis Ababa, the Juvenile Court is the proper conduit and that, at the moment, at least, the Boys Training Center is the proper repository. If all this is true then the Penal Code should be amended to allow the authorities to gain legal custody over a child who is beyond the control of his parents or guardian. In the present state of affairs commitment to the Training Center in such cases would appear to be unconstitutional.

Proceedings Before the Juvenile Court

The records examined for this Survey provide some clues as to the conduct of proceedings before the Juvenile Court, but by no means a clear picture. However, the Court was directly observed in operation for all of its eight sessions over a one month period. From these two sources we will, in this subsection, report on as much of the activities in the Court as was

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40. FISHER, supra note 1, at 119.

41. Id.

42. Id. at 115-6.

discernible.

1. The Charge and Plea

In their attempt to render juvenile proceedings less formal than their adult counterpart, the draftsmen of the Criminal Procedure Code, at Article 108(3), declared that the particularized adult procedures dealing with the framing, filing, and serving of the charge would apply only if the young person was accused of a serious offence to be tried in the High Court; in that situation the court at the initial hearing would direct the public prosecutor to frame a formal charge. Apparently the scheme envisioned for non-serious offences was that the person bringing the juvenile accused before the court would state the details of the alleged offence and name the witnesses, if any, and the judge would transcribe the allegations into the record.[43] Fisher raises grave doubts whether an accusation produced in this manner would be sufficiently precise a record upon which the juvenile accused could make his plea.[44] The provisions governing the prosecution of young persons are silent as to whether they have a right to receive a written copy of the accusation before trial.[45] In summarizing his reservations about the inadequacies of the special juvenile procedure in relation to the charge, Fisher states:

> 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 safe-guards guaranteed adult defendants. Pending such legislative corrections, it should be the duty of the Woreda Court Judge [in Addis Ababa the judge of the Special Juvenile Court]

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43. ETH. CRIM. PRO. CODE art. 172(2).

44. FISHER, supra note 1, at 143-4.

45. Under ETH. CRIM. PRO. CODE art. 109(4) "[a] copy of every charge shall be given to the [adult] accused free of cost."

> 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 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 the trial.[46]

Considering the state of the law on this matter, it is not surprising to find that the practice in the Juvenile Court is quite informal. Two distinct types of accusations are made in the Court: those by private complainants and those by the Public Prosecutor.

Private complainants seldom arrive at the initial hearing with a written accusation. They generally make an oral presentation with the judge occasionally interjecting questions and taking verbatim notes. The judge seems to make little effort to elicit from the complainant the information necessary in order to make out all the technical elements in whatever offence the complainant appears to be alleging. Indeed, as should be apparent from our discussion in the last section regarding "troublemaking" charges, the information elicited often could not constitute a legally sufficient charge even if all details were known.

In the cases initiated by the Public Prosecutor (about 60 per cent of the total) a more formal procedure was used. The prosecutor would hand the judge a form partially filled out with information concerning the accused, his family and a description of the alleged offence. Typically, the description

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46. FISHER, supra note 1, at 144.

of the offence and the surrounding circumstances was terse; e.g., "Accusation: Theft, on 12/6/62 (E.C.), at 11:00 a.m., the accused was arrested after stealing a pair of pants with an accomplice from the house of Ato (G)"[47] or "Accusation: Damage to property. At 4:00 p.m. on 4/9/62 (E.C.), accused threw a stone and broke the glass window in the door of a shop owned by Ato (X). Damage estimated at E$20.00."[48]

Whatever was transcribed from complainant's statements or whatever the prosecutor presented at the initial hearing generally constituted the charge that the youth was asked to admit or deny. In no case in our Survey was there evidence that the accused was given a written copy of the accusations before trial.

Prior to the appointment of the Judge sitting at the time of this writing[49] the practice was for the prosecutor to take the plea of the accused and report it to the Judge. The Court is now following the dictates of Criminal Procedure Code, Article 176(3); the Judge reads the accusation to the accused and asks whether he understands it, and then whether he admits or denies it.

The following table contains a summary of the "pleas" given by the youths in our sample. For reasons discussed above, it contains a mix of pleas taken by the Juvenile Court judge and "pleas" taken by the Public Prosecutor's staff, sometimes when the boy was in police custody and not in court.

Table Three. "Pleas"

Plea	No.	%**
Admission	192	60
Admission with Reservation	18	11

47. Juvenile Court Case No. 139/62, (1969)(unpublished).

48. Juvenile Court Case No. 137/62, (1960)(unpublished).

49. Ato Tesfaye Worku was appointed to the Special Juvenile Court on January 15, 1971.

Denial	92	29
N.A.*	18	11
TOTAL:	320	100

* Plea not recorded by police or court.

** Percentages have been rounded to the nearest whole percentage point (.5 rounded up).

2. Acceptance by the Juvenile Court of Confessions and Guilty Pleas

There were cases seen in the direct observation part of our Survey where the Prosecutor's accusation against a boy was based entirely on the boy's confession to the police. If the accused denied the accusation in the Court, the Judge automatically considered the boy's admission in the police station invalid on the ground that a young person's confession in the atmosphere of a police station and without "instructions from the court" cannot be relied upon as "voluntary." Even if the Judge believed that a confession was made "voluntarily," he was inclined to disregard it as evidence because of the illegality of the investigation, i.e., the investigation was made without prior court instructions to the police as to the manner in which investigation should be made.[50]

Where the Judge believed that the juvenile accused fully understood the accusation made against him and admitted it in Court, he either: (1) convicted the accused immediately, or (2) stayed the proceedings and ordered the Prosecutor to produce evidence that the accused's admission was true. It appears that the present Judge was inclined to choose one or the other of these alternatives depending upon the socio-economic status of the boy. This was because of a suspicion the Judge had that many boys want to be committed to the Training Center. For example, in the case of Public Prosecutor v. M, the Judge said that "it is not sufficient in this Court to convict a boy on his [uncorroborated] admission. Maybe the boy wants to get into

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50. ETH. CRIM. PRO. CODE art. 172(2).

the Institution because he is unable to feed and clothe himself .... To speak the truth, the facilities of the Institution are not adequate to rehabilitate the boy. On the other hand, when an innocent boy is committed he joins the real bad boys and learns many more bad things."

By way of contrast, in another case involving an assistant minister's son, the Judge accepted the boy's admission in Court and immediately convicted him at the inital hearing.

3. Absence of Counsel in the Juvenile Court

It appears reasonably clear that the special proceedings for young persons in the Criminal Procedure Code leave room for retained counsel in spite of their informality.[51] Nevertheless, our file search and direct observation indicate that young persons seldom, if ever, retain their own counsel in the Juvenile Court. In most instances this is probably due to a lack of funds for the purpose or a lack of appreciation of what a defence counsel could do.

