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EXECUTION OF JUDGMENT AGAINST JUVENILE DELINQUENTS

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ADDIS ABABA, ETHIOPIA

JULY 2008

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TABLE OF CONTENTS

CHAPTER THREE

CHAPTER FOUR

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Amelework Gizachew, Public Prosecutor in Arada First Instance Court.

Teshome Nida, Public Prosecutor in Arada First Instance Court.

Fikadu Hilemariam, Jude in Federal Fist Instance Court.

Assistant Surgeant, Mohammed Yishak, Addis Ababa Police Commission Technique Investigation Department.

Assistant Surgeant, Getachew Ayana, Addis Ababa Police Commission Crime Investigation main Department.

Assistant Surgeant, Bedilu Girma, Addis Ababa Police Commission Crime Investigation main Department.

TABLE OF CASES

Solomon Eshetu Vs Addis Ababa Police Criminal Investigation Main Department (Arada First Instance Court, Rem No. 59077/2000)

Tadese Dagim Vs Addis Ababa Police Criminal Investigation Main Department (Arada First Instance Court, Rem No. 59439/2000)

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ENDNOTE CHAPTER THREE

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I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation.

Name: _____

Signed: _____

INTRODUCTION

A crime is an act committed or omitted in violation of a law specifically prohibiting or commanding. A crime consists of conduct that violates the duties a person owes to the community or society, at distinguished from a private wrong committed against one or more persons or organizations. Criminal law is the body of law that defines what acts or omissions constitute crimes and rules governing the process of detecting and investigating crimes and gathering evidence against apprehending, prosecuting, trying adjudicating sentencing and punishing person accused of crimes.

Law enforcement officers need clearly defined rules and procedures for conducting arrest, searches, seizure, investigation procedures and about preliminary inquiry or hearing by court on the offences that have a series nature. Also all criminal justice personnel should be familiar with the language and reasoning of the courts defining rights and obligations in the criminal justice area. Because they carry a heavy burden to implementing the state criminal procedures law.

Under modern conditions it is necessary that the administration of criminal justice be provided with an efficient way of screening the type and number of cases which should go to trial, because individuals are definitely affected by being forced to stand trial for a crime. Especially the socio economical problems are a substantial one. It is easy to charge a person with the commission of a crime than to prove the charge under the strict requirements of the law. Promptness in the administration of justice is another problem in criminal justice. Crime today has increased all over the world in its type and number. Therefore a selective process must be made available in the early stage of prosecution.

CHAPTER ONE

1.1. Function of Criminal Procedure

Some method must be devised where by reports of criminal activity are brought to the attention of the officials and the offender taken into custody for investigation or prosecution. Making and filing of complaints with appropriate authorities, the making of arrest and searches with or without warrant, and the detention of suspects or accused persons during investigation or pending trial are involved. There is a growing realization that procedures must exist to control and regulate police activities.

It is necessary to sift and screen these complaints and reports of crime to determine their factual validity to decide what laws have been violated and whether sufficient evidence exists to support criminal charges. It is generally believed that this task should be performed as early as possible before formal charges are made. This sifting or screening may take place at various stages of the process before trial.

The other task is to formally charge the defendant and to provide him some procedural protections for his defense. This is protection from (1) prolonged detention, pending trial, (2) illegal searches and seizure (3) ignorance of the nature of the charges and evidence (4) ignorance of the procedural law and lack of means to defend himself properly (5) self incrimination (6) secret proceedings. Included are procedures indicating whether defendant shall be allowed the assistance of legal counsel;

The other task is to provide a method or procedure whereby the actual guilt or innocence of the accused may be determined. Most "trials" are usually review of facts collected by some one else.

The other task of a system of criminal procedure is to prescribe how criminal sanctions are to be imposed and administered. For example in the America system there are rules governing sentencing of convicted criminals the administration of prison and jails.

The last task is to provide means by which decisions as to guilt or innocence regarding the accused may reviewed by higher authorities.

Generally we shall classify these six tasks or functions of criminal procedures as (1) Intake (2) Screening (3) charging and protecting (4) Adjudication (5) Sanctioning and (6) Appeal.

1.2. Function of Police

The function of the police is that they greatly differ from society to society. The police are expected to put the crime problem under control. Similarly they have to prevent if possible by co-operation with the society, the happening of another crime.

