

Content

I. Compliant, accusation and flagrant offence [information about commission of an offence]

- Art 11-21, 50, [150-153 pp], 165-166, CPC

II. Summon and arrest [Art 19-21, 49-59, CPC]

Arrest with and w/out warrant

III. Police investigation Art 12, 22-31, CPC

IV. Confessions Art 27, 34 and 35, CPC

V. Search and seizer Art 32-33, CPC

CHAPTER TWO
SETTING JUSTICE IN MOTION: IN TAKE PROCEDURES AND
INVESTIGATIVE ACTIVITIES

Complaint, Accusation, and Flagrant
Offences

Relevant Laws

Art 11-21, 50, 150-153, 165-166, CPC

- Complaint refers to the information presented to law enforcement organs by the injured persons or their legal representatives to set criminal justice in motion.

Unless this condition precedent is satisfied, a criminal proceeding cannot ensue.

- There are offences which do not jeopardize the order, peace and security of the state and its inhabitants but are contrary solely to the rights of a given individual. There are offences of a purely private or personal character, the effect of which does not extend beyond the individual there by injured.
- In such cases, the state, though it is generally responsible for instituting criminal proceedings whether or not the victim of the offence agrees thereto, will not carry out this duty unless the victim indicates affirmatively that he wants the offender to be prosecuted.

- The prior consent of the injured party is required, firstly, because public interests are not at risk as the offence does not endanger the society at large, and secondly, because the institution of proceedings, against the will of the injured party, might often be more harmful to him than the commission of the offence, for it might draw the attention of society to certain facts, such as his spouse's unfaithfulness or his child's dishonesty, which are precisely what he does not want known publicly.
- In these situations, the institution of criminal proceedings is conditional upon a complaint first being made by the individual concerned.

- The criminal justice is also set in motion whenever there is a flagrant offense. Normally, an offence is said to be flagrant when the perpetrator is ***red handed*** while committing the crime. It is easy to apprehend the offender in such cases.

- The criminal justices process has a beginning and end. The condition precedents for setting the criminal justice in motion are ***complaint, accusation and flagrant offences***. These intake mechanisms are related to the nature of crimes.
- In Ethiopia, offenses are grouped into crimes and contraventions as well as complaint and accusation. Both distinctions are made based on the gravity of offences. But, the latter is particularly identifiable in relation to the intake system to trigger criminal justice.

- Under the Ethiopian criminal justice system, in principle, every crime concerns the public and is the responsibility of law enforcement organs to investigate and prosecute whenever they received information indicating the commission of offenses.
- However, exceptionally, some crimes are investigated or prosecuted ***only when the injured person requests criminal proceeding to start.*** In addition, providing information concerning the commission of a crime is a right. But, in exceptional cases provided in the law, it is a duty to inform the commission of such kind of offenses to the authorities.

Summons and Arrest

Relevant Laws

- Art 3, 5, 8, 9, 11, and 12, UDHR
- Art 9 and 14, ICCPR
- Art 16-21, 26, 32, FDRE Constitution
- Art 19-21, 49-59, CPC

The mode of bringing the suspect to the police station. The two commonly used mechanisms are summons and arrest. The effect of the two is the same. But, the means utilized in both cases is completely different. Summons is a peaceful system of taking a person into custody. On the contrary, arrest involves force. It brings psychological embarrassment on the part of the detainee. It may result in bodily injury or even death, in particular, if the suspect refuses to surrender. The extent of force utilized depends upon the gravity of the offense. For example, it does not seem rational to injure or kill a person for escaping from prosecution for minor offenses. It is difficult to state a clear rule to be applied all the time.

Arrest procedures Art 49-59

- Arrest might be with a warrant or without a warrant. In principle, it should be done with court order. But, in exceptional justifiable circumstances, it is legal to resort to arrest without a warrant. The clearest case is flagrant offense. It is not wise to wait for arrest warrant while a person is publicly committing a crime justifying arrest. It defeats the purpose of the criminal law. The danger for human rights, too, is less in such kinds of situations. Thus, arrest without warrant should be applied for certain justifiable cases. Private persons are also entitled to make arrest without warrant in such circumstances.