The right to appointed counsel is apparently guaranteed to a juvenile accused under Article 52 of the Revised Constitution of 1955 in cases where he is unable to obtain counsel with his own efforts or funds. But that right is limited, perhaps unconstitutionally, in the case of young persons by Article 174 of the Criminal Procedure Code. Fisher concludes that a court is directed to appoint counsel only in two instances: (1) where the offence charged is very serious, and (2) when regardless of the seriousness of the offence, the youth is not represented in court by his parent, guardian or other person in loco parentis.[52] Fisher, however, has urged the courts to appoint counsel in any case where there is a need, whether or not the court is required to do so.[53]

Until recently, at least, any consideration of appointed counsel has been mostly academic because of the unavailability of counsel at the Juvenile Court. This is reflected in the

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51. FISHER, supra note 1, at 146.

52. Id. at 147.

53. Id. at 148.

following statement by the Judge in a recent Juvenile Court case: "Every boy is entitled to a defence counsel according to the law. Indeed many boys do not understand what the Court asks of them. They cannot communicate with the Court properly. Such boys need a counsel. The problem is the lack of manpower."[54]

The Juvenile Court, however, recently took a first step toward a system of appointed counsel when it made an appointment in a case where the accused's father was in Court and the alleged offence was not "serious."[55] It is interesting to note that, as the law has been analyzed by Fisher, the court was not required to appoint counsel in that case.

It should be mentioned here that a possible source of manpower for appointed counsel in the Juvenile Court is, at this writing, being generated at the Faculty of Law, Haile Sellassie I University. Plans are afoot to establish a free legal assistance clinic, supervised by faculty members and lawyers and manned by senior law students. It is arguable that the attention of this group should be turned first to needy juvenile criminal defendants rather than adults who are involved in either civil or criminal litigation. The juveniles are in danger of losing their liberty rather than merely losing their property, and they are presumably less able to speak for themselves than adult criminal defendants. The evidence is that the Juvenile Court would be receptive to such a program.

4. Adjudication and Sentencing in the Juvenile Court

The following table presents the judgments entered by the Court in the cases examined in this Survey.

Table Four. Judgments

Judgment	No.	%**
Guilty	232	73
Not Guilty	60	19

54. Heard and recorded at the Juvenile Court on April 1, 1971.

55. Juvenile Court Case No. 70/63 (1970)(unpublished).

Parties Reconciled	3	1
No Judgment:		
Accused escaped Training Center before judgment	18	6
Accused did not appear	7	2
TOTAL:	320[56]	100

**Percentages rounded to the nearest whole percentage point (.5 rounded up).

It will be noted that in 25 cases no judgment was entered by the Court. The young accused in eighteen of those cases escaped from the Training Center, where he had been placed on remand pending trial. The police were unable to locate those boys and the Court ordered the case adjourned indefinitely. Seven juveniles, not in custody, failed to appear in Court on the appointed day of their hearing, apparently the police were unable to locate them, and eventually their files were closed. Three other cases, prosecuted upon private complaint, were recorded as reconciled. One of these was, in essence, a dispute between two families.[57] A mother accused her neighbors' daughter of throwing rocks and injuring her child. Apparently using Article 151 of the Criminal Procedure Code as authority, the Court ordered the two families to resolve their dispute through arbitration. Two weeks later the disputants reported to the Court that they had settled their dispute, the arbitration agreements were entered in the transcript and the case was closed.

The sentences given to the 232 youths adjudicated guilty

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56. The cases made available to the researchers included 385 separate offences charged as indicated in Table Two in the text above, but a number of defendants were charged with multiple offences. Thus, there were only 320 separate adjudications represented in the cases analyzed.

57. Juvenile Court Case No. 70/63 (1970)(unpublished).

were as follows:

Table Five. Sentences

Sentences	No.	%*
Reprimanded and set free (Penal Code 164)	91	39
Entrusted to parents or guardian (163)	26	11
Committed to Training Center 1 year (166)	3	1
Committed to Training Center 2 years	23	10
Committed to Training Center 3 years	29	13
Committed to Training Center 4 years	6	2
Committed to Training Center 5 years	1	-
Placed on Probation (176), length of sentence not specified	3	1
Placed on Probation for 1 year	1	-
Placed on Probation for 2 years	19	8
Placed on Probation for 3 years	2	1
Sent Home	20	9
Corporal Punishment (172)	5	3
Fine (171)	1	-
Time Served	2	1
TOTAL:	232	100

*Percentages rounded to the nearest whole percentage point.

In almost all of the cases where the young offender was reprimanded and set free (39 per cent), it was his first offence. The 26 youths who were entrusted to the care of their parents were also reprimanded. It should be noted that in no case did the Court use its statutory authority under Penal Code Article 163 to transfer legal custody of the young offender to a "reliable family" or a "home or organization for the education and protection of children."

In respect to those boys sentenced for a period of time to the Training Center, the Court occasionally made effective use of its powers under Penal Code Article 168 and Criminal Procedure Code Article 180 if the interests of the juvenile later required it. In such cases, after sentencing the young offender to the Training Center, the judge informed him that his length of sentence would be shortened if he improved his character and conduct while in the Training Center. When the staff of the Training Center determined that the boy had been sufficiently rehabilitated, they would make an application to the Court and he would be released.[58]

In three of the 22 cases where young offenders were placed on probation the Court did not specify a time period as is required by Penal Code Article 176. And in two of those cases the Court placed the probationers under the supervision of the Training Center rather than the Probation Office.

An interesting form of disposition was found in the cases of twenty young offenders who were sent to their birthplace. Although no provision was cited, the Court was apparently relying on Penal Code Article 163 (entrusting to family). In all of those cases, the young offender had migrated to Addis Ababa from the countryside. Typically, the youth was living in Addis Ababa without relatives or friends. He was unable to sustain himself, resorted to theft, and was eventually arrested by the police and brought before the Juvenile Court. There he would tell the Court that he wanted to be reunited with his family and the Court would order Training Center personnel to

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58. A good example of such procedure is found in Juvenile Court Case No. 111/62 (1970)(unpublished).

send him home. In approximately 25 per cent of those cases the young offender later reappeared in the Juvenile Court -- which in every instance then sentenced the boy to the Training Center.

Corporal punishment was ordered in only five recorded instances, usually after a certificate of good health[59] had been received from medical authorities. Only one fine was levied by the Court.[60] There the youth was found guilty of "receiving,"[61] i.e., knowing that his accomplice had stolen the money with which the two of them bought bicycles.[62] The offender was ordered to pay E$2 per month for five months. Two young offenders were set free on the day of their judgment, the Court determining that the amount of time that they had spent in the Training Center on remand was sufficient.[63]

Under the measure/penalty scheme of the Penal Code[64] the Juvenile Court has an extensive arsenal for the sentencing and treatment of young offenders. Our Survey has indicated that complete, effective use is not being made of those provisions. For example, in one case involving a youth suffering from epilepsy he was reprimanded and set free without reference by the Court to Article 162, "Admission to a Curative Institution."[65] More importantly, the Court has made only sparing use of Article 163, "Supervised Education," and then only to entrust the young offender to the care of his parents, other relative or guardian. Institutions and foster homes could be given custody of youths under this Article.

