

Criminal procedure code which is the counterpart of civil procedure code has many constitutional provisions. Articles 10, 13, 15, 16, 17, 18, 19, 20, 22, 25, 26, and 27 of the constitution contain provisions related with criminal procedure and talk about criminal justice. From these articles, we can understand that criminal procedure is a constitutional procedure. It is designed not only for the proper enforcement of penal law but also for the proper enforcement of constitutional provisions. There are two models of criminal procedure. The first model is said to be crime control. This model exerts less regulation or restriction against government or police power. It is mainly designed for public interest. Because, the security of the public comes first being one of the main tasks that the government is supposed to do. The second one is said to be due process model. It is a model by which more restriction is imposed against police power. This model is designed for presumption of innocence. Due to presumption of innocence of individuals, it exerts more regulation upon government power in order to protect the individuals' liberty. The power of the police and the prosecutor is subject to limitations the main of which are the rights of the suspect and the accused. Therefore, there must be certain rules and requirements such as the right to privacy, the right to bail, the suspect's right to liberty, privilege against self-incrimination and so forth which need to be complied with during investigation, prosecution and adjudication of offences. The point where to draw the balance between the two models is a matter of politics not of the law. For example, Vagrancy control proclamation, anticorruption proclamation and antiterrorism proclamation have widened the power of the government and limited the liberty of individuals. All these proclamations are the result of politics. Unlike these proclamations, the law of criminal procedure and the constitution tend to follow the due process model. But, truly speaking, the practice tends to be more of crime control as opposed to the law of criminal procedure and the constitution. In our country, law and practice have never matched to each other. The

constitution which is more of due process model has not ever been applicable;and hence, it has marginal significance.

The efficacy of criminal procedure is determined by the fact when the innocent should be acquitted and when the guilty should be convicted. These facts are the genuine outcomes of efficient criminal procedure. Therefore, we say that criminal procedure is effective when the innocent is acquitted and the guilty is convicted. How can we measure the effectiveness of criminal procedure? The criminal justice administration policy talks about how to make the criminal procedure effective through retrial measure whenever we face procedural irregularities. But, we must take note of the fact that it is simply a policy; hence, it is not that much binding to be applied by lawyers and courts. Lawyers deal with only facts and rules not with policies. In order to give effective judgment, the ingredients are facts, law, evidence and discretion.

The effectiveness of criminal procedure can be increased by raising direct cost on police,public prosecutor and courts. By so doing, we can decrease the moral cost and increase public confidence upon the law. Therefore, a strong allocation of budget upon the above entities is so important for the achievement of effective criminal procedure. Secondly, for a criminal procedure to be effective, the innocent should be acquitted before the court gives judgment and the process should be as short as possible. The fact that there is no evidence does not necessarily imply the existence of innocence.

Setting justice in motion refers to how cases are initiated. The criminal justice system is like machinery. It is operating now and then without any stoppage. Even if an initiated case is finally decided after the lapse of a long judicial process, another case will take the place thereof.

The special part of the criminal code has two types of offences. One of them is compliant offence. Compliant offences are minor offences; and they are more of private in nature. They predominantly affect the individual's interest. The law tries to balance the interest of the public and the individual. Were the law not balancing the interest in between, compliant offences could have been instituted only by the state. Until the victim complains, the state has no authority to investigate the offence.

The other type of offence in the special part of the criminal code is non-compliant offence. Non-compliant offences are serious crimes; the state initiates the investigation thereof. No choice is given for the victim to prosecute or not. Good examples are rape, theft and murder. In some cases of non-compliant offence, everybody is duty bound to report to the police the commission thereof(11/2). But, it is an exception. In the case of non-compliant offence, what is being done is accusation. The law states that anybody has the right to accuse whenever the commission of non-compliant offence comes to his attention. But, this right is single sided; it does not bear duty on its other side. Therefore, even if a person fails to accuse whenever the commission of non-compliant offence comes to his attention, as a principle, he is not at fault for he has no duty to do so. The exception is that in some cases, everybody has the duty to report to the police whenever he is cognizant of the commission of certain non-compliant offences.

NB. Accusation and compliant have the same purpose in practice. Compliant offences are instituted by the victim or by other persons interested therein. In the case of non-compliant offences, the police, on his own initiation, carry on investigation and institute an action. But, at the end of the day, both have similar purposes.

The period of limitation for serious (non-compliant) offences is long while that of minor (compliant) offences is short.

Accusation is any information given to the police. In the case of compliant offence, the individual has the right to withdraw the complaint at any time of proceeding before judgment is given. This is because, the interest is for the individual not for the public. Whenever an offence is compliant, the provision of the special part of the criminal code dealing with it is written as "punishable upon complaint".

What form does accusation or complaint have? Article 14 provides that (1) any accusation (Article 11) or complaint (Article 13) shall be reduced to writing by the person to whom it is made and when completed shall be read over to the complainant who shall sign and date it. (2) Where an accusation or complaint is made by more than one person (Art. 219 Penal Code), all such persons shall sign it. The form has to be reduced in writing and signed by the complainant. But, the practice is on the contrary.

NB. The complaint should be specific. It has to give detailed information as to the identity of the offender. There is no complaint to an unknown offender. This is not the case for accusation or serious offences. One can accuse even if the offender is unknown. Article 12 deals with anonymous accusation. It reads, Anonymous accusations which disclose serious breaches of the law and are on the face of them circumstantial and credible shall be investigated by the competent police authorities in the manner

prescribed by Art. 22 ETseq with a view to ascertaining the truth or otherwise of the accusation. Anonymous accusation is an accusation without disclosing the name of the information giver. We have just said that accusation is a right for everyone. So, the person can make use of his right without disclosing his name. Moreover, the concern of accusation is not the identity of but the information obtained by the compliant. This is because, the interest, in this case, is mainly for the public. Article 12 of the criminal procedure code must be read cumulatively with article 23 of the same code. The latter article provides that Investigating police officers shall carry out their duties under this Chapter notwithstanding that they are of opinion that the accusation, complaint or information they may have received is open to doubt. Article 18 talks about false accusation or compliant. It reads, whosoever makes a false accusation or false complaint shall be liable to the punishments laid down in Articles 441 and 580 Penal Code.

Article 19 provides that (1) an offence shall be deemed to be flagrant where the offender is found committing the offence, attempting to commit the offence or has just committed the offence.

(2) An offence shall be deemed to be quasi-flagrant when, after it has been committed, the offender who has escaped is chased by witnesses or by members of the public or when a hue and cry has been raised.

The other point to be dealt with here is the issue of flagrant offence. Flagrant offence occurs a) when the offender is found committing the offence, b) attempting to commit the offence or d) has committed the offence (the offence has just completed). But, the last type seems to be more complex for the fact that it would be difficult to determine as to how length of time is appropriate to establish flagrant offence. This is because, flagrant offence has to be more approximate in terms of time and place to committing or attempting to commit the offence. The time gap between the complete offence and the arrest there must be short and measurable in minutes. Offences under article 20 are said to be assimilated not to flagrancy of committing or attempting to commit the offence but only to

complete flagrant offence. Because, according to article 20, An offence shall be deemed to be flagrant and to fall under the provisions of Article 19 when: (a)the police are immediately called to the place where the offence has been committed; or (b)a cry for help has been raised from the place where the offence is being or has been committed. One of the actions taken in the case of flagrant offence is to arrest the suspect. The purposes for so doing are to maintain law and order and to preserve evidences. In this case, the arrest may be effected not only by the police but also by private citizens. Article 20 is so redundant that putting it as an independent article is of no value. Because, it has already been expressed under article 19; and in both cases, the time gap is measured in minutes. But, for assimilated cases to be flagrant, the suspect must not be out of sight.

Investigation is a process of fact finding. Activities under investigation are conducted by the police. Investigation is the second step next to accusation or complaint. We have already said that Accusation is any information given to the police. This information can be obtained from the victim, any individuals (in the case of serious offences), and the suspect (in the case of flagrant offence). After getting the input from the aforementioned individuals, the next step, investigation, shall follow. Investigation is a fact finding process. Activities under investigation include arrest, interrogation, examination of witnesses, seizure and search warrant. Once information is communicated to the police, the police have a duty to investigate even if the information given is open to doubt(23). Article 24 is a key provision relating to the issue under consideration. Article 24. — Recording of statement. After having recorded an accusation or complaint in the manner laid down in Article 14, the investigating police officer shall elicit from the person making the accusation or complaint all relevant facts and dates, the name or description of the offender, the names and addresses of principal witnesses and all other evidence which may be available and shall record them. All these inputs may not be necessarily found and recorded cumulatively. For example, relevant facts and date may be necessarily recorded; but, the name and description of the offender may not be recorded as such in the case of unknown offender(15). Article 25.—summoning of accused or suspected person. Where the investigating police officer has reason to

believe that a person has committed an offence, he may by written summons require such person to appear before him. According to this article, the police can issue summon whenever he has reason to believe that a person has committed an offence. The police have received relevant facts and dates as per article 24. If the relevant facts received under article 24 have equipped the police with a reason to believe that a person has committed an offence, he can by written summon require the person to appear before him. If one receives summon, the consequence is arrest. But, as a wise police officer, the investigator, before issuing the summon, should have examined witnesses to build his evidence under article 24 and performed other investigating activities. In short, the police officer, under article 24, should have recorded not only the name and addresses of principal witnesses but also outcomes of examining them which are the subject-matter of article 30. If the police officer does not have a reason to believe that the person has committed the offence, he cannot arrest the suspect. This is because, even if the law is not clear, article 25 is talking about arrest by the police when viewed the other way. Whenever the summoned person appears before the police, the latter always effects arrest against the suspect. If the police, while he does not have a reason to believe that the person has committed the offence, arrests the suspect, his action will be unlawful thereby violating the liberty of the individual under article 17 of the constitution. In order to effect arrest against a person, there has to be a ground and a procedure given by law for the fact that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law (17/1 of the constitution) of the constitution. The ground is the criminal law which makes the offender subject to a certain penalty, restriction of liberty or death. For such ground to exist and effect arrest, the alleged offence must be punishable with death or at least with imprisonment. If the offence committed is punishable only with money, there is no need to arrest the suspect. The procedure can be to have a reason to believe that the person has committed the offence (25 of the criminal procedure code).