Arrest by court warrant Arts 52-55

- The ordinary procedure for issuing warrants is prescribed by Article 53 and 54. Recognizing the extreme gravity of the decision to order the arrest of an individual, the code has strictly limited that power. Although ***any court may issue a warrant***, its power may be exercised only ***upon the application of an investigating police officer***. And then the warrant may issue only if the police officer is able to demonstrate two facts to the court:
 - 1) that it is ***absolutely necessary*** that the person whose arrest is desired appear before the court and
 - 2) that his attendance before the court cannot be obtained in any other way.

The criterion of absolute necessity

- How can the court decide whether or not the attendance of a person before it is “absolutely necessary”? We must note at the outset that these words imply ***a very rigorous test***, and in combination with the preceding word “only” clearly suggest that the court is to exercise a screening function; it is not supposed “automatically” to issue warrants to arrest whomever the police suspect of an offence. It is a fair inference that, as a minimum standard, ***the court must be satisfied that there is sufficient evidence to believe that the suspected person has probably committed the offence***. By requiring the applicant to produce some credible evidence to support that belief, ***the code has established an impartial judicial check on the weighty power of arrest***

“Cannot otherwise be obtained” - The second requirement of Art 54

- We have mentioned a second criterion which must be satisfied before the court may issue an arrest warrant: that the presence of the accused before the court cannot be obtained in any other way.
- As a general rule, then, ***the court may not issue a warrant of arrest unless the accused has already been summoned without success.*** For, until a summons has been tried it is possible that the accused's attendance in court can “otherwise be obtained” and therefore resort to arrest is forbidden by Art 54.
- Of course if the accused has already been summoned and has deliberately failed to appear the investigating police officer has the duty to arrest him by applying for an arrest warrant if necessary, and the court should issue it, assuming that “absolute necessity” has been shown.

- There are, however, cases imaginable in which the court would be justified in issuing an arrest warrant even though the summons method had not been tried. If, for example, the applicant could by reliable evidence convince the court that summoning the accused would be completely futile because the latter had already planned or begun to flee the empire, or because receipt of a summons would likely induce him to flee, the court would be justified in ordering arrest because the accused's attendance could not "otherwise be obtained." But unless such exceptional circumstances are shown, the police should always first proceed by summons.

- This conclusion, that summons under the code holds practically identical consequences for the accused as does arrest, provokes the question whether the code adequately controls and limits **the power to issue summons**. We find that in contrast to the practice of other procedural systems, both Anglo- American and continental, where a summons, like an arrest is issued by the courts, **in Ethiopia the power is given to the police themselves**. The only limitation imposed by Article 25 is that the investigating police officer should have “**reason to believe**,” that the accused has committed an offence. While that standard is not precise it can at least be said that Article 25 prohibits the summoning of an accused where the evidence is of very questionable reliability-such as anonymous or ambiguous information, hearsay unsustained by factual investigation, etc.

- It is submitted, therefore, that both for the sake of internal consistency and in order to safeguard the rights of citizens the code should be amended so as to transfer the summons power from the police to the courts. If that were done, judges would issue either warrants of arrest or summonses upon application, after reviewing evidence of the accused's criminal conduct and in accordance with the feasibility of obtaining custody of him without the use of force. They, not the police, would decide before issuing a summons whether or not there were "reason to believe" the accused guilty of an offence, just as they now decide before issuing warrants whether or not his presence before the court "is absolutely necessary." The decision as to which form of process to use in a particular case would never arise until after a judicial determination had been made that the accused was probably guilty of a criminal offence.

- In summary, it has been suggested that since from the accused's point of view the same serious consequences which follow from the execution of an arrest warrant against him also follow response to a summons, both forms of process ought to be issued by the same authority- the courts - on similar criteria. Failing this reform, the police at least ought to be given the authority to discharge apparently innocent accused whom they have summoned.
- If the latter change were made, the police would have three options at their disposal for dealing with a summoned accused, one of which would have to be acted for dealing with a summoned accused within forty-eight hours of his voluntary appearance at the police station: **discharge, conditional release on bond(28)**, and **presentation before the nearest court 28(2), 29**.

Arrest without warrant [Arts 19-21 and 50]

- Having thus far considered arrest under court warrant and the use of police summonses let us turn to the third and last method by which physical custody over suspected offenders is obtained - arrest without warrant. The governing rules are found in both the Constitution and the Code.
- **The Code: flagrant offences**
- Code Art 19-21 and 50 define flagrant offences and declare that any person may arrest a flagrant offender.