1.2.1. Crime Control

The basic objective of police is to protect society against aggression of abnormal and habitual offenders by holding down the volume of crime by keeping it from spreading and breaking out in new places. Police has a duty of understanding the extent and types of crimes, the place where the crime mostly committed and the time of the commission and the modus operand, (methods of its commission). So the police institution has to be well organized to effectively control the number and types of crimes. The power of the police is definitely essential but it has proved to be a headache for police departments throughout the world because of its misuse and the Ethiopian police force could not be an exception to this. Police department supervisors try to ensure that their officers do

not arrest the wrong people for the wrong reasons or practice racial (ethnic) sex or class discrimination.

1.2.2. Crime Investigation

The secondary basic objective of police is to select the offenders through a procedure of investigation. Investigation is a procedure for the finding of the facts. In the process police interrogate the accused, visit the premises and examine witnesses. The procedure starts where the police have established that there is a prima-facie case inducing the commission of an offence. Police can also summon the accused after sufficient clue that he is probably an offender. The police have no power to summon the accused if the evidence against him is not sufficient. The procedure will be used if the suspect fails to appear when summoned. The arrest is made after an order has been given by the court. Arrest is basically a procedure by which the accused is held under the control of the police. If the arrest is done in violation of the law, the arrest will be in violation of the constitutional rights of the accessed. A warrant of arrest is therefore issued only by a court and after request from the investigating police officer. An arrest made without arrest warrant is not lawful right in the case of a serious and flagrant offence.

The police after accomplishing his investigation will send the file to the public prosecutor office. The public prosecutor returns the file to fulfill the uncompleted investigation. After it arrives at the trial stage if the suspect is not willing to appear in court police will force him to appear. Generally the police has a big role for the state and its citizen to ensure peace and security. It is the back bone of the administration of justice.

1.3. Prosecutor

Prosecution is one of the important components of the criminal justice system. When a crime is committed against a member of the society, it is considered as if the whole community is injured.

A prosecutor is an attorney who is elected or appointed by the state to head a prosecution agency, whose official duty is to conduct criminal proceeding on behalf of the people against persons accused of committing criminal offences. The public prosecutor is an office created by law and the people occupying this office are referred to as attorneys general.

The prosecutor is the chief law enforcement officer of the state whose participation, spans the whole criminal justice system. He has a constant relationship with other criminal justice actors such as police and judges They consider themselves as a "house counsel" for the police because they are required to give legal advice, so that the arrests the police make stand up in court. They are a representative of the court because they have a responsibility to en force the rule of the due process to ensure that the police act according to the provisions of the law.

The prosecutor is nested with broad discretionary powers to enable him to carryout a wide range of functions pertaining to the administration of justice. They can decide whether or not to prosecute a particular case, they have the discretionary authority to grant immunity to an individual, they are responsible for organizing and presenting evidence in court.

1.4. Criminal Court

Criminal courts are the core of the judicial system in which important decisions are made. Courts are interpreters of the law, and are

institutions of the criminal justice system. They guide police and public prosecutor by restricting their power. Therefore the existence of courts is important for the protection of suspects, defendants and societies.

The basic functions of the court is to determine the legal out come of disputes. Courts hear disputes in order to adjudicate between or among those who have competing claims. Courts are neutral and accessible to all members of society. Their task usually involve the determination of quilt or innocence of one accused of criminal violation. Judges are expected to be governed by legal principles and not by personal preferences or political expedience. The court also determines bail, rules on the admissibility of evidence, and determines the appropriate sentence when quilt has been established.

1.5. History of Preliminary Inquiry in Ethiopia

The system of preliminary instigation (Art. 80-93), derived from the procedure of commitment for trial used in the commonwealth countries, is of some interest.

According to S. Z. Fisher is book entitled the criminal procedure of Ethiopia he says "Before the introduction of the new Code, it was not unusual for a communal or district court, when, say, informed of a murder, to question witnesses and then, invoking lack of jurisdiction, to direct the family of the victim to the next higher court, which would proceed likewise and refer to the provincial court, which would finally send it to the only positively competent court, the High Court.

Before the case came to be heard, months and even years would elapse in this way, while the accused stayed in prison awaiting trial, ignorant as to exactly what offense, would be charged with. In fact, the injured party, whose preponderant role ought to be remembered, would willingly satisfy

himself with an incomplete police inquiry, only to call new witnesses, whose existence he knew of all the time, at the hearing and thus get the case adjourned and cause further delays. Therefore it was necessary to try and put an end to unjustified attempts against individual liberty, to preserve the rights of the accused and to speed up the disposal of the case by abolishing intermediary stages and prohibiting dilatory tactics.