Indeed, under article 25, the suspect is not duty bound to appear. But, if he fails to appear, article 26 shall follow. Article 26.— Arrest. Where the accused or the suspect has not been arrested and the offence is such as to justify arrest or where the person summoned under Article 25 fails to appear, the investigating police officer shall take such steps as are necessary to effect his arrest.

(2) Where the arrest cannot be made without warrant, the investigating police officer shall apply to the court for a warrant of arrest in accordance with the provisions of Article 53. The beginning clause of article 26, the accused or the suspect has not been arrested, implies that article 25 is talking about arrest. The second clause of same, offence is such as to justify arrest, implies ground and procedure established by law to effect arrest. For example, if the offence is punishable only with money, it may not justify arrest. Article 26 does not authorize the police to effect arrest against the suspect. It simply allows him to take necessary steps or probably require the court to effect the arrest of the suspect. This article must be read in conjunction with article 56 of the same code.

Arrest is not defined under the law; but, it can be defined as restriction of personal liberty of individuals. Arrest is, as a principle, effected by the police; but, it can also be effected by private individuals in the case of flagrant offences. Arrest can be arrest through summons, arrest with warrant and arrest without warrant.

The other point is release on bond (ye police wastinna). Bond refers to payment securing bail or a sum of money paid to secure the release from prison of somebody awaiting trial, on the condition that the person appears on the date of the trial. Article 28.— Release on bond. (1) Where the offence committed or complained of is not punishable with rigorous imprisonment as a sole or alternative punishment; or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained of, the investigating police officer may in his discretion release such person on his executing a bond

with or without sureties that he will appear at such place, on such day and at such time as may be fixed by the police. (2) Where the accused is not released on bond under this Article, he may apply to the court to be released on bail in accordance with the provisions of Article 64. For release on bond, legal professionals such as Ato Simeneh believe that the seriousness of the offence does not matter. It is like suretyship in contract. If the alleged offence is not of rigorous punishment solely or alternatively or if it is doubtful that the alleged offence has been committed or that the summoned person has committed it, the police officer can, in his discretion, release the suspect on bond with or without surety. If the police officer decides otherwise and does not release the suspect on bond, the latter can apply to court to be released on bail on the basis of article 64. Article 64.— Application for bail. (1) A person under arrest may at any time apply for bail. (2) The application shall be made in writing and signed by the applicant, it shall contain a summary of the reasons for making the application and the nature of the bail bond the applicant is prepared to enter into. (3) An application for bail may be granted by any court. No one may be released on bail where the offence with which he is charged does carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying (63/1).

Arrest with warrant is dealt with under article 52 and the following. Especially, article 54 is the key provision relating to the issue under consideration.

Art. 54.—when warrant of arrest to be issued. A warrant of arrest shall only be issued where the attendance of a person before the court is absolutely necessary and cannot otherwise be obtained. The wording of the law as “attendance of a person before the court” under this article seems to be problematic. It is clear that the police officer who is in need of warrant apply to the court mainly for investigating purpose. Because, as we have seen before, arrest is one part of investigation that may be conducted by the

police. Therefore, if the arrest of the suspect by the police is necessary for carrying out investigation, the law must have been written as when the attendance of the person before not the court but the police is absolutely necessary and cannot be otherwise be obtained. Because, as we've just noted, arrest is one part of investigation and investigation is duty of the police while trial is that of courts. In short the word "court" must be replaced by the word "police" to make the law effective and just. The phrase "absolutely necessary" must be interpreted very leniently. If it is interpreted strictly, there will be no instance for warrant to be issued. For example, Even if the defendant is not to appear before the police or the court for ever, trial in absentia is at least possible.

Whenever an accusation is made, the proper procedural order must be as follows. Article 12 or 13 must stand at the front and followed by article 14, 24, 30 and 25. Under the last article, the suspect may fail to appear. In such a case, if the offence needs arrest with warrant, the police will be directed to article 54 if the attendance of the suspect before the police is absolutely necessary and could not otherwise be obtained. Then, investigation report and investigation file shall follow.

Investigation report refers to activities made by the police and facts found. Investigation file refers to sets of documents and other evidentiary materials such as exhibits.

Arrest without warrant, article 21, 49 and the following. Compliant offences are subject to simple imprisonment from 10 days to 3 years. In some exceptions, it may extend to 5 years. According to article 50, not only the police but also any individual can arrest a suspect without warrant provided that the offence is flagrant. Article 21/2 and article 50 are contradictory with article 13. Art. 21.— Effect as regards setting in motion of proceedings or arrest. (1) In the case of offences as defined in Article 19 and 20, proceedings may be instituted without an accusation or complaint being lodged, unless the offence cannot be prosecuted except upon a formal complaint. (2) An arrest without warrant may in such cases be made on the

conditions laid down in Article 49 et seq. under sub-article two, the phrase “in such cases” seems to include both compliant and non-compliant flagrant offences. Article 50 also provides that Any private person or member of the police may arrest without warrant a person who has committed a flagrant offence as defined in Article 19 and 20 of this Code, where the offence is punishable with simple imprisonment for not less than three months. Firstly, simple imprisonment may extend from 10 days to five years. Secondly, the main types of offences subject to simple imprisonment are compliant offences. Even if the fact is as have just been defined, article 50 allows arrest without warrant with any distinction between compliant and non-compliant offences. For this reason, we can conclude that article 21/2 and 50 are in conflict with article 13 of the criminal procedure code. There is also arrest without warrant only by the police. Art. 51. — Arrest without warrant by the police. (1) Any member of the police may arrest without warrant any person: (a) whom he reasonably suspects of having committed or being about to commit an offence punishable with imprisonment for not less than one year. (b) Who is in the act of committing a breach of the peace. (c) Who obstructs a member of the police while in the execution of his duties or who has escaped or attempted to escape from lawful custody. (d) who has evaded or is reasonably suspected of having- evaded police supervision. (e) who is reasonably suspected of being a deserter from the armed forces or the police forces. (f) who has in his possession without lawful excuse housebreaking implements or weapons. (g) who has in his possession without lawful excuse anything which may reasonably be suspected of being stolen or otherwise obtained by the commission of an offence. (h) who may reasonably be suspected of being a dangerous vagrant within the meaning of Art. 471 Penal Code. (2) Nothing in this Article shall affect the powers of other government officers to make an arrest without warrant under special provisions of other laws. Article 51/1(b) is a misplaced provision. If a person is found to be in the act of committing a breach of the peace, his act is an obvious flagrant offence. So, this provision

has been either misplaced or already included under article 19 and 20 of the code in question. Article 51/1(e) seems to be more justifiable of all provision of the same article. Under sub-article 2, custom authority, health officer and so forth can, unlike the law, inform the police to make arrest. Politically important and TV sensitive issues are in practice provided with warrant. But, the law allows arrest without warrant under article 51/1(a) in the case of political and TV sensitive issues for the fact that they are punishable for not less than a year. 64 percent of the offence in the criminal code is subjecting people to arrest without warrant. Art. 56.— Arrest how made.(1) The police officer making an arrest shall first establish the identity of the person to be arrested. (2) Where the arrest is made with a warrant, the police officer shall read out the warrant to the person to be arrested and shall show it to the person arrested if he so requests. (3) He shall then actually touch or confine the body of the person to be arrested unless there is a submission to his custody by word or action. (4) If such person forcibly resists the endeavors to arrest or attempts to evade the arrest, such officer may use all means proportionate to the circumstances to effect the arrest. (5) The provisions of this Article shall also apply to bench warrants. In order to effect an arrest, identity of the suspect must be established. Establishment of identity is more important in the case of arrest with warrant. Then, the police is expected to read out the warrant to the suspect and show it if he so requests. The suspect should not be touched or confined as far as he is willing to submit to his custody by any means. If an arrest is unlawful, anything which comes next is unlawful. Use of force under sub-article 4 does not mean legitimate use of force or self-defense. The force must rather be proportional to break the force that may be exercised by the suspect. Use of proportionate force to the power exerted by the suspect is a matter for criminal procedure law; legitimate use of force is a matter for criminal law.