Institutions exist in Addis Ababa which might be utilized

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59. ETH. PEN. CODE art. 172(1).

60. Id. art. 171.

61. ETH. PEN. CODE art. 647.

62. Juvenile Court Case No. 134/62 (1970)(unpublished).

63. Four months in the case of Juvenile Court Case No. 225/62 (1970)(unpublished), and three weeks in Juvenile Court Case No. 228/62 (1970)(unpublished).

64. PEN. CODE arts. 161-73.

65. Juvenile Court Case No. 250/62 (1971)(unpublished).

for this purpose. The Ethiopian Child and Family Welfare Association, for example, maintains three youth hostels for needy young people. Boys convicted of sustenance-type thefts might be put into the care of these hostels.

We hasten to add that utilization of these hostels or other like institutions could not be made by the Juvenile Court without some prior administrative action. Funds would be required with which to reimburse the caretaker institutions. In this respect it should be pointed out that a comparison of costs of maintaining a child at the Training Center and at the hostels, referred to above, suggests that it would cost the Government far less to send boys to the hostels.[66]

5. Probation Officers' Investigations and Use of Reports by the Juvenile Court

A probation officer was ordered by the Court to investigate the offence and the character and antecedents of the juvenile accused in 46 per cent of the cases analyzed.[67] The order was usually given at the end of the initial hearing and the probation officer was to present his findings at the subsequent trial. Such investigations were usually ordered only in relatively serious cases: For example, alleged robberies and burglaries and theft cases involving over E$10 or several items. The court disposed of the less serious theft cases, most family disturbance cases, etc., without an investigation by a probation officer.

In only one of the cases investigated did the probation

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66. According to the Executive Secretary of the Ethiopian Child and Family Welfare Association, it costs the Association approximately $23 (Ethiopian) per month to maintain one boy in their hostels. This amount includes food, housing, clothing, medical expenses and school supplies. Interview with Mr. Michael Tobias, February 20, 1971. In contrast, the cost per boy at the Training Center in 1967 was estimated at be $60 (Ethiopian) per month. R. BROWN, HISTORY, STATUS AND TREATMENT OF CRIME AND DELINQUENCY IN ETHIOPIA 211 (1968)(Office of the Institute of Ethiopian Studies, Haile Sellassie I University)(unpublished).

67. ETH. PEN. CODE art. 55.

officer talk to someone outside of the accused's immediate family -- the director of the school the youth had been attending. In every other case the investigation was limited to interviews of the accused himself, his parents or guardian, grandparents, and brothers or sisters.

The probation officer's report to the Court usually included observations as to guilt and sentence recommendations as well as factual character and antecedent information. For example, in one case it was reported that "the boy should be committed to the Training Center for the following reasons: (1) he has admitted to me that he has repeatedly stolen things, (2) his mother is unable to reform her son, and (3) if he is released he would continue to steal since he is used to stealing and steals out of necessity because he does not have enough to eat."[68] The Court appeared to rely wholly upon the probation officer's report in 98 per cent (143) of the cases where investigations were made. In only three cases did the Court substitute its own judgment as to adjudication and sentence.

The Criminal Procedure Code is somewhat unclear as to the manner in which official background investigations may be used in court proceedings involving juveniles. Fisher, however, after careful analysis, has said that "it would clearly be impermissible to prejudice the case by hearing evidence on character and antecedents before the charge has been found proved."[69] That is to say, the background investigation report should not be read by the court until he has heard the prosecution and defence evidence in the case and decided whether or not the accused is guilty. The report should be used in deciding what the sentence should be and not in deciding whether the accused is guilty.

Our Survey has indicated that the Court does not uniformly use these reports only for sentencing purposes. It was clear from a reading of the files and court observation that in many cases the investigation report was read by the Court before it decided the guilt of the accused. In light of the difficulty in deciphering the Code in this respect, it is certainly excu-

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68. Juvenile Court Case No. 28/63 (1970)(unpublished).

69. FISHER, supra note 1, at 154.

sable that this has been done in the past. But in the interest of justice for the juvenile accused it would be desirable if the procedure in this area were changed in the future.

It would be most economical if the Court were to order background investigations only after an accused is found guilty at his trial rather than at the end of his initial hearing. But perhaps in the interest of expediting the proceedings, such investigation orders should be given at the initial hearing so that adjudication and sentencing can all take place at a later hearing. There is no harm in this as long as the judge foregoes reading the report until after he has adjudicated guilt.

Before leaving this subject it should be pointed out that, although probation reports are perhaps the most effective way to gather background information for sentencing purposes, they are not the only means available to the Court of obtaining the information. The court may, under the authority of Penal Code Article 55, summon and examine teachers, school directors, former employees of the young offender, neighbors and any other individual capable of answering questions about the offender's background. It may also require the production of any document concerning the young offender.[70]

6. Speed of Proceedings in the Juvenile Court

As seen in Table Six, below, 49 per cent of the cases analyzed were disposed of by the Juvenile Court within 21 days after the initial hearing. For the year 1963-64, Ato Mebrahtu Yohannes reported that 57 per cent of the Juvenile Court cases were disposed of within the first twenty days, and stated that in his opinion this was "remarkable when one considers the problem of lack of proper addresses of parents, poor postal sytem, etc...."[71] One should also point out that the problems of escape greatly frustrated the administration of justice by the Court. Only ten per cent of the cases had not been disposed of after four hearings, as shown in Table Seven.

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70. P. GRAVEN, AN INTRODUCTION TO ETHIOPIAN PENAL LAW 149-50 (1965)(Addis Ababa, Haile Sellassie I University, Faculty of Law).

71. M. YOHANNES, supra note 11, at 20.

Table Six. Duration of Hearings

Duration	No.	%*
Decided in one day	79	25
Decided within five days	7	2
Decided within 7 days	17	5
Decided within 14 days	17	5
Decided within 21 days	38	12
Decided within 28 days	47	15
Decided within 42 days	44	14
Decided within 60 days	38	12
Decided within 90 days	26	8
Decided after 90 days	7	2
TOTAL:	320	100

Table Seven. Number of Hearings

Hearings	No.	%*
1 Hearing	79	25
2 Hearings	103	33
3 Hearings	67	22
4 Hearings	35	11
5 Hearings	13	4
6 Hearings	5	1
7 Hearings	5	1

8 Hearings	5	1
9 Hearings	5	1
11 Hearings	1	1
13 Hearings	2	1
TOTAL:	320	100

*Percentages rounded to the nearest whole percentage point (.5 rounded up).