Consequently the project of the Code ordered, in all cases punishable by death or life imprisonment, the beginning of an inquiry before the competent court in the locality, on the issue on which the accused would be tried before the High Court, if the charges were legally sufficient, or released if the charges were insufficient. Consisting, in the beginning, of a supervisory check on the inquiry which culminated in a commitment for trial every time it was found necessary, the procedure described in Arts. 80 to 93 was transformed step by step during the discussions, into a preparatory inquiry, and such an inquiry was made compulsory in all cases where police investigation reveals an aggravated killing or robbery, which ends necessarily by the commitment of the accused for trial but the charges were insufficient-this procedure was not, however, stripped of all its value and constitutes, compared to the former practice, a remarkable improvement because of the advantages it offers in the form of speed and security. It made it possible to hear witnesses on the spot while the facts were still fresh in their memory; as such they could not change their testimony with the statements they gave to the police or court. What is more, the accused, necessarily committed to the High Court, will at least be brought to trial immediately without having three or even four courts rule on his guilt. Moreover, he can prepare his defense without fear of a last minute appearance of witnesses, since in principle only those who have testified before the court that conducted the preliminary investigation may testify at the trial."

1.6. Definition of Preliminary Inquiry

Preliminary inquiry:- is a temporary or intermediate step to something, a systematic official investigation often a matter of public interest by a body to compel testimony.

It is a practical hearing held in the court. Its purpose is to determine if there is enough evidence to warrant having the accused person stand trial. It gives the accused person and his lawyer an opportunity to find out what kind of evidence the police have against him. It is also cold a preliminary hearing. If the judge decides if there is enough evidence to put the accused on trial, a trial date will be picked in the near future but it could be several days or months before the case actually comes up for trial in the high court.

It is "investigation". It includes every inquiry other than a trial. It does not include a trial but only refers to a judicial inquiry in to the matter by a magistrate or other court.

CHAPTER TWO

2.1. Purposes of Preliminary Inquiry

To day it is necessary that every system for the administration of criminal justice be provided with the best process of screening different cases, which should receive trial.

Suspects are definitely affected by being forced to stand trial for a crime the economic and social pressure brought to bear upon defendant in a criminal trial are real and substantial. All systems must therefore strive earnestly to assure that the glaring light of public opinion will be focused only upon those persons against whom sufficient evidence exists to warrant a public trial of the charges. It is always easier to charge a person with the commission of a crime than to prove the charge under the strict requirements of the law and the state must assume the responsibility of weeding out at the earliest possible time, those charges which are in capable of proof.

There is very practical problem of assuring promptness in the administration of criminal justice with increase of crime in all parts of the world. It is necessary to relieve the trial court of the impossible burden of trying all charges of the commission of crime. In these cases which require the full attention of criminal court, a selective process must be made available in the early stages of prosecution. This is the common problem but one which s susceptible to many different solutions. The most common methods include the placing of screening responsibility in the hands of either the public prosecutor, a judicial officer or a body of layman.

2.2. Screening Procedures in France

In French inquisitorial procedures the state officials who should have the greatest control over the investigative and screening phase of criminal procedures is the investigative judge. In theory screening is supposed to work as described in the following passage.

The police must report all offences to the prosecutor who must then open a file and refer the matter to a judge for "examination." Evidence is placed at the disposal of the examining judge, who must decide whether there is enough evidence to justify prosecution. To that end, he is given the power to order arrests and searches, take testimony under oath and interrogate the accused all the while recording the results of the investigation in the file. The critical investigative and charging decisions are to be made by the judge or authorized and reviewed by him.

In France however, it is actually the police and the prosecutor not the investigative judge, who make most of the important screening decisions, and contrary to what is suggested in the preceding quotation, the prosecutor is not required to open a file and refer the matter to an investigative judge. The investigative judge does not even participate in the proceeding unless the prosecutor assigns the case to him and that is only required in the case of serious crimes. A recent study reveals that in 1974, serious crimes and misdemeanors were sent to the judge for judicial investigation in less than 15 percent of the cases under Article 79 of the code of criminal procedure the French prosecutor enjoys the discretionary power not to assign a misdemeanor case to a magistrate for examination. He can also avoid doing so as to serious crimes by ignoring their aggravating circumstances and treating them as lesser included delits. This practice is known as "corrects analyzing" a serious crime, and has the same semi legal status in France that plea bargaining had in

the United States. Nevertheless, "correctionalizing" is a major device available to the French prosecutor for simplifying cases procedurally so that they may receive an expeditious disposition.