1. Accusation and complaint shall be made to the police or public prosecutor. The police officer or the public prosecutor or any other

person authority of article 17 to whom the accusation or complaint has been made shall reduce it into writing and read it over to the complainant who shall then date and sign it. There are also cases where the police officer himself observes the commission of an offence which are said to be flagrant. In this case, investigation begins with the arrest of the suspect. 2. Investigation is said to begin when the information is communicated to the police. Investigation proceeding is a proceeding for the purpose of gathering evidence to reach a decision. It consists of the arrest of the suspect, interrogation, search of the person and premises of the suspect and examination of witnesses and view of things and other places. These may not be done in a single proceeding. 3. In non-flagrant offences, if the police has a reason to believe, he may call the suspect by summons. If the summoned person has appeared, he shall be interrogated by virtue of article 27/2. If he fails to appear, the police shall take the necessary steps to effect his arrest. 4. After the arrest, the police before conducting interrogation, must inform that he has the right to remain silent, and should he make any statement, such statement is recorded and produced as an evidence before his trial. 5. The police may conduct search with search warrant as the case may be. Should the court grant the warrant, it shall specify the place where the search is to be conducted and the item to be searched and seized. There are circumstances where search may be carried out with warrant. 1) where the offender is followed in hot pursuit and enters premises; or disposes of articles or the subject-matter of an offence in a premises and when information is reached to the police that an item relevant to serve as evidence is to be concealed and etc. a) when the offence is punishable with more than three years imprisonment; b) when the police believes that by reason of delay in obtaining search warrant the articles are to be removed. 6. Examination of witnesses. 7. Article 28 shall follow. But, this does not work for flagrant offences. Under article 28, If the suspect is not released for whatever reason, the suspect has the right to appear before

a court within 48 hours. The court will either release him on bail or remand him into custody. 8. The arrested person has the right to be released on bail. The court then may consider granting bail depending on the nature of the offence and character of the offender either on the application of the accused or in its own motion. If the offence is a non-bailable, it is not the decision of the court but a matter of the law. If the person is not likely to appear on such day as may be fixed by the court or is likely to temper with evidence or is likely to commit further offences, the court may deny him bail. The police may not complete investigation within 48 hours and hence, he may request the court for a remand to complete investigation. The court after examining the evidence produced by the investigating police officer, it may grant remand if it is satisfied that the suspect may tamper with evidences. Remand is granted only for a maximum of 14 days on each occasion. Then, the police has to complete investigation without unnecessary delay. He shall enter all the information which are accessible to him in the investigation diary or file and investigation report day by day. Then, he shall forward the investigation diary and report to the public prosecutor. 12. Upon receipt of the investigation report, the public prosecutor may decide that further investigation be conducted or preliminary inquiry be held or close the investigation file or refuse to institute charge against the suspect. Preliminary inquiry is a judicial process where the public prosecutor has his evidence recorded until the day of the trial. If the evidence is testimonial evidence, the witnesses shall enter bond that they will appear on such day and hour of trial as may be fixed by court. Pre inq is mandatory in the case of grave offences such as robbery and first degree murder and it is optional in some offences. Upon receipt of the pre inq and inv report, the pub pro has the power to decide whether to prosecute. His power is subject to certain limitations. He cannot charge if the suspect died, if the suspect is a young person below the age of 18, or if the offence is subject to amnesty or pardon or the suspect is not prosecuted

as provided under any special law or public international law for there is a diplomatic immunity. In other cases, he will decide based on the sufficiency of evidence. If there is sufficiency of evidence on the eye of the public prosecutor, he shall frame a charge and file it before a court of jurisdiction. A charge has four parts, The caption, the statement of the offence, the particulars of the offence and the list of evidence. In terms of content, emphasis is placed on the particulars of the offence. It has the name of the accused, the offence with which the accused is charged and its legal, material and moral elements, time and place of the offence, the law and the article violated, and if appropriate, the person or the thing in respect of whom the offence has been committed. The receipt of information by way of accusation or complaint and the commencement of investigation is said to be setting justice in motion. Accusation is information given to a competent authority by any person (police and the public prosecutor) about the commission of an offence. What if the informant refuses to sign under article 14? Is it possible to extend the application of article 12 to article 14? In the case of complaint offence, if the complainant refuses to sign the complaint, we can infer that he does not want that the offence be investigated and the offender be prosecuted. The complainant may lodge his complaint against unknown offender. Consent is a precondition. 1. Public interest are not at stake as the offence does not endanger the society at large. 2. The institution of the suit 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 the society to certain facts such as his spouse's unfaithfulness, and so forth which he does not want to be known publicly. Complaint offence has to be lodged before the shorter period of limitation of three months as of the day on which the injured or his legal representative came to know of the criminal act unless he can show that he is materially incapacitated. The period of limitation shall go as of his material incapacitation ceases to exist. Unlike article 15, Article 12 shall not apply

to compliant offence. Article 18 of the cpc is here to encourage genuine informants and deter false accusation and false compliant.

Chapter three. Interrogation and confession.

Both Article 27 and article 35 deal with interrogation and confession. But, interrogation under article 27 is conducted by the police and hence extra-judicial while that of article 35 is conducted by court and hence judicial or within a court. Before the police interrogate the suspect, he has to tell him

- 1) that he has the right to remain silent;

- 2) his answer is recorded and brought before court as an evidence against him;

See Miranda versus Arizona case. For Substantial number of cases, evidences are obtained through interrogation or confession by the police under article 27. This is because, in practice, the police do not tell the suspect that he has the right to remain silent. unlike the practice, the constitution states that when a suspect is arrested, he should be told the reasons of his arrest by the language he understands. If, in any case, we exclude the confession obtained by virtue of article 27, the possibility of winning the case as a defense council is 75 percent. In the suit against TamiratLaine, the accused argued that there was psychological coercion. The supreme court, however, argued that the defendant did not prove the existence of coercion and his confession is supported by other evidences. Courts' decision must be based on veracity, true statement. If we do not exclude the confession by virtue of article 27, the possibility of losing the case as a defense council is 75 percent.

After a court has recorded any statement or confession made to it at any time before the opening of a preliminary inquiry or trial, A copy of the record shall then be sent to the court before which the case is to be inquired into or tried, and to the public prosecutor. Powers or offences entertained before the high court are subject to preliminary inquiry by the lower court. The court under article 35 can be any court. The evidence obtained under article 35 can be preserved by the public prosecutor as

evidence obtained through preliminary inquiry. The confession under article 27 can be subject to impeachment invoking coercion while the confession under article 35 can never be so. Confession given to the court cannot be excluded. In order to exclude confession under article 27, the allegation of the suspect "I am coerced" is enough and no more evidence should be sought to this effect. This is the right provided under article 13, 18 and 19/5 of the constitution. All Federal and State legislative, executive (in which the police department is included) and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of human rights(13 of constitution). Article 19/5 of the same document also provides that Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible. The right to remain silent is to be silent about the suspected crime. It does not include to identify one's identity. Even, the suspect has the right to remain silent without expressing his identity. The police may illicit it in another way. The allegation of the suspect "I have not committed the crime" does not amount to remain silent. The right to remain silent may even extend to article 140 and 142 up to not defending oneself.

Searches and seizures are conducted to find evidence. They are conducted on persons and premises. Search on arrested persons is conducted without warrant for evidence purpose. Search on warrenton premises may be general or specific in time, item and place. If search warrant is unlawful, the evidence obtained is also unlawful and inadmissible. Search without warrant is mostly conducted in pending cases. Search without warrant is broader than search with warrant for there is no specificity in place, item and time. Search for security purpose is termed as frisk. There is consent based search. But, the law does not prohibit such search. If one is allowed to waive his right, he is able to

waive it. Bag is part of the person. Vehicle is neither part of the person nor it is a premise or part of premises. If the vehicle is parked in a premise, it cannot be searched for we have no legal base. Even if there is no legal base, in practice, police officers search vehicle.

Positive liberties are restricted on the basis of ground and procedure(17) of the constitution. Frisk is not done for investigation of evidence but for security. There is no legal base for frisk.

Vagrancy proclamation, anticorruption proclamation and antitererism proclamation have modified the criminal procedure in their respective areas. The ATP has modified the criminal procedure with respect to investigation and admissibility of evidence. For example, search of vehicle is justified to prevent terrorist's acts. In the case of ACP, the right to remain silent is modified. Search of vehicle is still not possible. In the case of vcp, the right to bail is abolished. In the case of corruption, the right to bail is denied if the crime is punishable with 10 and more years. In the case of ATP, hand writing and voice detection are allowed. Under article 34, the suspect's physical examination is compulsory. The victim's physical examination is optional.

In practice, the police do not release suspects on bond for the latter do not reappear. Instead, the police use article 29.

Article 19/6 with respect to right to bail provides that Persons arrested have the right to be released on bail. In

exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person. This sub-article sets two requirements, law and court, to deny bail. Bail is denied when there is law and court to that effect. Article 63 of the Cpc, article 6 of the vagrancy control proclamation and article 4 or 6 of the antitererism proclamation deny the right to bail. All these articles are contradictory to article 19/6 of the constitution. Denial of bail must not be only by law. The above laws do not respect discretionary power of courts. They should have left rooms for courts to decide by way of their discretionary power. The precise provision is that of article 67 of the cpc. Bail is conditional release to come back to his trial. Remand (marefia bet mekoyet) refers to sending a person back to jail. Why is bail given? Article 6 of the vcp reads, 1) Any Police may arrest without warrant any person who may reasonably be suspected of being a vagrant.

2) The police shall bring the arrested suspect before a court within 48 hours-of his arrest. The time reasonable taken to bring the suspect to the court shall not be included.

3) A person who is reasonably suspected of being a vagrant in accordance with Article 6(1) of this Proclamation shall not be released on bail.

Bail is justified due to presumption ofinnocense. Bail is given to make the arrested person to work outside, To decrease cost of imprisonment and custody and help dependant if he has.

Remand reasons. 1. bail right with respect to the arrested person such as vagrant, terrerrst and so forth is not qualified even if investigation is finalised. 2. To finalise the investigation process. Back load or clearance rate

of courts. Civil case, 80 percent. Labor case, 60-70 percent. Criminal case, 45 percent. Article 63 reads, (1) Whosoever has been arrested may be released on bail where the offence with which he is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

(2) No person shall be released on bail unless he has entered into a bail bond, with or without sureties, which, in the opinion of the Court, is sufficient to secure his attendance at the court when so required to appear.

