PARTICIPATION IN THE COMMISSION OF CRIME

It is obvious that a crime should not always be committed by single persons. The acts of planning, preparation and execution of offences are not necessarily carried out by a single individual b/c two or more offenders may participate in the commission of an offence.

A crime can be committed by several persons who participate in the commission of a **crime at different or same capacities**. It is therefore important to determine the degree of involvement and the role played by such persons in the commission of the crime.

Participation may take various levels that can be referred to as principal or secondary. Moreover one of the defendants may be accessory after the commission of the offence. Such variations and degrees in participation determine the extent of liability in the commission of an offence.

Participation In Principal Capacity:

- Principal participation involves not only persons who have actually committed the criminal act or omission but also those who took part in the planning, arrangement decision or the commission.
- Commonly divided into 3: mat, ind part and full moral asso
- Participation is defined differently in different legal systems. Some legal systems define it narrowly and only include those persons who involve themselves in the commission of the offence physically or personally.
- A person, therefore, is considered to be a principal offender if and only if he/she participates in the commission of the offence materially.
- If Alemu and Belay stabbed Chernet to death, they are principal offenders as they personally perform the offence on their own.

- Some other legal systems, however, define it broadly not only to include material offenders but also those persons who take part in the commission of the offence either morally or indirectly.
- Similarly, in Ethiopia, principal participation is defined broadly that it takes the forms of material, moral and indirect offenders. These forms of principal participation are provided under Article 32 of the Criminal Code, which states that “ …….”

Material Criminal:

- This form of participation is dealt with under Article 32(1) (a) of the Criminal Code. It exists when the one, who, **with the requisite mental state, personally engages** in the act or omission of the offence. In this case crime is committed when the **act concurred** with offender's mental state. Co-off actually/directly
- It is direct when every person directly, physically or personally commits the offence.
- E.g in murder, for e.g. material offender is the man who with the necessary mens rea, he administers the poison , fire the gun w/c causes death. Whosoever takes the life of another in z par of 2 or more than.

- It is also possible for a person to be regarded as a material criminal **if he negligently performs** an act and produces a forbidden harm.
- This is to mean that a person should not always commit the crime intentionally in order to be regarded as a material criminal.
- Negligent performance of an act can also constitute material criminal. This is the case when Bahiru while driving his car from Addis to Adama and Kifle while driving his car from Adama to Addis collided each other in the middle of the street in Debrezeit and killed two people.

- Bahiru and Kifle are material criminals for the death of the two people through their **negligent state of mind** as they **physically** and **personally** performed the act which constitutes a criminal offence under Article 543 of the Criminal Code. which states that "whosoever, by criminal negligence, causes the death of another….., is punishable with simple imprisonment or fine…".

Indirect Criminal:

- The 2nd type of participation is indirect, w/rby an offender avoids direct mat contact w the object of the offence. This form of principal party is contained under Article 32(1) (c) of the Criminal Code. Such a party to a crime **uses an intermediary** to commit a crime. In this case, the intermediary is a mere instrument and the originating actor is the principal participant in the form of indirect criminal. **
- An off may, for instance commit an offence through a nonhuman instrument such as an animal or natural force. To use p. graven illustration if A trains his dog in shoplifting, it is irrelevant that the act w/c constitutes theft is not performed directly by A.

- It could also be indirect when the perpetrator commits the crime by **using instruments like natural forces**.
- This happens when a person employs a flood in the destruction of property which belongs to another person.
- In particular by means of an animal or a **natural force** shows that the list is illustrative.

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- The off may also indirectly commit an offence by using a child, a mentally deficient person or a person who acts under mistake or by compelling ano. Person.
- Mentally deficient persons are the ones who are irresponsible for their acts. This happens b/c of unawareness of the nature or consequences of their acts due to the reasons stated under art. 48.

Moral Criminal:

- Moral Criminal is a person who fully associates himself/herself with the commission of the crime and takes the crime as his or her own.
- Moral criminal is a person who **plays no part physically** in the commission or omission of the offence but mater minds or who fully asso himself w the com of the offence.
- Persons who involve in the commission of the crime in such a way are considered to be **working brains**. They are the **master mind behind** every activities of the crime.
- He/she just takes part in the process **by designing plans, providing means, facilitating everything** necessary for the commission of the offence, as it is dealt with under Article 32(1) (b) of the Criminal Code.