(i) Definition [Arts. 19, 20]

flagrant offence is an offence

- which ***“is being committed or has just been committed” or attempted to be committed.***
- where a ***“hue and cry” has been raised. “when... the offender who has escaped is chased by witnesses or by members of the public.”***

- (ii) Application: *immediacy and publicity*
- There are two other matters in connection with flagrant offences which deserve discussion, corresponding to the two elements which are central to the notion of flagrancy: immediacy in time and publicity. The first element is apparent in such phrases as “has just committed the offence, “after it has been committed, “the police are *immediately* called, and “a cry...has been raised.” (Emphases added.) The obvious crucial questions are, How long a time is “after”? How soon is “immediate”? etc. If, two weeks after the commission of theft, the victim thinks he recognizes the offender walking on a public thoroughfare may he legally invite passers-by to chase the suspect and arrest him? Or does “after it has been committed” in Article 19(2) mean “immediately after...? Does Article 19(1) (in combination, always, with Article 50) authorize a police officer to arrest without warrant an offender who re-appears at the scene of the crime twelve hours after commission of the offence? twenty-four? forty-eight? The answering of such questions demands a line-drawing which is never easy.

- According to continental writers, flagrant offences require or permit the omission of such time-consuming formalities on three grounds: ***prevention***, ***detection*** and ***certainty***. Prevention applies where immediate arrest is the only way to prevent the offender from carrying off the fruits of his crime. Detection refers to the need for arrest in order to stop the offender from escaping, and to preserve evidence. Certainty refers to the fact where an offender is found “red-handed” there is no possibility that he is innocent, so there is no need for such judicial safeguards as a warrant.

- The second element of flagrancy, that the commission of the offence or its aftermath be in some sense “public,” is apparent in such requirements as that the offender be “found” committing or attempting to commit the offence, that he be “chased by witness or by members of the public, that a “hue and cry has been raised, that the police have been “called to the place where the offence has been committed, or that a “cry for help has been raised” from the place of the offence. (Emphases added.) The policy allowing free arrests in such cases can be justified, not only by the added certainty which “publicity” lends, but also, often, by the need promptly to **restore disturbed public order and tranquility by removing the cause from the scene**. Such prompt action might also be necessary, in some cases, **to avert further public disturbance in the form of lynching or other violence committed by the offender or his pursuers**. Thus it is easy to understand why the concurrence of a “public” offence, together, frequently, with an opportunity to terminate a resulting disturbance while it is in the course of happening, should qualify as an exception to the rule requiring prior court approval of all arrests.

Police Investigation

- **Relevant Laws**

- Art 3, 5, 8, 9, 11, and 12, UDHR, Art 9 and 14, ICCPR
- Art 16-21, 26, 32 FDRE Constitution, Art 12, 22-31, CPC
- Investigation is required to substantiate the information pertaining to the commission of crime. The police have to undertake **interrogation to the suspect** as well **as witnesses; gather real evidence**, such as exhibit, finger print, etc. In the process, the police have to refrain from illegal activities leading to the rebuttal of the evidence in court.
- It has to avoid the use of the “third degree” to elicit information from the suspect and witnesses. Otherwise, the fate of evidence collected violating the rights of persons might be rejection.
- In addition, the police could face administrative, civil, and criminal sanctions.

- While taking information as well as examination of witnesses, the police have to act in such a way that it is possible to **protect the rights of innocent** persons. To the extent possible, the informant or the witness has to **explain the facts** taking any kind of responsibility that might follow. To achieve this purpose, the police have to register the facts known to the informant or the witness acquired through the five senses. Unless the witness is expert, **it is wrong to take the mere opinion of a witness**. For example, the informant or the witness should not be allowed to say that I know the commission of a crime and who did it. One has to state the facts as they are acquired through the five senses. **Arriving at a conclusion based on the facts obtained is the business of the competent authorities.**
- Thus, the police have to handle criminal investigation with due care not to by pass legal restrictions in place to protect the rights of innocent persons and suspects. Attention has to be given for both the means and the end of the criminal justice system.