(3) Nothing in this Article shall affect the provisions of Art. 67. Art. 67. — Bail not allowed

An application for bail shall not be allowed where:

(a) the applicant is of such nature that it is unlikely that he will comply with the conditions laid down in the bail bond;

(b) the applicant, if set at liberty, is likely to commit other offences;

(c) the applicant is likely to interfere with witnesses or tamper with the evidence. 63/1 talks about first degree homicide. NB. Punishment from 10 to 20 years does not mean 15 years imprisonment. Since 11, 12, 13 and 14 are possible years, it is not said to be more than 15 years.

In the case of qualification for bail, it is almost impossible for courts to predict that suspect may or not appear. Many courts take into consideration whether the suspect has permanent work or not, whether he is married or unmarried, whether he is a student or farmer and so forth. These requirements however contradict article 25 of the constitution. Courts should either use other requirements or if they use these requirements, they should not make them clear in their judgment writing.

The negative liberty of a person should be intruded into by the state restrictively based on the legitimate interest, absolute necessity and etc. Positive liberty could be intruded into by the state much more than the negative liberty such as the right to privacy. The purpose of bail is to balance liberty and attendance. Whenever we decide the right to bail, we

should take into consideration the likelihood of the appearance of the suspect and presumption of innocence. While denial, we should reason out why we do not grant bail. The requirement of likelihood to commit other offence should not be a ground to deny a bail. To prevent the commission of a crime is not the duty of courts but the police. Denying bail for future acts is absolutely unrealistic and has no ground under article 17 of the constitution. The criminal law does not have provision to punish someone for unrealized future acts despite a procedure to that effect. The requirement of "the applicant is likely to interfere with witnesses or tamper with the evidence" does not still seem to be valid. If we follow the order of article 11 or 13, 14, 24, 30 and 25, there is no likelihood to interfere with witnesses or tamper with evidences. Because, we have already known or identified the evidence. Even, if we do not finalise collecting evidence, The time taken to collect evidence from witnesses may be not more than three days by the police officer. Therefore, to deny someone the right to bail has not to last more than three days. The legitimate ground applicable to bail is only that of article 67/1(a).

according to article 59/3, No remand shall be granted for more than fourteen days on each occasion. By 14days, we do not refer to working days. This article is applicable with article 19/4 of the constitution. All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. Where the interest of justice requires, the court may order the arrested person to remain in custody or, when requested remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial. The clause "remand him for a time strictly required to carry out the necessary investigation" is the one to be focused on.

Presumption of innocence is manifested into two ways, through bail and burden of proof. Public prosecutor has the burden to prove each element constituting the crime. Therefore, if the burden of proof is shouldered by the public prosecutor, the right to remain silent is respected. Speedy trial should be considered when we are remanded(19). Bail may be given without application even if the law does not say so. If not, we should apply with a piece of paper to that effect. Bail may have the nature of money or surety. According to model 85, they are purely contractual. Amount of bail is decided on the basis of the seriousness of the crime, resource of the accused and the guarantor, likelihood of the appearance of the accused and danger to the public(69). Some teachers believe that the latter two grounds are irrelevant.

Remedies for Irregularities during investigation. The first one is civil and criminal responsibility of the police or the state. Civil or tortious liability of the police entails state responsibility. The criminal responsibility is for the police not for the state. The second one is disciplinary measure to be taken against the police. The third one is habeas corpus. Habeas corpus is a remedy only for unlawful or unnecessarily extended arrest. For example, Arrest may be unlawful if it is effected with no reason to believe. Anyone can bring application for habeas corpus to the court. The arresting police officer shall prove the reason for the arrest and extension thereof before the court. If the police cannot prove, the court shall automatically release the arrestee. In the case of unlawful arrest or habeas corpus, there is no remand. The fourth one is exclusion of evidence. If the evidence is collected because of improper investigation, it shall be excluded(19/5 and 9 of the constitution. Evidence may be confession, document and exhibit. The burden of proof that confession is lawful lies upon the public prosecutor(13/1, 19/5 and 18 of the constitution). For arrest, all the remedies listed above shall be applicable. For other irregularities, it is dependent upon particular circumstances.

Why is the public prosecutor duty bound to prove that confession is lawful? 1. Article 13/1 makes him duty bound to do so. 2. Place, time and manner of confession is determined by the state. However, the practice is that the

arrestee has the burden of proof that he has unlawfully confessed. Even if confession is proved to be unlawful, evidence is not excluded in practice.

The right to have legal council is allowed for arrestee as of his detention if he is able to cover the cost thereof. Legal council to be hired by the state is only for the accused.

Article 37/1 reads, Every police investigation under this Chapter shall be completed without unnecessary delay. The phrase, unnecessary delay, is a proper drafting. Fixing time such as six months or one year is not advisable. For example, investigation for organized crimes, murder and corruption may not be completed within six months while other crimes do not take six months.

Art. 38. — Action by public prosecutor on receiving report.

On receiving the report under Art. 37 the public prosecutor may:

- (a) prosecute the accused on a charge drawn up by him under Art. 109-122; or
- (b) order that a preliminary inquiry be held under Art. 80-93; or
- (c) order further investigations; or
- (d) refuse to institute proceedings under Article 42. Under this article, the order must be “C”, “B”, “A” and “D”.

preliminary inquiry is to mean “kidme-kismermera”. The purpose of preliminary inquiry is to preserve the public prosecutor’s evidence in Ethiopia. The original draft was to preserve evidence of the suspect and the public prosecutor. Preliminary inquiry is necessary for first degree murder and armed robbery. As to scope, It is not carried out in every case. Secondly, It may be carried out if the offence falls under the jurisdiction of the high court and if the public prosecutor applies to that effect so as to preserve evidence. Other countries conduct preliminary inquiry for philany not for misdeminiers. (1) Where any person is accused of an offence under Art. 522 (homicide in the first degree) or Art. 637 (aggravated robbery) a preliminary inquiry shall be held under the provisions of this Book:

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

(2) Where any person is accused of any other offence triable only by the High Court no preliminary inquiry shall be held unless the public prosecutor under Art. 38 (b) so directs.

(3) The provisions of this Book shall not apply to offences coming within the jurisdiction of the High Court which have been committed by young persons. Article 92 shall be seen in line with 20/4 of the constitution. Article 93 shall be seen in line with 109. Article 93 is not for indefinite time but for 15 days only. The limit of 15 days can be inferred from article 109. Article 93 is the power for the court which sees preliminary inquiry not for the court which gives adjournment. After the lapse of 15 days, habeas corpus will be applicable.

Closure of police investigation presupposes some communication between police officer and the public prosecutor. Art. 42. — Cases where proceedings shall not be instituted

(1) No proceedings shall be instituted where:

(a) the public prosecutor is of opinion that there is not sufficient evidence to justify a conviction; or

(b) there is no possibility of finding the accused and the case is one which may not be tried in his absence; or.

(c) the prosecution is barred by limitation or the offence is made the subject of a pardon or amnesty; or

(d) the public prosecutor is instructed not to institute proceedings in the public interest by the Minister by order under his hand.

(2) On no other grounds may the public prosecutor refuse to institute proceedings. Sub-article 1(d) is deleted. Sub-article 1/c shall be put under article 39. Sub-article 1(b) shall be put in the other portion of the code, trial

in ausencia(161). Only sub-article 1(a) is a proper provision put in its proper place. Sub-article 2 is a mandatory provision.

There are two types of proceedings, mandatory and discretionary. The criminal policy adopts discretionary prosecution. It involves pre-bargaining of the public prosecutor with the offender. This pre-bargaining is becoming efficient; but, it may not be necessarily fair. In the case of Discretionary, public prosecutor does not go to court only because he has sufficient evidence. The opposite happens for mandatory prosecution. Sufficiency of evidence under sub-article 1(a) includes not only evidences to the offence or facts to the offence but also the defense evidence. For example, the accused may have affirmative defense. So, the public prosecutor should see the absence of defense on the part of the accused. In practice, the public prosecutor sees only facts to the offence. Sub-article 1(a) is supported by article 136/1 which reads, After the plea of the accused has been entered, the public prosecutor shall open his case explaining shortly the charges he proposes to prove and the nature of the evidence he will lead. He shall do so in an impartial and objective manner.

The other point to be discussed is the charge. Article 20/2 states that Accused persons have the right to be informed with sufficient particulars of the charge brought against them and to be given the charge in writing. Art. 108. — Principle.

- (1) No person may be tried for an offence other than a petty offence unless a charge has been framed in accordance with the provisions of this Chapter. The charge document has four essential parts. The first one is caption. To write caption, we put date and case number on the right margin of the paper. On left margin, court name. a bit down to court name, name of accuser and accused. This is caption. The second part is statement of the offence. We shall put type of the offence at the outset and then the law violated. Example of statement of the offence: murder contrary to article 139. When there are many counts, we put them first count, second count and etc. example, first count, murder

contrary to article 539. Second count, theft contrary to 664. Third count, rape contrary to 620. The third part is particulars of the offence(111). 1. Full Name of the accused. If he has several names or bywords, those names should be mentioned for identity is essential (56) by the police (128) by the court. The mention of so many names, if any, is beneficial in order for witnesses not to allege that they do not recognize him. 2. Material, legal and moral ingredients of the crime must be mentioned in number. The substantive law and the evidence must be matched. If we properly match the substantive law and evidence, we can negate the presumption of innocence. 3. Time and place of the offence. Defense of "alibi" is raised if we do not show the time and place of the offence. 4. Corpus delicti. That is the person or the property against whom the offence is committed. 5. The law and the article.

Article 112 shows the dangerous prepancy of the offender. The fourth part is list of evidence. untill recently, charge did not include list of evidence. But now, change is made to include list of evidence. Access or List of evidence helps the accused to know the creditability or character of the witness in his defense to make cross examination and so forth. These are contents of the charge.