- The only d/ce b/n ind criminals and moral offenders lies in the type of instruments they use ……Mos execute their crimnal scheme through a responsible and willing co-offender ..make use nonhuman ins or irresponsible persons or innocent human agent.
- Bear in mind that a moral criminal **may not be present** at the time when and the place where the crime was committed. Look at the ff e.g. a gang leader who organizes the group .. Takes recreation trip for the purpose of an alibi (plea of absence at the time of the offence) doesn't escape liability, b/c art 32 (1) (b) makes him a ppal co-offender in view of his **full asso with the commission of the offence** and **the intended result**.
- I would like to bring into ur attention 1st
- **ባዶ ተሰፋ እንዲሳካላቸው መጸለይ በቀጥታ ወንጀሉን ከሚፈጽመው ሰው ጎን ሙሉበሙሉ የቆመ መሆን መቻል አለበት**

- Even w/r a person lacks the necessary attributes physical, occupational to materially commit certain offences, such a person can be held co-off in ppal capacity if he/she has either indirectly committed the offence or assumed the status of being a moral offender (see art 33). E.g. Rape
- Although rape can only be committed by a male offender (art.620), a bar owner, woizero X, who wants her 16 yr old maid servant to be a bar girl, and indirectly makes use of an intoxicated customer (art 48 (1) in having a girl raped is the sole principal offender.

Legal Effects Of Participation:

- A person who involves in the commission of a crime in different forms of participation as material, moral or indirect criminal is **liable for the crime committed being considered as a criminal in the first degree.**
- Of course, all principal criminals **may not be subjected to the same punishment** as personal circumstances and degree of individual guilt may be taken into account as per Articles 35 and 41 of the Criminal Code.
- Art 35 provides *where a crime is committed by a group of persons the person who is proved to have taken no part in the commission of the crime shall not be punished*.
- Art 41 provides that *each of the participants as principal or secondary in a crime shall be punished for his or her own act, according to the **extent** of his or her participation, his or her **degree of guilt**, and the danger which his or her act and his or her person represent to society.*

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- *Special circumstances or personal incidents or relationships, which have the effect of excluding punishment or justify its reduction or increase,* ***are not transmissible to another person.***
- *They operate to the benefit or the detriment solely of the person to whom they attach.* The concerned
- An imp point worth mentioning is here that the principal criminal or criminals may not be liable for what goes beyond their intention as per Article 58(3) of the Criminal Code. But if there is a possibility to prove negligence on their part … it can't be raised as a defence.
- Robbery of residence automobile and organizes B & C

Co-Criminals in general Crimes and special Crimes

- Persons may also be categorized as co-criminals in general crimes and special crimes.
- Persons may be considered as co-criminals in general crimes when the crime in question can be committed by any one. This relates to homicide, theft, robbery, bodily injury and so on.
- Persons are co-criminals in special crimes when the crime in question requires special qualification.
- Art. 33 of the Criminal Code points out this situation as “…….”
- In rape-the person should be male to commit the same materially as per Article 620 which states that “whosever compels a woman to submit to sexual intercourse

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- All other people who do not have the this qualification cannot commit such crimes materially.
- But they can be held liable criminally being considered as co-criminals in a crime in their principal capacity either as moral or indirect parties in accordance with Article 33 of the Criminal Code.
- Although rape can only be committed by a male offender (art.620), a bar owner, woizero X, who wants her 16 yr old maid servant to be a bar girl, and indirectly makes use of an intoxicated customer (art 48 (1) in having a girl raped is the sole principal offender. This is the case where a woman can be held criminally liable under Article 622 through Article 33 if she under a gun point forces a man to rape another woman.

Participation In The Secondary Capacity:

- ** A person involved in the secondary capacity is not considered to be principal criminal as his participation in this case is less than the principal criminals.
- This relates to incitement or complicity, which are also called accessories either before or during the commission of the crime.
- Accessory after the fact does not come under participation for **one cannot take part in the commission** of the crime after it is consummated. ***

Incitement

- This form of participation is secondary before the commission of the crime. It is dealt with under Article 36 of the Criminal Code as:
  ……..”
- From this, it is possible to envisage the following elements:
- Incitement requires at least two persons. These are the inciter/instigator and the incited/instigated.
- The incited is the one who actually commits the crime either in the form of material, moral or indirect criminal.
- The instigator is the person who initiates the idea of committing the crime by using different means.
- ?Here, it should be borne in mind that the instigator and the principal offenders may be two or more than two. This is the case when Aster and Bayush persuade Mohammed and Degu to abduct Almaz.

- Acc to this article, an instigator is a person who intentionally induces another per …. By persuasion, promises, money, gifts, threats or otherwise to commit an offence. The key constituent elements of art are *inducement, intention and the means utilized*.
- Inducement is the **act of influencing, convincing, or causing** an offender to commit an offence. The instigator doesn't go beyond inducement. He doesn't either directly or indirectly involve in z com of the off. Yet there is a ***sine qua non causal*** r/p b/n inducement and the induced offenders act. The incited offender would not have committed the offence in the **absence** of the instigators inducement.

- It should be noted that the **determination** of the offender must be attributed to the instigation.
- Inducing a ppal off d/fs from full moral asso.. Unlike the moral offender, the instigator doesn’t participate in the decision-making process and leaves the ppal off to make up his mind on his own.
- The instigator also d/f from the indirect offender b/c he doesn’t make a decision towards the **com** of the offence and then make use of an agent.