A significant amount of screening of criminal complaints in France is probably done by the police themselves. Theoretically, according to law, police have no discretion in reporting crimes to the prosecutor whether or not they have a suspect or in conducting a preliminary inquest in to the facts reported to them. We may assume that roughly one third of all felony and misdemeanor graded offences in France are probably screened out by the police and over 85 percent by both police and prosecutor at a very early stage of the investigation.

Screening is done by investigation judges in those cases, which are assigned to them at the completion of their investigation. They have the authority to order no further proceedings, to remit the case to the appropriate court for trial, or to arrange for the case to be placed before a chamber of the appeals court.

The question of whether French prosecutors screen cases by engaging in practices comparable to American plea bargaining has recently been addressed by two American legal scholars who traveled to France to study criminal law in practice in the context of its procedural code. Abrahams Golstein and Martin Marcus found no evidence of "explicit" charge bargaining (this is reduction of changes in return for an agreement not to oppose conviction of these lesser charges) or sentence in return for similar agreement on defendant's part). However, they did find some evidence of "implicit" bargaining.

2.3. Screening Procedures in the United States

In the United States the two formal screening mechanisms in criminal procedure are the grand jury and the preliminary hearing. Three

information screening processes are the arrest policies of the police the policies of the prosecutor's office which determine which complaints will be prosecuted and finally the plea bargaining process, which serves a screening function in addition to the many other functions it performs for those involved in it.

The grand jury to day is notoriously in effective device for screening out a weak or oppressive prosecution, and in that sense it is anchronism. Grand juries usually consist of a body of from twelve to twenty there citizens convened to hear evidence brought before them by a prosecutor bearing on the probable commission of crimes by certain individuals or groups. They hear only the prosecutor's evidence and decide, on the basis of the law in relation to this evidence whether there is probable cause to believe that a certain individual or group committed an indictable offense. As one might have predicted given the fact that layman are involved, that they have no legal or other special knowledge that would enable them to evaluate the evidence. Thus, although grand juries may against tyranny in the extremely rare "political case" they are an empty formality when ordinary crimes are submitted to them for screening.

The preliminary hearing introduced as an alternative to the grand jury in many states of the Unite States during the nineteenth century, is not much better than the grand jury as a screening device. The sufficiency of the evidence to prosecute is not made by a body of lay persons, but by a legally trained judge. It is made in an open, adversary setting in which the defense attorney can hear the prosecutor's prima facie case and can cross examine his witness. The sad truth is, however, that this potential for critically screening the state's evidence has not been realized. The major reason for this is undoubtedly the easily satisfied burden of proof resting on the prosecutor and a tendency of magistrates, like grand jurors, to rubber stamp the prosecutors decision to prosecute. The

willingness of the magistrate to ratify the prosecutor's decision to proceed may be an acknowledgement of his trust in the prosecutor an assumption that the prosecutor has already done a careful job of screening. It may also reflect a feeling that a prosecutor should not be put prematurely to his proof and that, even if his case is true, he should be given additional time prior to trial to develop it further. Defense attorney soon learn the futility of an eerily effort to have the prosecutors case dismissed at the preliminary hearing stage and either wane the hearing altogether or use it to obtain some for knowledge of the prosecutor's evidence.

After the police the public prosecutor undoubtedly accounts for most of the remaining screening of criminal complaints. Screening if it occurs at all consists mainly of prosecutors sifting the mass of cases dropped in their lapse by police to decide whether sufficient evidence exists to support a criminal charges. Screening is more complicated and involves decisions influenced by pressures emanating from many sources, defense counsel the court the police and correctional officials politicians the media and others. It may involve voluntary dismissal decisions of less important cases in order to alleviate the docket situation in certain courts or over crowding in correctional facilities.