Another point is alternative charge(113). During alternative charge, the statement of the offence and particulars of the offense shall be changed and the other two will remain unchanged. The public prosecutor may be doubtful whether the offence falls under article 539, or 540 or 541. In this case, he will bring statement of the offence and particulars of the offence about which he thinks probable and then bring alternative charge about which he is not certain. In practice, the public prosecutor put the grave one in advance. Therefore, if the public prosecutor prosecutes the defendant on the basis of article 539 first, the accused will be denied of bail. Note must be taken that all charges in this case are produced in one document. The court may punish the accused by changing article. Changing article and

punishing the offender for courts is possible when the offence or the alternative charge is much close to each other. Example, serious bodily injury by minor bodily injury. But not robbery with theft.

Article 114 must be seen in line with 138.

Caption is dealt with under article 117. Article 117— Joinder of offenders.

(1) All persons accused of having participated in whatever capacity in the offence or offences even at different times shall be charged and tried together.

(2) Nothing in this Article shall prevent the court from ordering separate trials where separation is required in the interests of justice.

(3) Where several persons have committed different offences connected with the same criminal activity they may where necessary be charged and tried together. When there are several defendants accused in the same charge, we write the caption as defendant first, defendant second, defendant third and etc. the order shall be made on the basis of seriousness of the offence. The more serious one shall be mentioned first and the rest goes with the same logic. In the case of more than one charges, we write the statement of the offence and particulars of offence of count 1st and then statement of the offence and particulars of the offence of count second and etc. when we write particulars of the offence, we do not mention articles of the cpc. But, we should elaborate the facts of the statement of the offence by the substantive law. From the statement of the offence, we mention only the substantive law. We can say attempt to rape. We do not mention articles of participation; we simply elaborate it in the facts of the statement of the offence. Article 123 of the criminal code and articles 11 and 12 of the cpc are related with particulars of the offence. Article 27/2 is also related to List of evidence, documentary evidence, oral evidence and exhibit.

Errors and omissions. According to article 118, No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded as material and no charge containing such errors or omissions shall be

regarded as invalid unless they relate to essential points or the accused was in fact misled by such error or omission or justice is likely to be thereby defeated. Errors or omissions concern the first three elements or part of a charge. They do not concern the last element, list of evidence. Because, we can leave or add evidences in due course of the proceedings as opposed to civil proceedings. Example to error: misstatement of name, Abebe instead of Kebede. Time error in the particulars of the offence Example, January 1st instead of December 15th. Omission refers to not including the elements under article 111 and 112 of the cpc. If the error or omission is an essential element, or if it in fact misled the accused, or if it is likely to defeat the justice, the charge shall be invalid. Essential elements are those to be listed under articles 111 and 112 of the cpc. If the defendant is not assisted with a legal council, we can assume that the defendant is in fact misled. If he is assisted with a council, we do not assume that he is in fact misled. Likely to defeat justice means to mislead the court to capture the elements of the charge.

Remedies to errors or omissions are additions, alterations or framing a new charge. If the error is minor or not more substantive, additions or alterations will be made. If the error is substantial, we will frame new charge. The court may give 5 days for prosecutor to frame new charge. Where no new charge is framed under the provisions of Article 119, the accused shall be discharged. The law has not given time limit in which new charge is framed. The teacher suggests that five days is enough to frame charge. New charge shall be prepared before judgment. New charge shall be prepared only for once when the suspect is in custody. If it is more than once, the suspect must be discharged. But, even if the suspect is discharged, the public prosecutor can continue preparing several new charges if they are to carry errors or omissions now and then.

Private prosecution(42/1(a)) is not practiced in Ethiopia. Because, The complainant is unable to bear the economic cost by himself. Secondly, the plaintiff is to obtain only moral satisfaction. Therefore, people resort to civil

action. The public prosecutor never gives authorization in practice even if he is requested. After authorization is given, it is like other criminal proceeding. The only difference is the cost of the proceeding to be born by the private accuser.

Jurisdiction of courts. Judicial jurisdiction of Ethiopian courts is dealt with under article 11 and the following of the criminal code. Ethiopian courts will have judicial jurisdiction, if the offence is committed in the territory of Ethiopia, or if there is Ethiopian interest or if the nationality of the offender or the victim is an Ethiopian. Ethiopian ships or aircrafts are considered as Ethiopian territory. In the case of interest, when Ethiopia is most affected by the crime, Ethiopian courts will have principal jurisdiction. When Ethiopia is less affected than the other states, Ethiopian courts will have subsidiary jurisdiction. In the case of principal jurisdiction, the criminal will be tried again in Ethiopia. In the case of principal interest or jurisdiction, there is no double jeopardy. The punishment he served elsewhere may be deducted. In the case of subsidiary jurisdiction, if the criminal is tried elsewhere, he will not be tried in Ethiopia. If he is not tried elsewhere, he shall be tried in Ethiopia.

Court structure in Ethiopia. Federal supreme court is established by the constitution. Federal high court and first instance court are established by two third majority vote of the parliament in due course. Article three of proclamation 25/96 provides law, parties and location to determine jurisdiction of federal courts. Law, federal law. Parties, from two or more different regions. Location, Addis Ababa and Dire Dawa. Article 55 of the constitution states that the parliament enacts penal law. Article 4 of the above proclamation lists the federal courts' powers. States do not have inherent penal jurisdiction but through delegated jurisdiction. State Woreda courts do not have penal jurisdiction by law unless the state enacts penal law. The practice is that woreda courts exercise penal jurisdiction.

Positive interpretation of article 4 is that article 4 of the proclamation shall not be delegated to state courts. The rest emanating from federal law are

delegated. But, in practice, article 3 is irrelevant for criminal case. The complicated nature of the crime is the requirement to demarcate the jurisdiction between the high court and the first instance court. The type of punishment is not the criterion. In civil case, the nature of the case and the pecuniary value is the criteria.

The supreme court should not have had trial jurisdiction for the right to appeal to be materialized. i.e. article 8 of the proclamation should not have been enshrined. Material jurisdiction in civil case is called jurisdiction over offence in criminal case.

If the elements of the crime are complex, the crime will fall under the jurisdiction of the federal high court. If they are straightforward, they will fall under the jurisdiction of first instance court. Example, robbery, since it is complex, will fall under the jurisdiction of the high court and theft will fall under the jurisdiction of the lower court.

The first schedule of the penal code allocates jurisdiction between courts. The high court has jurisdiction over cases falling under the jurisdiction of the lower court. No such a case in civil case. For example, in the case of more than one offences, the first and the second count may fall under the jurisdiction of the high court and the third and the fourth count may fall under the jurisdiction of the lower court. In this case, the public prosecutor can prosecute them all before the high court. Jurisdiction under article 13/2 shall be seen to related offences. The first instance court cannot take the same action as the high court does.

Fairness of criminal justice system. No criminal justice system is fair in the world for the reason that the accuser is the state and the defendant is a private individual. These parties are not on equal footing.

Procedural remedies. 1. Change of venue(106 of cpc). 2. Withdrawal or removal of judges (27 of proc 2596). Art. 106. — Change of venue.

Whenever it is made to appear to the High Court by application before a trial has started either by the public prosecutor or by the accused:

(a) that a fair and impartial trial cannot be held in any criminal court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this Article will tend to the general convenience of the parties or witnesses; or

(d) that such an order is expedient for the ends of justice or is required by any provision of this Code,

it may make an order against which no appeal shall lie to the effect that:

(i) any offence be tried by any court not empowered under the provisions of Art. 99-104 of this Chapter but in other respects competent to try such offence;

(ii) an accused person be committed for trial to itself.

The application to the high court must be replaced by the phrase “application to the higher court”.

Grounds for change of venue. 1. When there is no fair and impartial trial. If the crime is sensitive in that area, witnesses may be influenced by the society or be in difficulty to testify in the same area. 2. The ground of question of law of unusual difficulty is not applicable in criminal law. It may be applicable in civil case. In criminal case, the question of unusual difficulty arises on the presence of evidence not on the question of law. 3. General convenience is a sensible ground. It is for the parties and witnesses. 4. Expediency. For example, when court x is case loaded while court y is not, then it is possible to change venue from court x to court y even if the latter has no local jurisdiction. But, it is required to have jurisdiction over offence. The high court may change the venue to itself when application is made to it. According to Simeneh, The supreme court should not change the venue to itself. Because, it offends the right to appeal. If the convenience favors the defendant, decide for convenience and if the expedience favors the defendant, decide for the defendant. If both are equal, convenience will prevail.

B. withdrawal of judges. Grounds, 1. The judge's relationship with parties or advocates. It could be blood or marriage relationship. 2. If the judge may have seen the case. a judge of first instance court that was dealing with the case may be appointed to a high court or a public prosecutor with the same situation may become a judge. 3. When the judge has a case pending before either of the parties. 4. Other similar restriction for it is not exhaustive. When these conditions appear, the judge shall withdraw himself. Or the defendant may apply to that effect to the judge himself. If accepts the application, he shall refer the case to the next bench and remove himself. Or he may refer the case to other judges if they are three in number so that the only two judges see it. If the judge does not accept the application, the defendant shall apply to judicial administration council(JAC). The JAC's response is to take disciplinary action on the judge not the decision upon the case. The fate for the defendant, if he lost the case, shall be to apply for appeal. Other than this solution, the JAC does not give decision forcing the judge to remove himself. Change of venue is institutional procedure; And removal of judge is individual procedure.