- 2nd element intention. The act of inducement or provocation must be carried out intentionally. The instigator should have the **knowledge** of what he incites. This is to mean that there is **no negligent incitement.**

- This is the case when Alemitu friendly tells to Degu that Almaz goes alone to a river to fetch water every morning where the latter acted upon the information and committed abduction.

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- The ***means of inducement*** stated under 36(1) are not exhaustive but illustrative, since the terms "or otherwise' accommodate other means not stated in the provision.
- Yet, the act of using **threats** in inducement seems to overlap with an indirect offenders act of **compelling** a human agent (Art. 32 (1)c. but the act of threat by an instigator and compulsion by an indirect offender are d/t.
- the instigator threatens a person and leaves the discretion of decision to the threatened person. The indirect offender, on the other hand, compels another person to carry out the indirect offenders criminal objective.

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- The instigator should convince the principal criminal until the latter reaches a determination or decision to commit the crime based on the inducement/instigation/incitement.
- That is, the principal criminal should be stimulated to take the decision as a result of the incitement.
- There shall be causal relationship between what the instigator does and the act of the principal criminal.

The legal effect of being an instigator:

- The instigator will be liable to punishment under the **law for the intended crime**. This is the case for instance that a person who incited the commission of the crime of robbery will be liable under Article 36/670.

Complicity

- It is also a secondary participation which may exist either before or during the commission of the offence as provided under Article 37 of the Criminal Code as “ …… ……”

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- It may generally be said that a person participates in the commission of a crime as an accomplice **if he or she gives assistance** to the principal criminal.
- Such assistance must be given either before or during the commission of the crime with the **intent** to promote or facilitate the commission of the offence.
- Under the present article, knowingly assists, ppal offender, period and means requires careful consideration.
- Primarily, assistance in the commission of the offence constitutes complicity **only where it is made knowingly**. *

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- **Two**, assistance must be given to the principal criminal.
- **The crucial and controversial point to note here is the issue of "assistance to whom"? The law says to the ppal? What if an assistance is given to an accomplice or an instigator? Does it fall under Art. 37?**
- **Third**, the period of assistance is also imp. The assistance must be given either before or during the commission of the crime. IOWs, it should proceed or be contemporaneous w the final exec. The assistance should **be given before the result is achieved.**
- Fourth, the means used and the impact of assistance deserve brief discussion. Assistance may be
- - - corporeal (supply of means or material)
- - Incorporeal (information or advice). Ass. is inco when it relates to advice, command, counsel, encourage, and so on
- It is corporeal when the assistance relates to guns, money, instrumentalities, being at a look out, ran the gateway car, and signal the approach of the victim.
- What if the assistance is not used? E.g. box password

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- All that matters is the intention of the acc to give ass. w/c in the opinion of the ppal facilitates the com of the offence he has in view (በዋና ወንጀል አድራጊው እይታ የተሰጠው እገዛ አፈጻጸሙን ያመቻቸ ከሆነና ግብረ-አበሩ ሆነ ብሎ).
- The act of assistance **is not thus a sine qua non condition** to the offence, and the ppal offender may execute his design despite the ineffectiveness of the assistance.

What are the legal effects of complicity?

- The following are the legal effects of complicity:
- The accomplice is liable for the punishment under the law regulating the intended crime.
- 2. The accomplice will not be liable for what goes beyond his intention.
- 3. Punishment may, however, be reduced within the limits of the law as per Article 179 of the criminal code.

Accessories After The Fact:Art.40

- Accessory refers to a person who gives assistance to the principal criminal after the realization of the crime. The form of assistance may be, hiding and aiding the criminal as per Article 445 of the Criminal Code: under the topic Harboring and aiding that reads as:
  - *"Whosoever knowingly saves from prosecution a person who has fallen under a provision of criminal law, whether by warning him or hiding him, by concealing or destroying the traces or instruments of his crime, by misleading the investigation, or in any other way, is punishable with simple imprisonment or fine."*
- Receiving or hiding a property w/c is the result of criminal conduct is an accessory after the fact.
- Receiving or hiding a property, which is obtained by a crime committed by the criminal as per Art. 682 that reads as:
- *Whosoever receives a thing, which he knows or has reason to believe is the proceeds of a crime committed against property by another, or acquires the thing, or receives it on loan, as a gift, in pledge or in any manner whatsoever, or consumes it, retains or hides it, resells it or assists in its negotiation, is punishable with simple imprisonment, or, in more serious case, with rigorous imprisonment not exceeding five years, and fine.*

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- Helping a person to escape from prosecution as per Article 460 is also that reads as:
- *"Whosoever, in any manner, saves a person from the execution of the punishments or measures to which he has been sentenced by a court, is punishable with simple imprisonment or fine".*

What are the legal effects of being accessory after the fact?

- Such a person cannot be considered as an accomplice, which is one form of participation and hence cannot be treated under Article 36 because there is no participation in the commission of a crime once it has been completed.
- So an assistance given to the criminal after the commission of the **crime is independent crime.**