The right to speedy proceedings embraces not only the right of the adult accused to have his case disposed of within a reasonable time,[72] but also includes the right to "be brought before the judicial authority within forty-eight hours of his arrest."[73] The mandate is even more stringent in the case of young persons. Article 172(1) of the Criminal Procedure Code declares that a juvenile accused "shall be taken immediately before the nearest Woreda Court by the police...." The creation of the Special Juvenile Court in Addis Ababa, meeting only on Tuesday and Thursday afternoons, represents a great improvement in the handling of young persons, but it means in most cases an automatic denial of the juvenile accused's right to "immediate" presentation . Only those young persons arrested early on Tuesday and Thursday can be taken by the police to the Juvenile Court "immediately". This problem was largely ignored until, as noted earlier, the newly appointed Judge began to refuse to hear cases of juveniles who had been unlawfully detained by the police. This enforcement of the Code forced a rethinking on the part of the police, ministries, and courts, which at the time of this writing was still in the process. Less than three weeks after the new Judge's appointment, the Assistant Police Commissioner of Addis Ababa wrote a letter to the Minister of Justice complaining that it was impossible to meet the requirements of Article 172(1) of the Criminal Procedure Code as long as the Juvenile Court sat only two afternoons

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72. ETH. CONST. revised, art. 52.

73. Id. art. 51.

a week, and requested a quick resolution to the problem.[74] The Assistant Minister of Justice responded by requesting the President of the Addis Ababa Awradja Court, which has jurisdiction over the Juvenile Court, to offer suggestions as to how the problems could be solved.[75] He, in response, suggested that sessions be held "every day during working hours...."[76] This would be a step in the right direction and perhaps the only practical improvement at the moment. Full compliance with Article 172(1) would probably require a court to sit every day, 24 hours a day.

7. One Day Dispositions in the Juvenile Court

Ideally, with 24 hour service available in the Juvenile Court, there would seldom be an occasion where the police and public prosecutor would have a juvenile accused in custody long enough before the initial hearing to gather sufficient evidence to draft a charge and convict him. But given the inconsistencies to date between the Criminal Procedure Code and the scheduled sessions of the Juvenile Court it is not surprising to find from our Survey that many cases have been tried, in effect, at the initial hearing.

In our Survey we found 33 cases disposed of at the initial hearing where the accused was found guilty. The cases usually involved thefts of less than E$10 value. In 30 of these cases the accused admitted the allegation, but in three he did not. The sentencing in these one session cases reflects the relative insignificance of the offences. Two were committed to the Training Center, one for one year, the other for two. Three were

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74. Letter No. 2669/234/55, from Ato Wondimu Abebe, Assistant Commissioner of the Police, Addis Ababa, to the Minister of Justice, Ter 27, 1963 Ethiopian calendar (unpublished).

75. Letter No. 74/A2, from Ato Solomon Tekalign, Assistant Minister, Ministry of Justice, to the President of the Awradja Court, Addis Ababa, Megabit 29, 1963, Ethiopian calendar (unpublished).

76. Letter No. 1747/63, from Ato Tequola Wolde Kidan, President of the Awradja Court, Addis Ababa, to the Assistant Minister, Ministry of Justice, Miazia 7, 1963, Ethiopian calendar (unpublished).

entrusted to their families and the remainder (28) were reprimanded and set free.

8. Disposition of Girls by the Juvenile Court

Only 22 cases involving girls were found in the 320 cases analyzed. Nine of the young ladies were accused of theft from their employer, three of insult, three of theft of an item worth more than E$10 and three others were accused of minor assault. Apparently the girls had more mettle than their male counterparts as 55 per cent denied the accusation while only approximately 25 per cent of the boys made a denial. The determination of guilt followed, exactly, the plea that the girls entered. The Court obviously was not concerned with the determination of guilt since in every case the girl was set free after the Court had entered into the file that it had no other choice as no institution exists for the treatment of female offenders. It should be observed that one of the probation officers at this writing was a woman. If a woman continues in the Probation Service she might be utilized in the disposition of female offenders in the future.

The number of girls brought before the Juvenile Court probably does not reflect, accurately, the incidence of juvenile delinquency among girls in Addis. Sixteen of our 22 cases were initiated by private complainants. In view of the disposition always employed by the Court, it is likely that the police are reluctant to bring an accused girl to Court and, thus, release most of them at the police station.

9. Absence of Appeals from the Juvenile Court

During the year and a half under analysis, no case was found appealed from the Special Juvenile Court to the High Court in Addis Ababa, although the right of a young person to appeal his conviction is guaranteed in Article 185(4) of the Criminal Procedure Code.[77] This fact points up again the need for counsel in the Juvenile Court. Most certainly some percentage of the youths adjudged guilty and sentenced had legitimate, appealable complaints against the way they were processed. This is clear from the data reported above in this Section.

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77. FISHER, supra note 1, at 156.

10. Applicability of Informal Juvenile Proceedings to Ethiopian Culture

Juvenile courts, characterized by informal procedures, have arisen in many countries over the last 50 to 75 years in an effort to handle juveniles in a courtroom atmosphere that would be conducive to rehabilitating the youths.[78] These courts have been typified by the encouragement of a "fatherly" manner on the part of the judge and the relaxation of the rigid adversary type rules of adult criminal proceedings. Some countries have recently had second thoughts about the effectiveness of these juvenile courts. For example, in the United States, the recent Report of the President's Commission on Law Enforcement concluded its section on "The Juvenile Justice System" by stating, in part, that "there is increasing evidence that the informal procedures may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers."[79] The "increasing evidence" that the commission referred to are studies made of the juvenile court proceedings in the United States. One such study concluded, that, "[u]nless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the rehabilitative efforts of court personnel."[80]

Ethiopia cannot be said to have a true juvenile court system on the scale that exists elsewhere.[81] Nevertheless, as we have seen, there are special substantive as well as procedural rules for the handling of criminally accused juveniles. With the creation of the Special Juvenile Court in Addis, there is one court in the country that has begun to approximate the full trappings of a true "juvenile court." That Court, as we have seen, has

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78. See id. at 116 n. 23.

79. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 85 (1967).

80. WHEELER AND COTTRELL, JUVENILE DELINQUENCY--ITS PREVENTION AND CONTROL 33 (1966), quoted in In Re Gault, 387 U.S. 1,26 (1967).

81. FISHER, supra note 1, at 117.

been inclined to operate on an even more informal basis than is outlined for it in the Penal and Criminal Procedure Codes.

In an effort to determine the attitudes toward the Court of boys who had been through the Training Center, a sample consisting of 40 of its inmates were questioned as part of a survey conducted concurrently with ours. Twenty-eight of the sample were committed under sentence to the Training Center and the remaining twelve were there on remand, awaiting trial. All of the boys were asked whether they had been "treated fairly" by the Juvenile Court. The committed boys responded as follows: "yes," 25 per cent; "no," 40 per cent; no answer, 35 per cent. The remanded boys' responses were: "yes," 22 per cent; "no," ten per cent; no answer, 68 per cent.