Fair trial. 1. The right to legal council. The right to council is indispensable to create balance between the public prosecutor and the defendant. Because, Public prosecutor is a professional whereas the defendant is ordinary citizen. Ethiopian criminal procedure lies between adversarial and inquisitorial. For adversarial system to be effective, an advocate is essential. Legal council is necessary A) at the trial stage, b) at any time before trial. Trial hearing refers to hearing before a court of law. Any kind of trial hearing must be in open court. AA municipal court has the power to arrest, seizure, search and remand and confession(35). AA court has no venue to conduct open trial. But, it had to conduct issuing search warrant, remand, arrest warrant, confession in open court. Trial refers to the process from the beginning of a case to the end thereof. Trial in open court is important, A) for public to get information through media, B) for accused individual. Even if journalists are allowed to attend trial by the constitution, they are not

usually practically allowed. Open trial creates a moral coercion for the judge to be fair and accountable which is beneficial for the accused individual. Trial in open court is a process pending the case before the court. It is not one day trial process.

Substantive justice is an entitlement and procedural justice the means how the entitlement is disputed. There has to be means for procedural justice. One of such means is the right to legal council. Personal appearance is entitlement. If it is entitlement, it can be waived. The accused can be represented by legal council authorized by him. It is however for non-serious offences. For the first time, personal appearance is a requirement. He has to appear before the court in person and identify himself. After that, personal appearance will be entitlement. The right to council is a right from summon or in the case of flagrant offence from arrest to the end of a trial.

2. The right to speedy trial. Speedy trial is a speedy process since the initiation of the case, kemirmeraeskefird(19/4 of the constitution. This length of time can be inferred from article 19&20 of the constitution. Trial within a reasonable time(20/1 of the constitution is similar with speedy trial of article 19. Speedy trial is mentioned in the case of arrested person(19). Trial within a reasonable time(20) is mentioned in the case of the accused person. This indicates that speedy process is from arrest to trial, kemirmeraeskefird.

Speedy trial is, however, limited as a result of non-availability of resources. Article 37, 59, 109, 94 and 120-124 are provisions important designed for speedy trial. Remand is, however, subject to abuse for it has no limitation of how many times it should be given. If the teacher were a judge, he would give remand only for second time for the same reason, investigation. 7 days for the first and 5 days for the second. During remand, the judge has to negotiate with the police and ask the accused of his opinion as to the remand. In AA courts, there is no limitation how many times remand should be given.

If the requirement of 15 days under 109 is not respected, there is no charge. Adjournment is given for one week(94/3). Article 123.— Trial to be fixed.

When the charge has been filed under Article 109, the court shall forthwith fix the date of trial and cause the accused and the public prosecutor to be summoned to appear on the date and at the time fixed by the court. It shall take such steps as are necessary to secure the attendance of the accused, if in custody.

adjournment does not mean fixed date of trial. Compare 123 to 94.

3. Pretrial access to evidence(20/4) of the constitution. Pretrial access to evidence does not mean trial access to evidence. Article 20/4 of the constitution provides that Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court. The right to access evidence includes right to get evidence against them and right to produce evidence.

Article 91, 97, 143 of cpc and the charge itself talks about the right to access to evidence. Evidence is not admissible unless it is not accessed by the accused or his defense lawyer. If evidence is not given to the accused, he has the right to have adjournment to examine the evidence. This is one ground for adjournment. Evidence has to be credible. The accused may discredit some of the witnesses against him by,for example, alleging that they have personal problem with him. The accused and the counter witnesses should not be related persons and should not have personal problem in between. The accused may also attack that document 1 or 4 is forged and so on. He may say that document 6 is not signed by him. The accused can do all these if he has access to evidence and it is beneficial for cross examination.

Public prosecutor has to be impartial and objective(136). Remember GirmaWakgira. The public prosecutor is the first judge by examining evidence.

4. Presumption of innocence. It is not a true innocence but an assumption of innocence. Presumption of innocence is not presumption of facts. Presumed factsemanate from basic facts. Presumption of innocence is expressed in terms of A. when the burden of proof is on the public prosecutor. He has to prove each element of crime. Defendant has no a duty to prove it. He has a privilege against self incrimination. B. fair treatment and the right to remain silent. At each stage of trial, the defendant has to be treated fairly. Burden of proof of each element of the crime must be by the required degree. The required degree is beyond reasonable doubt.

Presumption of innocence is breached by the media (article 45 of the cc). in the case of crime by the media, knowledge and consent is presumed. No contrary proof is admissible. This contradicts the right to produce evidence. No presumption of innocence is in the case of crime of corruption by law. These are unconstitutional provisions.

No exact balance between the public prosecutor and the accused can be created other thanmitigating imbalance. because, no criminal justice system is fair in the world. But, we can make it close to fairness by applying the above methods.

the hearing next to fairness. The hearing is the attendance of the suspect before the court. It is not actual trial.

1. Attendance of the accused. Art. 127. — Attendance of accused.

(1) The accused shall appear personally to be informed of the charge and to defend himself. When he is assisted by an advocate the advocate shall appear with him.

(2) The accused shall be adequately guarded and shall not be chained unless there are good reasons to believe that he is dangerous or may become violent or may try to escape. The accused has to attend personally

along with his advocate if any and with his interpreter if he needs. If the accused does not appear, the court shall issue bench warrant. Bench warrant is issued not for investigation purpose but for attendance. Article 125 provides that Where an accused person or a witness, who has been duly summoned and there is proof of service of such summons, has failed to appear as required, the court may issue a bench warrant and such accused person or witness shall be brought before the court by the police.

2. Establishment of identity. We have to establish identity to create a link between the alleged crime and the accused. To do so, address, profession, trading type, age and name of the defendant must be expressed. Art. 128. — Verification of identity.

When the accused has been brought into the dock his identity, age and trade shall be established.

3. Ascertaining that the defendant received charge and evidence. This has to be done with sufficient time. The law is not clear as to the time sufficiency. In practice, it is given ten days. Legal council must effectively assist the accused. If there is no effective assistance, we can challenge the decision in case we are convicted. If a preliminary objection is not raised while it should or the reverse, we can say there is no effective assistance. In this case, no need to appeal. Appeal is a judicial process;so, it is made during the judicial error. Ineffective legal council is not a judicial error. In practice, there is no such right to challenge the decision in such a case in Ethiopia. The accused meets his council one day before the trial. Therefore, the council can request additional time. But, in practice, judges do not give time.

4. Reading of charge. Article 129 states that The charge shall be read out to the accused by the presiding judge who shall then ask the accused if he has any objection to the charge. Whether the accused has legal council or not, we have to read the charge to the accused. The fact that the charge is read must be recorded. The court, on its own motion, must read the charge whether it is asked or not by the legal council or the accused.

Preliminary objection. Preliminary objections(130) are issues to be seen by the court before it got into the merit of the case. Non-clearness, Errorss and omissions as to form and content(111 and 112 of the charge are the most common preliminary objections.

NB. We should Base our preliminary objection on the law not on the fact. Fact is seen during evidence yet. 1. that the case is pending before another court. 2. that he has previously been acquitted or convicted on the same charge. Both are prohibition of double jeopardy. Followingg the preliminary objection, if the public prosecutor ordered to frame new charge failed to do so, the accused shall be discharged(121/3). 3. that the charge against him has been barred by limitation or the offence with which he has been charged has been made the subject of pardon or amnesty. Amnesty is a legislative act; it is conducted before investigation. Parden is an executive action. It comes after conviction. If it comes after conviction, it cannot be ground for preliminary objection. It should not be mentioned as preliminary objection hereunder. 4. Jurisdiction. It is not mentioned under article 130 as a preliminary objection. But, there is no problem for it is not exhaustive. 5. that he will be embarrassed in his defence if he is not granted a separate trial, where he is tried with others. It has no effect to preclude the court to see the case. It is made only for convenience purpose. So, it is out of the basket for preliminary objections. 6. that no permission to prosecute as required by law has been obtained. Example, member of parliament. It is a hybrid in that member of the parliament is not accused if he has the right to immunity and he can be accused if he has no the right to immunity. 7. that the decision in the criminal case against him cannot be given until other proceedings have been completed. This concept is applicable in civil case not in criminal case. Because, he has the right to presumption of innocence.Example labor dispute subject to civil and criminal proceedings. This preliminary objection is out of picture.

8. that he is not responsible for his acts, Insanity. In this case, we see whether the person is competent to stand trial. If he is not competent, we sustained or adjourn the trial. If he is competent, we shall continue the trial. The main objections are errors and omission as to form and content, pending case, conviction and acquittal, jurisdiction, limitation and amnesty.

Article 130/3 reads, Where no objection is raised under this Article immediately after the accused has been required by the court to state his objections, the accused shall be barred from raising any such objection at any later stage in the trial, unless the objection be such as to prevent a valid judgment being given. This provision does not work in criminal procedure code. Because, all preliminary objections in criminal case always prevent valid judgment from being given. Therefore, Preliminary objections can be raised at any time. Even, in criminal case, the court can always raise preliminary objections on its own motion. Neglecting the preliminary objections, if the judgment is given, it is impossible to execute; it has no deterrence effect. Article 130 is not exhaustive for it is written by inserting the conjunction "or". The above article did not include lack of jurisdiction, non-fulfillment of the three elements of crime under 23 of cc and unity of guilt 61/3 of cc. if there are several acts done with the same intention or objective, it is one crime. A person may be accused of making forged document, using forged document and causing others to use forged document as count 1, count 2 and count 3. In this case, the accused can raise preliminary objection by alleging that he has committed only one crime and not three in number. In practice, public prosecutor consider 130 to be illustrative.

Preliminary objections must be decided forthwith. It is usually decided based on the record. If additional evidence is required, we must give additional time but short.

Plea of accused. After reading the charge and asking preliminary objection, we must ask plea of the accused for each count by rereading the charge. After the charge has been read out and explained to the accused, the presiding judge shall ask the accused whether he pleads guilty or not guilty(132). Where there is more than one count the presiding judge shall read out and explain each count one by one and shall record the plea of the accused in respect of each count separately(132). The plea of the accused shall be recorded as nearly as possible in the words of the accused(132).