Confession

Relevant Laws

- Art 3, 5, 8, 11, and 12, UDHR
- Art 7, 9, 14, ICCPR
- Art 18-19, FDRE Constitution
- Art 27, 34 and 35, CPC
- Art 424, CC
- Art 20 and 22, 2027-2065, Civil Code

The right to remain silent

- At its most basic level, the right to remain silent is designed to protect individuals against forced confessions obtained through torture, threats, or other undue pressures.
- It also means, however, that the accused can remain silent throughout the pretrial or trial phase of his or her criminal proceedings.
- In other words, the state must prove that an individual is guilty without the help of that individual.

- **The Right to Remain Silent (Civil Law)**
- In addition to requiring the **presence of an attorney**, French law requires that the accused be **informed of his or her right to remain silent** during the pretrial proceedings. This right, so integral to the adversarial system, represents another modification of the inquisitorial procedure. However, it does not have the stature that the similar right has in common law countries, and the presumption on the part of all parties is that the accused will cooperate in the investigation by answering questions and raising points that might help in the defense.
- At the same time, except in minor cases, the accused has to be proven guilty through the entire process of developing a dossier and going through a trial. If the accused chooses to make a statement at trial, he or she is not under oath, as in common law procedure, and is not subject to cross-examination. Any confession in the pretrial or trial process is treated as part of the evidence included in the dossier. This is a major difference from many common law countries, especially in the United States, where plea bargaining is the norm.

Coercive interrogation: ineffective and unlawful

- Improper methods of police interrogation are known to every country in the world. And everywhere, it is agreed that an accused's confession of guilt which has been procured through ***physical violence, psychological intimidation, or improper inducements or promises cannot be considered in evidence against him at trial***. The primary reason why involuntary confessions are excluded from evidence is that they are **unreliable** indices of truth: men have been known to admit crimes of which they are innocent, simply to escape the pain of torture or to obtain an irresistible benefit.
- The exclusionary practice also expresses society's condemnation of police "third degree" methods, which not only violate the accused's ***privilege against self-incrimination***, but, by inflicting harm on one merely suspected, not convicted, of crime, nullify his constitutional right to the ***presumption of innocence***. Thus the practice serves purposes other than the mere need to decide cases upon trustworthy evidence: by removing the ultimate incentive it serves to discourage the police from using illegal questioning methods.

- In light of these considerations it is understandable that Ethiopian law frowns severely upon the use of coercion against persons being investigated under suspicion of crime. The CPC states quite clearly that *“no police officer or person in authority shall offer or use or make or cause to be offered, made or used any inducement, threat, promise or any other improper method to any person examined by the police.”* Violation of this command subjects the police officer to both civil and penal sanctions. And, of course, the courts do not allow into evidence confessions which have been obtained by force.

- The Ethiopian approach; Art 35

What is the purpose of this article? In view of its strong similarity to section 164 of the Indian Code, it is unquestionable that the drafters of Ethiopian's Code were to some extent looking towards the Indian system. And in Indian law, as we have seen, the reason why the magistrate is given power to record confessions is that only confessions so recorded are admissible in evidence at trial. It was the intention of drafters of our CPC, I submit, to require all confessions which the police wish to have proved at trial, recorded and certified "voluntary" under Article 35. Confessions not so recorded should be inadmissible against the accused, as they are in India.

- Miranda v. Arizona
- The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege
- In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one...

- To summarize... He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.

Search and Seizure

Relevant Laws Art, 12, *UDHR*, Art 17, *ICCPR*, Art 26, FDRE Constitution, Art 32-33, CPC

Search and Seizure

- Though interpretation may vary, this right usually requires law enforcement to obtain a search warrant before engaging in any form of search and seizure.

- Like the case of arrest, search and seizure have to be undertaken **only by the order of the court.** It has to be also ***executed properly.***
- But, it is possible to effect search and seizure in certain justified circumstances with out search warrant.
- The Constitution devotes one third of its part to the protection of human rights. Given the value attached to the cause of human rights, it seems justified to seriously scrutinize and reject illegally obtained evidence. Otherwise, the protection of human rights becomes exposed to risk

- Therefore, the procedure of search and seizure has to be carried out with due care being accorded to the respect for human rights. The mechanism to enforce the rules pertaining to search and seizure is exclusionary rule.
- ***Fruit of the poisonous tree*** should be applicable. This might discourage the police from resorting to illegal means to secure legal end. The end should not justify the means. The police should also be liable administratively, civilly as well as criminally.