It is difficult to draw any conclusions from these responses, particularly in view of the human tendency to think that any punishment of oneself is undeserved though objective observers might think otherwise. But it would seem that we can draw a tentative conclusion from the large percentage of boys who failed to answer. This percentage, plus some part of those who indicated fair treatment, would seem to represent a reluctance to criticize authority -- particularly that authority that is in a position to punish the critic.

In this connection, it is interesting to note the following gratuitous response to one of the questions asked of the Training Center inmates: "How can I question the judge when he is better than my father?" This attitude toward authority has been characterized by Levine as applying generally to the Amharas, the dominant ethnic group in Addis Ababa and vicinity. He has said that "[f]orms of obedience and respect comprise the principal fiber of the Amhara social fabric...[and] are perhaps the most fundamental lessons of Amhara socialization.... [Children] become conditioned to show automatic subservience to any figure of authority."[82]

All of this would suggest, again, that if juveniles appearing before the Special Juvenile Court in Addis are to be assured of receiving a fair hearing and the full measure of justice that is due them under the relaxed procedures of the Court, counsel

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82. D. LEVINE, WAX AND GOLD 105 (1965).

should be present to speak in their behalf. The youths are not likely to know their rights and even if they do, they are not likely, on their own, to assert them.

SECTION II.

THE HIGH COURT, ADDIS ABABA

Jurisdiction of the High Court

As noted earlier,[83] the ministerial letters which created the Special Juvenile Court of Addis Ababa vested in it the authority to hear cases of young persons accused of Woreda and Awradja Court offences. That is, the Juvenile Court was to have original jurisdiction of juveniles over nine years of age but who had not yet attained their fifteenth birthday, and was to hear only those offences which were under the jurisdiction of the Woreda and Awradja Courts. According to the Second Schedule of the Criminal Procedure Code cases involving "young persons" within the subject matter jurisdiction of the High Court were apparently to be heard by that Court. For example, a thirteen-year-old boy accused of petty abstraction,[84] a Woreda Court offence, or receiving stolen property,[85] an Awradja Court offence, was to be tried by the Juvenile Court; while a child the same age, accused of theft from his employer -- aggravated theft[86] -- was to be first taken by the police to the Special Juvenile Court which, after determining that he was properly charged with a High Court offence, would transfer the case to the High Court. Apparently, the letters are silent on the subject of juveniles of the "post juvenile" age group, i.e., those who had attained their fifteenth birthday but who had not attained legal majority (18 years of age).[87] Thus those indivi-

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83. See sub-section "Creation and Jurisdiction" of Section I, in text above.

84. ETH. PEN. CODE art. 634.

85. Id. art. 647.

86. Id. art. 635.

87. FISHER, supra note 1, at 119.

duals are left to be processed as adults under the ordinary provisions of the Code.[88] For example, a fifteen-year-old was to be taken directly to a Woreda Court, if accused of petty abstraction, to an Awradja Court if accused of "receiving" and to the High Court if charged with aggravated theft.

Generally speaking, the jurisdiction exercised by the Special Juvenile Court and the High Court during the period investigated was primarily based on age. The Juvenile Court appears to have tried all juveniles aged fifteen years and below regardless of the offence of which they were accused, while juveniles aged sixteen and seventeen were taken to a particular court, Woreda, Awradja,[89] or High Court, according to the offence with which they had been accused or charged. As was shown in Table Two above, approximately 29 per cent of the offences tried before the Juvenile Court were High Court offences, which according to the scheme established by the Criminal Procedure Code and ministerial correspondence should have been transferred to the High Court.[90] Also, Table One shows that sixteen per cent of the juveniles brought before the Juvenile Court were fifteen years old and one per cent of the youths were sixteen and seventeen years old. Furthermore, an analysis of the High Court cases[91] revealed no case invol-

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88. ETH. PEN. CODE art. 56(1).

89. Analysis of cases of juveniles aged sixteen and seventeen tried by the Woreda and Awradja Courts in Addis Ababa was not included in this report.

90. The Special Division of the High Court, described by FISHER, supra note 1, at 129, was not functioning during the period of analysis.

91. The files of decided High Court cases are indexed only by Civil and Criminal Divisions and are simply filed according to their case number. To find cases involving persons less than eighteen years of age required reading through the complaint of each file. In 1961, Ethiopian calendar, there were 1,358 cases in the Criminal Division, in 1962, Ethiopian calendar, there were 1,432, and in the first six months of 1963, Ethiopian calendar, there were 775 cases.

ving a juvenile fourteen years of age or younger.[92]

Forty-one cases, involving juveniles between fifteen and eighteen years of age, were brought before the High Court during the period covered by this Survey.[93] Because some cases involved co-defendants, the total number of juveniles handled was 45, 27 of whom were seventeen years old, thirteen of whom were sixteen, and four of whom were fifteen. All of these offences were clearly High Court offences. Seventeen were accused of theft from an employer, nine were accused of robbery, nine of fraudulent misrepresentation, five of breach of trust, three of homicide, and one of drawing a check without cover.

Procedure Before the High Court

According to Penal Code Article 56(1), youths accused in the "post juvenile" age group are to be tried as adults. The procedure before the High Court was quite clear from the records examined and affords an interesting comparison to the proceedings of the Special Juvenile Court. In contrast to the Juvenile Court, a formal charge[94] was always filed in the High Court. It cited the applicable Penal Code provision and contained a detailed description of the particulars of the alleged offence and a list of witnesses. In a typical hearing the accused was brought before the Court which verified the identity of the person before it by asking him his name, age, and occupation.[95] The Court then read the charge to the accused and asked him if he understood the accusation, and whether he had any objection

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92. Apparently the newly appointed judge of the Juvenile Court, Ato Tesfaye Worku, who was appointed on January 15, 1971, has transferred cases to the particular court based on the age of the juvenile and type of offence. Two such Juvenile Court cases were analyzed -- Nos. 65/63 (1971)(unpublished) and 66/63 (1971) (unpublished) -- but were brought before the High Court after the period of this survey.

93. Of those, 40 were analyzed; one case was removed temporarily from the files by the Registrar.

94. ETH. CRIM. PRO. CODE arts. 108, 109, and 111.

95. Id. art. 128.

to the charge.[96] A copy of the charge was given to the accused,[97] and he was then asked by the Court to enter his plea[98] of "guilty" or "not guilty."[99] If the accused entered a guilty plea, the Court usually convicted him forthwith.[100] The following case,[101] in which a seventeen-year-old domestic servant was charged with aggravated theft, is representative of the procedure followed when the accused denied the allegations. After the accused entered a plea of "not-guilty," the Public Prosecutor informed the Court that his witnesses were not present and requested an adjournment. At the subsequent hearing, nineteen days later, three witnesses were presented by the Prosecutor. The first, a police officer, testified that the accused had admitted the theft at the police station. The private complainant, the employer of the accused, testified that the girl had stolen her gold bracelet. The third witness, a woman whom the Public Prosecutor said had accepted the stolen bracelet, denied she had received it. After each witness testified the accused was invited by the Court to cross-examine. After the Public Prosecutor had concluded his case, the accused informed the Court that she had no defence witnesses, and she requested that judgment be passed. The Court responded by acquitting the accused on the grounds that the confession was made out of fear, the third witness denied that she had ever received the bracelet, and the Prosecutor's evidence was insufficient to prove his case.