Art. 133. — Plea of not guilty. (1) Where the accused says nothing in answer to the charge or denies the charge, a plea of not guilty shall be entered. (2) Where the accused admits the charge with reservations, the court shall enter a plea of not guilty. The accused may give plea of not guilty. “I have committed; but, I committed it since he has done something against me”. Defendants do not keep silent in practice. Silence also amounts to plea of not guilty.

Art. 134. — Plea of guilty.

(1) Where the accused admits without reservations every ingredient in the offence charged, the court shall enter a plea of guilty and may forthwith convict the accused.

(2) Where a plea of guilty has been entered, the court may require the prosecution to call such evidence for the prosecution as it considers necessary and may permit the accused to call evidence.

If the accused gives plea of guilty, there is no evidence more than self or admission. After entering the plea of guilty but before conviction, the court may ask the public prosecutor to produce evidence when it deems necessary. Remember the case of driver. If the plea of guilty is compatible with evidences to article 27 and 35, it makes sense. Without admitting before, if he admits here, we should look into the admission very considerably.

Change of plea. Art. 135. — Amendment of plea.

(1) Where a plea of guilty has been entered and it appears to the court in the course of proceedings that a plea of not guilty should have been entered, the court may change the plea to one of not guilty.

(2) The conviction, if any, shall then be set aside. It is possible to change plea from guilty to not guilty. It is not possible to change plea from not guilty to guilty. Because, it would be better to make the accused guilty after hearing the evidence.

Criminal justice administration policy allows prebargaining between the two parties to change plea of not guilty to guilty but not in criminal procedure law. While changing guilty to not guilty, the court may require additional evidence; the court asks the accused and then the accused can give plea of not guilty. If the court does not require additional evidence, the accused cannot change plea of guilty to plea of not guilty. To change plea of not guilty to guilty, Prebargaining may be made from first degree homicide to second degree homicide. This helps to mitigate the penalty. If the accused did not give plea of guilty during investigation, what the incentive that made him to change plea of not guilty to that of guilty? The law presumes that the accused may have been forced and etc. the change from plea of not guilty to that of guilty shows that there is problem. Changing not guilty to guilty does not favor the accused. because, every doubt favors the accused. The interpretation of the substantive and the procedural law should favor the accused. The accused is favored if his evidence and defense is presented before the court. Doubt must be seen in line with beyond reasonable doubt.

Adjournment(94). It is usually done after objections are conducted. The court may of its own motion or on the application of the prosecution or the defence adjourn any hearing at any stage thereof where the interests of justice so require. Sub 2 should have been as “adjournment may be given with these reasons”. But, now, it is written as An adjournment may not be granted unless.

the charge has been altered or added to and the prosecutor or the accused requires time to reconsider the prosecution or defence; or

(3) Under sub-article 1, the phrase "where the interest of justice so requires" seems to make the list to be illustrative. But, under sub-article 2, the phrase "may not be given unless" seems to make the list be exhaustive. Article 94/1 makes sense; because, article 130, preliminary objections are not exhaustive. 1. the prosecutor, public or private, or the accused fails for good cause to appear. Truly speaking, there is no good reason for the public prosecutor to be absent. So, if the public prosecutor is absent, there is no charge. If the accused is absent for no good reason, we should revoke at once the bail. Because, he did not comply with the bail conditions. If the accused fails to appear for good reason, trial in absentia or adjournment may be given. Therefore, the requirement under sub 2(a) is applicable only for the accused. The public prosecutor has filed the charge on the basis of 109. But, he failed to appear on the date fixed for trial. In this case, there is no charge; because, when one public prosecutor failed to appear, the other public prosecutor may be easily replaced for it is a system. In short, we should compare the state with the accused. But, in the case of private prosecution, state of emergency is a good reason for the prosecutor. 2. witnesses for the prosecution or the defence are not present. This is a good reason. The trial is continuous. Therefore, all witnesses should appear together and be heard. The remaining witness may come with a bench warrant. Because, if the trial is continuous, and if the witnesses do not appear together, the heard witness may tell what he witnessed to the rest witness. 3. in a trial other than that of a case committed on preliminary inquiry to the High Court, the prosecution require time for investigation. This is not good reason. Because, Preliminary inquiry and investigation must come first. Armed robbery and homicide are high court crimes the preliminary inquiry of which can be left out by the public prosecutor. Preliminary inquiry cannot be a ground for preliminary objections. Because, it cannot be raised by the accused for the purpose thereof is beneficial for

the public prosecutor. 4. further evidence requires to be produced. It is good reason. The court may adjourn the trial at any time when additional evidence requires to be produced. Because, in criminal case, evidence can be admitted at any time. 5. evidence is produced either by the prosecution or the defence which takes the other side by surprise and the production of which could not have been foreseen. This is good reason. Because, in such a case, we need time for preparation. 6. the charge has been altered or added to and the prosecutor or the accused requires time to reconsider the prosecution or defence. It is good reason. 7. the accused has not been served with a copy of the charge or of the preliminary inquiry or has been served too short a time before the trial to enable him properly to prepare his defence. The teacher said that we should change the phrase "preliminary inquiry with preliminary objection. But, why? Any ways, it is good reason. 8. prior sanction for a prosecution is required before the trial may start. In this case, the Amharic version must be read for the English version is somehow mistaken. It is not a ground for adjournment. The charge has to be closed by the registrar. 9. a decision in the trial cannot be given unless other proceedings be first completed. it is not good reason. In criminal procedure, there is no such requirement for there is presumption of innocence. 10. the mental stability of an accused requires to be established by an expert. According to the teacher, it is an issue related to the merits of the case(48 and 49) of the cc. 11. the court considers that the accused, if a young person, should be placed under observation. It is not good reason for adjournment. It is only a ground to determine the condition in which the accused stay in custody. It cannot be a ground to suspend trial. 12. the trial cannot be completed in one day and is adjourned to the following day. If all witnesses are not heard at once, it is difficult to convict the accused. So, it is good reason. Article 94/3 provides that No adjournment under paragraphs (a) and (f) - (h) inclusive shall be granted for more than one week. These are specific actions; they do not require more than one week. Where the purpose for which the adjournment was granted

has not been carried out for a reason not attributable to the fault of the prosecution or the defence, a further adjournment of the same or less duration shall be granted(2of 95). Article 95/1 provides that (1) Subject to the provisions of sub-article (3) of Article 94, 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. For other reasons other than listed under sub 3 of 94, sufficient time will be given (sub 1 of 95). Sub thre of 95 reads, (3) Where a hearing has been adjourned under paragraphs (c) or (i) - (k) of Art. 94 (2), the court shall, when the purpose for which the adjournment was granted has been carried out, issue new summonses to the parties and witnesses. Read 59 with 95/2. If adjournment has to be restricted, for stronger reason, remand has to be restricted.

Effect of adjournment. The court can order the production of further evidence. It may also order the production of a result for mental treatment.

Art. 96. — Effect of adjournment.

(1) On granting an adjournment, the court shall make such order as is necessary to ensure that the purpose for which the adjournment is granted is carried out. This shall include the issue of warrants on the conditions laid down in Art. 33, 53 and 125.

(2) Where an adjournment has been granted under paragraphs (j) or (k) of Art. 94 (2) the court shall order that the accused be remanded to a place where his state of mind can be examined into by an expert.

Hearing of evidence. Section 2. — Evidence and judgment

Art. 136. — Opening of case and calling of witnesses for prosecution.

(1) After the plea of the accused has been entered, the public prosecutor shall open his case explaining shortly the charges he proposes to prove and the nature of the evidence he will lead. He shall do so in an impartial and objective manner.

(2) The public prosecutor shall then call his witnesses and experts, if any. The witnesses and experts shall be sworn or affirmed before they give their testimony.

(3) They shall be examined in chief by the public prosecutor, cross-examined by the accused or his advocate and may be re-examined by the public prosecutor.

(4) The court may at any time put to a witness any question which appears necessary for the just decision of the case. Types of evidence are witness(yessew), document(yessennede) and exhibit. Even if the section under consideration seems to be dealing with witnesses only, hearing of evidence also includes the other evidences, document and exhibits. Next to plea of not guilty, opening of argument by the public prosecutor shall follow. We shall come to this process only if the accused gives plea of not guilty. If he gives plea of guilty, conviction will forthwith shall follow and opening of argument by the public prosecutor will be ignored. The public prosecutor shall do in an impartial and objective manner. He should present facts without being provoked. Facts must be obtained from the law and evidence. So, the argument must be based on law, facts and evidence. Public prosecutor should not present his evidence without opening argument. Opening argument is an introduction to the case in question. In practice, in most of the cases, opening argument is not conducted. The witnesses and experts shall be sworn (oath if they are believer) or affirmed (if they are paggan) before they give their testimony. In the case of affirmation, the witness shall say "I promise to speak the truth".

Examination in chief must be related to the matter. Its objective is to prove the facts. At this stage, no leading question is made. In the case of examination in chief, the public prosecutor examines his witnesses in chief. The witnesses should themselves testify what they know without being helped by the leading questions. The question at this juncture is of command type.

There are exceptions to which leading questions are conducted. Leading question is possible if the accused party permits. If there is no objection by the accused during leading question, his silence shall amount to permission to the leading questions. In other countries, the judge can permit for leading question; in our country, the power to permit is given for the accused party. No leading question shall be put to a witness without the

permission of the accused or his advocate or the public prosecutor, as the case may be(137/2).

Art. 137.— Form of questions put in examination in chief. (1) Questions put in examination-in-chief shall only relate to facts which are relevant to the issues to be decided and to such facts only of which the witness has direct or indirect knowledge. (3) Leading questions may be put to a witness in cross-examination.

