CHAPTER SIX

THE FEDERAL SYSTEM AND CRIMINAL JURISDICTION OF COURTS

Relevant Laws

- FDRE Constitution {Arts 78,and 80}
- Criminal Procedure Code. {Arts 99-107}
- Proclamation 25/96 {Arts 3-15}

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- The federal state structure_ Dual court system . Art 78 [2&3]
- ***Two parallel sets of courts {Federal Courts Vs. State Courts]***
- Each having ***three layers of courts {FFIC, FHC & FSC}***

Criminal Jurisdiction of Courts.

- Issues on how power of adjudication over offences is apportioned as between ***federal and regional courts***, and even ***among the federal courts*** on the one hand and the state courts on those matters is jurisdiction over offences.
- In principle federal courts have jurisdiction over offences based on three major grounds: procl 25/96 art 3

i. Law :- federal constitution, laws and international treaties
ii. Parties to the case:- parties specified in the federal laws
iii. Places of commission of crime Addis Ababa and D/Dawa
iv. Type of offences:- offences exclusively allocated to federal courts

Delegation

- Apart from these apportionment of jurisdiction among the federal and state courts, there is a ***delegation of power as per Art 78[2] & 80*** [4,5&6] because of the fact that we do not have yet established federal courts all over the country.
- Hence, matters which in principle fall within the jurisdiction of Federal First Instance and Federal High Courts may come within the jurisdiction of state high court and state supreme courts respectively, if they are committed in regions or there is any other ground justifying delegation.
- It is designed for the purpose of convenience, both for the parties and the court as well.

Jurisdiction has three elements:

Judicial , **Material**, and **Local**

- A court is said to have jurisdiction over a particular offence only when it has the judicial, material and local jurisdiction of adjudication.

A. Judicial Jurisdiction

- Judicial jurisdiction is all about whether ***Ethiopian courts*** have power to see and then adjudicate a case or not. Hence, it is related to issue of whether a person is subject to the criminal law of Ethiopia or subject to the jurisdiction of Ethiopian courts and therefore they may be tried by Ethiopian courts for violation of the Ethiopian criminal laws.
- Art 11-20 of the CC are devoted to issues of judicial jurisdiction of Ethiopian courts over offences. Thus, whether or not a person is subject to the CC of Ethiopia depends on:

(1) the place where the offence was committed;

(2) the nationality of the accused, and;

(3) the kind of the offence that has been committed.

B. Material Jurisdiction

- Material jurisdiction is concerned with ***the level of courts***, and the type of court that should hear the case. Thus, the issue of material jurisdiction should be seen the light of structure of courts.
- Art 78 of the FDRE Constitution created a two tiered court system, i.e. federal and state courts. At federal level, we have the Federal Supreme Court, the Federal High Court and the Federal First Instance Court. At state level, too, we have the state supreme court, the state high court and the state woreda court

Federal Supreme Court Article 8,9 & 10, FIJ, AJ and Cassation

First Instance Jurisdiction, Art 8 offences for which

- Officials of the federal government are held liable in connection with their official responsibility;
- Foreign ambassadors, consuls and representatives of international organizations and foreign states are held liable; and
- Application for change of venue

Appellate Jurisdiction

- Art 9 of the proclamation provides that the Federal Supreme Courts shall have appellate jurisdiction over ***decisions of Federal High Courts*** rendered in their first instance and appellate jurisdiction on variation of the decisions of the Federal First Instance Court.

Power of Cassation (Art 10(1-3))

- Over any final decision containing basic error of law. The federal Supreme Court's decision under its cassation power is final and binding.

The Federal High Court (Article 12)

- **First instance criminal jurisdiction**

  Article 12 of the proclamation provides that the Federal High Court shall have first instance jurisdiction over:

- Offences against the national state i.e. offences against the constitutional order, or the internal security of the state.
- Offences against foreign states.
- Offences against the law of nations.
- Offences against the safety of aviation.
- Offences regarding illicit trafficking in dangerous drugs.
- Other criminal cases arising in Addis Ababa and Dire Dawa and falling under the jurisdiction of the high court pursuant to other laws in force.

Appellate Jurisdiction.

- The federal high court exercises criminal appellate jurisdiction over all decisions rendered by Federal First Instance Court, the national electoral board, tax appeals commission, labor boards, etc.

The Federal First Instance Court.

- Offences against the fiscal and economic interest of the federal government.
- Offences regarding counterfeiting of currency.
- Offences regarding the security and freedom of communication services operating within more than one region or at the international level.
- Offences in which foreign national who enjoy privileges and immunities and reside in Ethiopian are victims or defendants subject to the jurisdiction of First Instance Court in operating laws and without prejudice to international agreements entered in to by Ethiopia.

C. Local jurisdiction

- It refers to ***the area of Ethiopia in which the case is to be tried***. Art 6 provides that the court shall exercise local jurisdiction in accordance with the provisions of Art ***99-107***. The general principle, embodied in the Art 99 is that every offence shall be tried by the court within the ***local limits of whose jurisdiction the offence is committed***.
- Where all the operative events involving the offence occurred within the jurisdiction of the court in which it is to be tried, there is no problem. The problem arises when the operative facts occurred within the local limits of the jurisdiction of more than one court. This situation is covered by Art 100-103.

- Under Art 100, it is provided that where that act which caused harm occurred in one jurisdiction and the harm resulting from the act occurred in another, the offence may be tried before either the court within the limits of whose jurisdiction the act took place or the court within the limits of whose jurisdiction the consequence resulting from the act took place.
- Art 101 provides that where an act is an offence by reason of its relation to another offence, a charge of the first mentioned offence may be tried by a court within the local limits of whose jurisdiction either act was done.

- Art 102 deals with the situation where, in the broad sense, the place of offence is uncertain. Where it is factually uncertain in which of several local areas an offence was committed, Art 102 (a) provides that it may be tried before the court in any of the local areas.
- The same is true where the offence is committed partly in one local area and partly in another, Art 102(b), where an offence continues to be committed in more than one local area, Article 102(c) and where an offence consists of different acts done in different local means Art 102(d).

- Where an offence is committed while the offender is in the course of performing a journey or voyage, Art 103 provides that the offender may be tried by any court through or into the limits of whose jurisdiction either the offender, the victim or the thing against which the offence was committed passed during the course of the journey. It is not necessary that the offence was committed in the jurisdiction of the court so long as the offender, the victim or the thing passed through the jurisdiction.

- Art 104 provides that when an offence is committed outside Ethiopia on an Ethiopian ship or aircraft, it is deemed to have been committed in Ethiopia. This Art doesn’t specify in what area the case is triable. However, Art 107 provides that in the case under Art 100-104, the public prosecutor shall decide the court in which the charge shall be filed, and on the filling of the charge, the court in which the charge is filled shall have jurisdiction. In other words, where the case is triable in more than one court, the decision as to where the case is to be tried rests with the public prosecutor.

Assignment I

Discuss the concept of fair trial rights of an accused. Support your discussion with relevant national international human rights instruments and laws