It was not clear from the file in the above case whether the defendant had counsel. But, although the records do not allow a statement to be made with any statistical reliability, it appeared that the presence of counsel for the accused, retained or appointed, was a common occurrence at High Court proceedings.

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96. Id. art. 129.

97. Id. art. 109(4).

98. Id. art. 132.

99. Id. art. 133.

100. Id. art. 134.

101. High Court, Addis Ababa, Crim.Case No.1/62 (1969)(unpublished).

The Speed of Proceedings in the High Court

While the procedures afforded juvenile accuseds of the "post juvenile" age group by the High Court show considerably more structure than the procedures followed by the Juvenile Court, there are some areas where adjustments would be desirable.

Since "post juveniles" are to be tried as adults, the requirement that an accused is to be taken "immediately" to the nearest Woreda Court[102] is not applicable. The constitutional mandate that an accused be taken before a court within 48 hours[103] is, however, applicable to "post juveniles" brought before the High Court. Our analysis suggest that the mandate is not being followed by the police uniformly. In 23 of the 40 cases analyzed, the date of the accuseds' arrest was not contained in the records of the trial. The records of the remaining seventeen cases reveal that none of the accuseds involved in them was brought before the High Court within 48 hours after his arrest. In fact, no accused was taken by the police to the High Court in less than five days. In each of these seventeen cases the accused was detained in police custody. Only two juveniles were released on bond by the investigating police officer.[104] We should hasten to add that in some of these cases the accused may have been presented for an initial hearing to the Juvenile Court before he was presented to the High Court. But it is not likely that this happened in many of the seventeen cases.

Once the accused was brought before the High Court, the records indicated that thirteen cases, 33 per cent, were disposed of at the first hearing. Of the other cases, three were decided within two days, four were decided within fourteen days, and one within 21 days. For the remaining cases it took the Court anywhere from 69 days to ten months and fifteen days to dispose of the case.

Nine of the cases involving long delays should be mentioned separately as they all showed a failure of the prosecutor to

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102. ETH. CRIM. PRO. CODE art. 172(1).

103. ETH. CONST. revised, art. 51.

104. See ETH. CRIM. PRO. CODE art. 28(1).

produce his witnesses and culminated eventually in "temporary release" of the accused. Those cases are exemplified by long periods of incarceration of up to ten months and from six to eight hearings while the prosecutor attempted to produce his witnesses. Usually after several adjournments, which lasted approximately one month apiece, the Court would temporarily release the accused and grant the public prosecutor the right to reinstate the case when and if he was able to locate his witnesses.

When the Criminal Procedure Code is examined in this regard it is clear that the Court has been acting within the law in these cases, but it also seems clear that the Code could stand amending in this area. Although the prosecutor can be granted an adjournment under Article 94(2)(b) of the Criminal Procedure Code, when his witnesses are not present there is no specific time limit applicable as there is in Article 94(2)(f) which states that the prosecutor can be granted an adjournment of no longer than one week in which to alter or add to his charge. The only restriction on the amount of time for which adjournments in general can be granted is found in Article 95(1) of the Criminal Procedure Code which states that "the court shall adjourn the hearing for such time only as is sufficient to enable the purpose for which the adjournment was granted to be carried out." While the public prosecutor can argue, under the Criminal Procedure Code Article 95(2), that it was through no fault of his that the witnesses could not be located, it is unfortunate that the Court has granted the public prosecutor adjournments for as long as ten months while the accused waited in jail. Similar procedures in the United States prompted the American Bar Association's committee on Standards Relating to Speedy Trial to recommend that the right to a speedy trial should be defined by rule or statute in terms of a specific number of days or months commencing from the date the charge is filed or if the accused has been continuously held in custody or on bail from the date of his hearing and if the public prosecutor fails to bring the accused to trial and fails to commence his prosecution before the specified time period has elapsed the accused should be discharged.[105]

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105. AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO A SPEEDY TRIAL 6-9 (1967)(tentative draft).

It could be argued that "temporary release" of the accused at the first adjournment asked for by the prosecutor, or soon thereafter, would solve the problem at least until the Code is altered. This would surely be a step in the right direction. A similar suggestion in the United States evoked the following response from a Supreme Court Justice: "This unusual...procedure, which in effect allows [the public prosecutor] to put a person under the cloud of an unliquidated criminal charge for an indeterminate period, violates the requirement of fundamental fairness assured by the Due Process Clause...."[106] "Temporary release" for an indeterminate period might also violate the Due Process Clause of the Ethiopian Constitution.[107]

Bail Practice in the High Court

The High Court's practice concerning setting bail suggests that the dollar amounts established are generally out of the reach of the accused. In most of the cases in our sample, release on bail was deemed by the Court to be improvident due to the unreliable nature of the accused or the likelihood that he would commit other offences if released on bail.[108] But in sixteen cases bail was set in the following amounts: (a) two cases at E$1,000; (b) six cases at E$500; (c) two cases at E$300; (d) three cases at E$200; and (e) three cases at E$50. In only four instances were the accuseds able to post the amount of bail themselves or provide a satisfactory guarantor. None of the twelve who could not post bond were, in the court's judgment, especially likely not to appear voluntarily at future hearings or likely to commit other offences upon release. This prompts the question of whether the amounts set for their bail were too high. Perhaps a study of this question should be made by High Court personnel.

Sentencing

The 24 "post juveniles" in the High Court sample who were adjudicated "guilty" were given the following sentences. Eighteen,

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106. Klopfer v. North Carolina, 386 U.S. 213, 226-7 (1967).

107. ETH. CONST. revised, art. 43.

108. See ETH. CRIM. PRO. CODE art. 67.

75 per cent, were given prison sentences, ranging from one to two years. Three of those given prison sentences were also fined. Five of those given prison sentences were placed on probation, usually for two years, after their sentences had been suspended under Article 195 or 196 of the Penal Code. Two were released because they had already served their sentence time while awaiting trial. Four others were reprimanded and set free. In most of the short-term prison sentences the Court appeared to be trying to mitigate the sentence in accordance with the very difficult provisions of the Penal Code on this matter.[109]

SECTION III.