In the case of hostile witnesses (41and 44 of the anti-corruption proclamation, leading question is possible. Article 44 of the same proclamation reads, 1/ The court may allow the party who called the witness to raise leading questions to a prosecution or defense witness who, being unwilling to tell the truth, has given a statement contradictory from his previous statement. 2/ The court shall, before allowing the leading question, ask the witness whether he has given contradictory statement or not. If he admits, the leading question shall be allowed. A closing of the file at the preliminary hearing as a result of inadmissibility of evidence may not be a bar to institute a new charge on the same matter after gathering other evidences(41). Is it possible in our case?

Hostile must be psychological such as sweating, being shy and so forth. The scope of examination in chief is determined by the purposeithas , proof of facts. The court cannot limit the party making examination in chief. We should give background as to facts to be proved for witnesses.

Article 20/4 provides that Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of and examination of witnesses on their behalf before the court. Direct knowledge includes facts directly obtained through our sense organs. Indirect knowledge includes hear-say(yesimi-simi). Indirect knowledge is not admissible in criminal law. Therefore, testimony from indirect knowledge is not admissible(20/4). When there is indirect knowledge, we should raise objection.

Because, the accused has the right to examine witnesses directly. But, in the case of indirect knowledge, the true witnesses to be examined are not there.

In practice, leading questions are possible: A) when the witnesses is a minor; B) in the case of introductory parts such as name and address of the witness, C) to refresh memory. Minors do not commit oath.

The other point is cross examination. The purpose for cross examination is to negate what is witnessed during examination in chief when there is contradictory, false, untrue and unreliable witness. In such a case, there is leading question. If the witness tells untrue and unreliable statement, the assumption is that the witness is hostile. The scope is not limited by the examination in chief. I.e. the accused can bring further questions to the witness not raised in the examination in chief. For example, the accused may ask the witness, "have you ever been punished of false accusation? Because, the scope of cross examination is dependent on negating what is witnessed during examination in chief.

Article 137/3 states that Questions put in cross-examination shall tend to show to the court what is erroneous, doubtful or untrue in the answers given in examination-in-chief. The accused may waive cross examination(140). Pursuant to article 140, Failure to cross-examine on a particular point does not constitute an admission of the truth of the point by the opposite party. If the fact is well proved during examination in chief, it is better to waiv it. Because, if what is witnessed is not contradictory, untrue or unreliable, making cross examination will be a strengthening for facts proved during examination in chief.

Reexamination. Art. 139. — Re-examination.

The public prosecutor, the accused or his advocate may on re-examination only ask questions for the purpose of clarifying matters which have been raised in cross-examination. The purpose for reexamination is to make the evidence coherent. That is to build facts damaged during cross examination. Leading question is possible. If there is no cross examination, there is no reexamination. only what is raised during cross examination should be

raised During reexamination. Article 137/1 states that Questions put in examination-in-chief shall only relate to facts which are relevant to the issues to be decided and to such facts only of which the witness has direct or indirect knowledge. From this provision, the phrase “indirect knowledge” must be excluded or omitted.

We’ve just seen that evidence may be witness, document and exhibit. Document is to mean form. Exhibits are usually placed in the hand off the police for court registrars have no place to put. In such a case, police becomes hostile to legal councils. The witness can see the form and testify. But, in practice, witnesses are denied the chance to see the form(evidence law).

what is document? Art. 141. — Acquittal of accused when no case for prosecution.

When the case for the prosecution is concluded, the court, if it finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, shall record an order of acquittal. If the case is proved beyond reasonable doubt, then we should allow the accused to bring his evidence. If there is no proof beyond reasonable doubt, we should acquit the accused. If a crime of first degree homicide has six elements, each element should be proved beyond reasonable doubt. If one of the elements is not proved beyond reasonable doubt, the judge should change article 539 to 540, second degree homicide. When the court does so, it should inform the accused to defend on the basis of the new article, 540. In practice, the court does not inform the accused the change of the article. Where the evidence shows that the accused committed an offence with which he might have been charged in the alternative and the offence is within the jurisdiction of the court, he may be convicted of such offence notwithstanding that he was not charged with it, where such offence is of lesser gravity than the offence charged(113/2).

Article 141 is a fundamental article. Because, if the accused says that he has no defense, his fate is being subject to conviction.

Ruling. Ruling must be in writing. List of evidence (yekerebu and yalkerebu) must be mentioned. Admitted and non-admitted evidences must be expressed. Proved and disproved facts must be mentioned.

Art. 144. — Depositions taken in preliminary inquiry may be put in evidence.

(1) The deposition of a witness taken at a preliminary inquiry may be read and put in evidence before the High Court where the witness is dead or insane, cannot be found, is so ill as not to be able to attend the trial or is absent from the Empire. (2) The deposition of an expert taken at a preliminary inquiry may be read and put in evidence before the High Court although he is not called as a witness. We should remember that article 85/2 provides that He shall be informed that the preliminary inquiry does not constitute a trial and that the decision as to his guilt or innocence will be taken by the High Court and not by the committing court. During preliminary inquiry, there is oath or affirmation. No cross examination. The accused is chitted by the wording of article 85/2. Because, the accused was told that preliminary inquiry is not a trial under article 85/2. If so, he has no the right to cross examination. Of course, it is somehow compromised. Because, in our country, preliminary inquiry is made for very few crimes. Even, in such crimes, the public prosecutor can make it be abolished. So, it is not made in practice.

Art. 145. — Statements made in police investigation may be put in evidence.

(1) The court may, on the request of the accused or the prosecutor, refer to statement made by a witness to a police officer in the course of police investigation. (2) It may then, if it thinks it expedient in the interests of justice, direct the accused to be furnished with a copy thereof and such statement may be used to impeach the credit of such witness. Police investigation may be put in evidence. But, not only the evidence obtained from them, the witnesses should themselves be found in person.

Impeachment or discredit is possible when there is cross examination. And no cross examination in the absence of witnesses.

The police investigation evidence and the preliminary inquiry evidence are different from each other. Witnesses should attend before the court in person for impeachment purpose. In practice, courts use article 145/1. They do not refer to or use sub 2 of the same article.

Accused's Testimony is not documentary evidence. Documentary evidence must be the one designed independently for a different purpose. In practice, accused's testimony is considered to be documentary evidence by the public prosecutor. When the accused tries to attack that the evidence is obtained through coercion, the public prosecutor alleges that the evidence is documentary; hence, not inadmissible. Document is made independently for the purpose of committing a crime and meant for the crime committed as an evidence. But, testimony is designed to prove the crime. Medical evidence is not document. It is a witness; because it is an expert testimony. The expert must appear in person if he is considered as a witness. Many public prosecutors consider it as a document. So, both the accused's and expert testimony is subject to impeachment unlike true document. article 145, is applicable on all offences.

Defense evidence. Here too, there is opening argument or theory of the case. Opening argument is made after consideration of 141. There is no opening argument if the accused is acquitted on the basis of the above article. In the theory of the case, if the accused says that he is not criminally liable, he should explain why he is not criminally liable. He may make use of prosecution evidence and separate evidence of his own. Then, the accused may make statement. In this case, there is no oath or affirmation for he is not witness. While making statement, there is no cross examination; because, he has the right against self incrimination. The question is how value we give to the statement of the accused. Truly speaking We should give value for the statement of the accused. Because, there is nothing that knows more than him for himself.

In civil case, defendant can be witness in his case by giving oath and being subject to cross examination. The accused is acquitted if he creates doubt on the prosecutor. If he creates doubt, we should not require him to produce additional evidence.

Judgment. Judgment is the composition of facts, evidence and law. We analyse facts; from the law, we illustrate elements of the crime(23 of the cc) and in the special part; and we list admissible and inadmissible evidence. Judgment may be acquittal or conviction. In the case of conviction, articles and sub-articles must be clearly put.

During sentencing, evidence is required.

Objection to evidence. Art. 146. — Objection to evidence.

Where the prosecutor or the accused objects to the admission of any evidence or the putting of a question to a witness, the court shall decide forthwith on the admissibility of such evidence. Objection to evidence is a method of disabling our adversary. There are two methods in which we object our evidence. 1. Before a trial when evidence is pending. It is called motion in limine in common legal system. Preliminary inquiry in Ethiopia is not used to frame issue. It is simply used to take and preserve evidence. Motion in limine helps to narrow down the framed issue. In practice, there is no before trial objection to evidence. Inadmissibility of evidence occurs: 1. When there is no sufficient room for the right to cross examination; 2. When there is coerced confession; 3. When there is no sufficient time to defend himself; 4. When irrelevant evidence is produced. If one has any evidence, he should object to the file before the trial. He does not wait the trial. Motion may be oral or written. Written is the best way. Article 146 seems to be objection only when there is leading question. This is before trial. (Yalebotawyegeba new).

Final address or closing argument(makomiakirikir). During final address, parties should put good conclusion by including facts, evidences and law. The defense always speaks last. When more than one accused are there,

defendant1, defendant2 and so forth shall speak according to their order in practice. Judgment includes law(539), fact(1,2,3), evidence (admitte and not admitted with reason) and conclusion(proved, not proved and disproved). The conclusion must be based on proof of each element constituting the crime beyond reasonable doubt. If one element is not proved, the accused should be acquitted. We should not require corroborative or additional evidence. Fact 1, fact 2, fact 3, fact 4. Witness 1 proved fact 1. Witness 2 proved fact 1 and 2 and 3. Witness 3 proved fact 3 and 4. Witness 4 proved fact 4. In this case, even if only witness 2 proved fact two, there is no problem so long as he proved it beyond reasonable doubt. The accused can appeal stay of execution.