THE SUPREME IMPERIAL COURT, ADDIS ABABA

The Supreme Imperial Court has only appellate jurisdiction over cases involving juveniles. Original jurisdiction to try such cases rests entirely in the lower courts. As mentioned earlier, the special procedures for young persons in the Criminal Procedure Code provide the right of appeal. But there are no special provisions regarding details of appeal procedure for young persons. It is reported that in actual practice, in the Supreme Imperial Court, the same procedures are applied as those applicable to adults.[110]

Appeals to the Supreme Imperial Court are made from the High Court either when the case was originally tried there[111] or when it was appealed there and further appeal is made.[112] We earlier saw that the High Court tried no cases involving young persons during the period of the Survey and that no appeals

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109. ETH. PEN. CODE arts. 56(2), 184, 181, 182.

110. Interview with Ato Eden Fassil, Assistant Registrar of the Supreme Imperial Court, Addis Ababa, May 25, 1971, and Ato Berhane Mogus, an Ethiopian university student from the Faculty of Law assigned to the Registrar's Office of the Supreme Imperial Court, Addis Ababa, May 24, 1971.

111. ETH. CRIM. PRO. CODE art. 182(1)(c).

112. Id. art. 182(2)(b).

to the High Court were taken from the Special Juvenile Court. Thus, it is not surprising to find that our search showed no cases involving young persons being heard on appeal from Addis Ababa courts in the Supreme Imperial Court during the period under analysis.

Three cases were found, however, appealed from courts outside of Addis. One of these cases is worth recounting because it shows the Court paying little attention to nonapplication of the special juvenile procedures by the police and lower courts.

The case in point[113] involved two defendants who had been involved in a fatal brawl in a restaurant-bar. When the police apprehended the boys one told them he was fourteen years old. Both youths were taken immediately to jail where they remained in custody for 22 days before being taken before a court, the High Court in Dessie. The boys were released on bail. Four months later a doctor testified that one of the boys was between fourteen and fifteen years of age. The High Court, on receiving this testimony, ordered subsequent hearings to be held in the judge's chambers. Two months later medical evidence was introduced that the second boy was sixteen years old. The Codes appear to point to a severance of the proceedings as to the two youths under such circumstances.[114] But the High Court merely reversed its previous order and hearings were held in open court -- without severance. The proceedings continued for one and one-half years after commencement whereupon both youths were found guilty of second degree homicide and were sentenced to five years of rigorous imprisonment. On appeal to the Supreme Imperial Court it was contended, inter alia, that the High Court erred in trying the youngest boy as an adult. The Court affirmed the lower court opinion. It failed to note the delayed presentation by the police and as to the age issue, it stated that the High Court had given the boy full consideration and that the request for acquittal on that ground was unacceptable.

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113. Supreme Imperial Court Crim. App. No. 97/62 (1969) (unpublished)

114. According to the Ethiopian Penal Code, art. 5(1), persons less than 15 years old cannot be tried with an adult, and art. 56(1) of the Penal Code says that juveniles over fifteen shall be tried as adults under the ordinary code provisions.

It is perhaps understandable that the Court would be reluctant to reverse convictions and release convicted persons because of "technical" procedural errors by lower courts. This, however, is the usual way to insure that accuseds get the treatment to which they are entitled under the law. Such reversals have the long range effect of making lower courts aware that they must abide by procedural requirements in future cases.

At a minimum, when procedure irregularities in the handling of juveniles are detected in appealed cases, it would seem that the responsible courts, police, or other authorities should be notified of the fact by a Supreme Imperial Court or Ministry of Justice directive.

SECTION IV.

THE PROBATION OFFICE, ADDIS ABABA

When the draftsmen of the Penal Code of 1957 included provisions concerning probation,[115] they introduced a foreign concept into Ethiopian criminal law. Ten years after the promulgation of those provisions the Probation Office of the Social Defense Department of the Ministry of National Community Development and Social Affairs was established and the first young offender was placed on probation. To date, the Addis Ababa Probation Office has restricted its activities to the Special Juvenile Court.[116] The two functions performed by the Probation Office are (1) making investigation reports on the accused's character and antecedents, which has been described above,[117] and (2) the supervision of probationers. During the four years of its existence, the Probation Office has completed more than 900 investigation reports. A total of 145 youths[118] have been

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115. ETH. PEN. CODE arts. 194-212, 176.

116. The cases where the High Court placed boys on probation during the period analyzed for that court, were not handled by the probation office.

117. See generally text between notes 67 and 71 supra.

118. During the most recent year and one-half period analyzed for the Juvenile Court survey, the Court placed no girls on probation.

handled by the Office in its function of supervising probationers. It should be noted that no young offender was placed on probation during the last six months preceding this Survey. This may be explained, in part, by disruptions that resulted from the appointment of a new judge.

The Probationers

The Probation Office categorizes the probationers into (a) those who had been successfully discharged from probation, of which the records examined showed 59, or 41 per cent, (b) those who had broken the "conditions" of their probation and had their probation revoked -- 51, or 35 per cent, and (c) those who were presently on probation, 35, or 24 per cent.

Only 60 of the 145 files contained reasonably complete information. Those 60 were analyzed. Comparisons were then made with the information gathered in respect to the 320 youths presented to the Juvenile Court during the most recent year and one-half period. It must be pointed out that these groups are not nicely comparable inasmuch as the 60 person probation sample was selected from those handled by the Probation Office over a four year period prior to the Survey. Nevertheless the comparisons made are worth brief reporting.

The incidences of types of offences represented in the two samples were not significantly different. Thus, no conclusion can be drawn as to what types of offences are most likely to get probationary disposition. There was evidence in the comparisons, however, that boys from higher socio-economic strata were more likely to be placed on probation than those from the lower strata. This was supported by the fact that the occupations of the fathers of the probationers tended to be of considerably higher income producing levels than was true of all the boys presented to the Juvenile Court. It was also supported by the fact that a much larger percentage of the probationers listed their occupation as "student" as opposed to other occupations such as coolie and zabanya. It is not likely that these comparisons indicate discrimination by the Juvenile Court in favor of the well-to-do. More likely they reflect the fact that the probationers had responsible parents or guardians who were in a position to care for them during probation. On the other side of the coin, they probably reflected the judge's decision, in many cases, that homeless "street boys" or boys with poor parents should be

committed to the sheltering environment of the Training Center.

Pre-Probation Investigation, Supervision, and Rules of Conduct

The investigative techniques that have been used to determine whether a boy is to be placed on probation were described above in the section on the Juvenile Court. Briefly, the Probation Officer limited his investigation to interviewing the probationer, his immediate family, and on one occasion a school authority. Twenty-one of the 22 young persons recommended by the probation officers to the Juvenile Court for probation were placed there. Of those 22, one was placed on probation for one year, nineteen for two years, and two for three years.

Boys on probation in Addis are supposed to be supervised by a probation officer but they are put into the day-to-day custody of someone else. Of 60 boys sampled from the Probation Office files, 60 per cent were put in the care of their parents and sixteen per cent in the care of other relatives or a guardian. Of the remaining 25 per cent, two were placed under the supervision, but not committed to, the Training Center. Information was not available as to the other thirteen.

Probation has been defined as a form of sentencing in which the offender is not confined and where his release "is conditional in the sense that the [offender] remains subject for a period of time to the control of the court" under appropriate supervision of a probation officer.[119] It benefits the probationer by giving him maximum freedom, allowing him to reform in the environs of his own family and friends, and allows him to continue his normal social contacts and relationships. In addition, probation avoids the many possible negative effects of confinement in a penal institution.

In order for the probation period to attain its goal of rehabilitation and so that the probationer is aware of the framework within which he is expected to live during his probation period, Article 202 of the Penal Code directs that the court shall specify rules of conduct that appear to be necessary for

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119. AMERICAN BAR ASSOCIATION PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PROBATION 24 (1970)(tentative draft).

each probationer. These rules are supposed to be individualized to meet the particular needs and circumstances of the offenders, but Article 202 gives examples of what the rules may prescribe, such as requirements of "learning a trade, residing, working or living in a particular place, and refraining from consorting with certain people." In order to be placed on probation the offender must enter "into a formal undertaking to be of good conduct [and] to accept the requirements laid down."[120]

According to the Chief Probation Officer,[121] no conditions of probation nor rules of conduct were prescribed by the Special Juvenile Court when a young offender was placed on probation. Rather, those rules and conditions were to be determined by the supervising officer. It was reported that the usual procedure was for the officer to prescribe his rules and conditions during the first meeting with the probationer. Typically, the probationers were told to report to the Probation Office once a week or every fortnight, to return to school or continue attending school. In a few cases, the boy was told to refrain from consorting with certain individuals, usually other juveniles who were thought to be exerting a bad influence on the child, and in one case the probationer was told to keep his present job.

The probationer was also told that if he violated these rules he would be committed to the Training Center. But no boy in our sample was required to enter into the formal undertaking described above. Furthermore, no boy was given a written copy of the rules nor where they written into his record. All rule-making appeared to be oral in the Probation Service.

We have seen that technically the court should be prescribing the rules of conduct for probationers, but it is arguably permissible under the Code for the court to delegate the fashioning of the rules to the probation officer who is more familiar with the boy's background and present circumstances. Nevertheless, it seems that the Juvenile Court should require that the boy be brought before it to (1) have the rules read to him, (2) give him a written copy of the rules, and (3) have him sign a

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120. ETH. PEN. CODE art. 201(1).

121. Interview with Ato Asrat Belay, Chief Probation Officer, Addis Ababa, May 11, 1971.

copy containing his statement of promised compliance. This would serve three purposes. First, it would tend to insure that he knew what was expected of him and he would have a writing to later refresh his or his parent's memory. Second, it would put the authority figure of the judge behind the rules, thus helping to insure compliance. Third, it would bring the probation practice in this connection into line with Penal Code requirements.

To effect the intended benefits of probation close supervision by the probation service is essential. As stated in Article 203(1) of the Penal Code, the supervising authority or probation officer, "shall keep in touch with the probationer: he shall visit him at home or at his place of work, make arrangements for his leisure hours, give him guidance and facilitate to the best of his ability his readjustment in life and his reform. He shall exercise over the probationer a regular but unobstrusive control...."

The actual supervision of juvenile probationers, as indicated by our sample, fell quite short of the guidelines of Article 203(1). It appeared from the files that in approximately two-thirds of the cases the probation officer had almost no contact with the probationer after he was placed on probation. In the remaining cases, an occasional visit was made to the boy's home, school, and sometimes to his place of work, followed by long periods of time when the probationer failed to report to the Probation Office and the officer was unable or did not try to locate him. The instances where continuous supervision and guidance were given to the probationer were rare exceptions. This lack of adequate supervision did not seem to be the result of a burdensome caseload. During the first six months of 1971 there were four probation officers and only about thirty-five probationers.[122]

We should note, however, that many in our sample were on probation before this six month period and information as to workload in the earlier days of the Probation Office was not available.

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122. Compare R. CLEGG, PROBATION AND PAROLE 19 (1964), where the author suggests that the ideal caseload is between 50 and 75 probationers per officer. He reports that in some jurisdictions in the United States caseloads of between 300 to 500 are not uncommon

CONCLUSION

Our survey has shown that the Addis Ababa courts which deal with juveniles operate reasonably well within code dictates in some areas. Nevertheless certain clear irregularities were uncovered. It would seem that these irregularities could be easily adjusted by memoranda issued by the appropriate authorities to the courts concerned.

Discrepancies exist between the requirements of the Criminal Procedure Code regarding the handling of juveniles and practical possibilities given the present two sessions a week structure of the Special Juvenile Court. These discrepancies can be eliminated if the Court sits continuously throughout the week. A movement in that direction seems to be afoot.

It would appear to be too early to assess whether informal juvenile court proceedings, recently questioned in other societies, are appropriate for Ethiopia. Only one juvenile court exists in the country and our study of it showed inconclusive results on this issue. But our study of the Special Juvenile Court in Addis Ababa did suggest that professional counsel is needed for the youths processed therein. This is particularly true because of the profound respect for authority characteristic of the youngsters appearing in that Court.

BIBLIOGRAPHY

Juvenile Delinquency - Addis Ababa, Ethiopia

American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to a Trial (Tentative Draft) New York: American Bar Association, 1967.

_____. Standards Relating to Probation (Tentative Draft) New York: American Bar Association, 1970.

Blake, J. and Holland, E. The Juveniles: An Interview Study of Four Groups of Youths in Addis Ababa (unpublished manuscript) Addis Ababa: Haile Sellassie I University Library, 1971.

Brown, R. History, Status and Treatment of Crime and Delinquency in Ethiopia. (unpublished manuscript) Addis Ababa: Office of the Inst. of Ethiopian Studies, Haile Sellassie I University, 1968.

Clegg, R. Probation and Parole. Springfield, Illinois: C. Thomas, 1964.

Graven, P. "Prosecuting Criminal Offences Punishable Only Upon Private Complaint," Journal of Ethiopian Law, vol. 2 (1965).

_____. An Introduction to Ethiopian Penal Law. Addis Ababa: Faculty of Law, Haile Sellassie I University, 1965.

Fisher, S. "Some Aspects of Ethiopian Arrest Laws: The Eclectic Approach to Codification," Journal of Ethiopian Law, vol. 3 (1966).

_____. "Criminal Procedure for Juvenile Offenders in Ethiopia," Journal of Ethiopian Law, vol. 7 (1970).

Levine, D. Wax and Gold. Chicago: Univ. of Chicago Pr., 1965.

Mebrahtu Yohannes. Procedure in Cases of Juveniles in Ethiopia (unpublished manuscript) Addis Ababa: Library, Faculty of Law, Haile Sellassie I University, 1965.

O'Connor, G.W. and Watson, N.A. Juvenile Delinquency and Youth Crime, the Police Role. Inst. Assn. Chiefs Police, 1964.