Plea-bargaining is the most common form of post charge screening. The bargains that are struck take several forms. The prosecutor will recommend to the judge the prosecutor may agree to forego an enhancement of the penalty under an habitual offenders statute in return for a guilty plea to the original charge. At other times lesser charges made at the same times as the greater charge may be dropped. To the much greater benefit of the defendant the greater charge may be abandoned in favor of the lesser finally the complaint indictment or information may be drown to allege different charges, carrying lesser

penalties than the original charges. However even if the time and docket pressure did not exist, the unreasonableness of many legislatively mandated penalties for crimes, the variability of aggravating and mitigating circumstances surrounding the commission of every crime and the relative "unimportance" of many criminal incidents in the eyes of prosecutors would still dictate the extensive use of plea negotiations in the United States in order to bring the final result in each case with in the limits of what is reasonable in the eyes of both prosecutors and defense attorneys. This is not to say that plea-bargaining, as a method of screening is inevitable in the United States. It does suggest however that if plea bargaining is abolished must be replaced by some thing which performs at least as well the numerous functions of screening that plea bargaining per forms.

In summary, it can be seen that the screening of criminal in all the nations, except for a small percentage (usually the most serious cases) is done in a very haphazard, un regulated way by police and prosecutors at the earliest stage of the process. Although great efforts are being expended in some nations such as the United States, to understand the motivation of the actors involved in this process, the enormous variety of screening methods and motivations will probably defeat any efforts to deal with the problem in a comprehensive way for a long time to come.

2.4. Screening Procedure in China

In China screening of complaints is done mainly by the police rather than by procurators. Even though the office of the procuracy is still in existence in the most recent constitutions, the procuracy is still in its infancy, there being few officials with sufficient legal training to perform the task of supervising the administration of criminal justice. In the new procedural law (1979) the police were given a certain amount of discretion in deciding whether to initiate a preliminary investigation into

complaints they receive, and whether to recommend the arrest of a criminal suspect to the procuracy for its approval. It is the police or "public security bureaus", rather than procuratorial investigators (prosecutors offices at various levels) who screen cases insofar as they have limited authority to decide whether a certain category of criminal complaint will be investigated, and to decide whether "arrest" shall be made and prosecutions initiated. Article 96 of the 1979 procedure law provides that, in reviewing cases, procurators must ascertain, among other things, whether the facts and circumstances of an alleged crime are clear and supported by reliable and complete evidence, whether criminal conduct has been omitted from the charges, whether there are other persons connected with the crime whose involvement and responsibility should be investigated, and whether the investigation activities of the police were lawful.

Article 100 provides that if the procurator deems the facts of the complaint as elucidated by the investigation to be "reliable and complete" he should initiate a prosecution in the appropriate peoples' court. Article 101, on the other hand, states that the procurator has the authority to exempt a case from prosecution in cases where, according to the provisions of the criminal law, it is not necessary to impose a sentence of criminal punishment or an exemption from criminal punishment may be granted…If he does exempt a case from prosecution, his action is receivable by his superior in the procuracy. Also the public security bureau which investigated the case initially and transmitted it to the procuracy for prosecution has the right to be informed of the decision and to request reconsideration. If that fails the public security bureau may protest the decision by seeking review by the next higher level of the procuracy. The crime victim likewise has the right of being advised of a decision not to prosecute and to request that the local office of the procurator review its own decision. Finally, the procurator can if he

wishes, conduct a supplementary investigation of his own into the facts of the case, or he can return the case to the public security bureau for further investigation. Thus, the Chinese procurator has considerable power to screen out of the process complaints which he believes lack merit. In the recent procedure law, as in the past, the peoples courts also have the power to screen cases before they reach the trial stage. Under article 108 of the people court, the court must conduct a review of it to determine whether it is ready for public trial. If, in the judges opinion, the evidence is not complete, Before a criminal case is finally litigated in the people's republic of China, the sufficiency of criminal accusation is sifted by officials of at least three organs of government-police, prosecutors and court officials.

2.5. Practical Application of Preliminary Inquiry in England

No criminal case of a serious nature may be tried in a superior court in England unless a preliminary examination is first conducted by a magistrate, known as an "examining justice." The sole purpose of the preliminary examination is to assure that no serious criminal charge will proceed to trial unless the examining justice is satisfied that there is sufficient evidence to establish a prima facie case against the accused. This is accomplished by requiring the prosecution to present in open court the evidence previously developed by the police against the accused. Is a process of evaluating the evidence already known to the prosecution. In the course of the examination, witnesses will be produced, and all of the available documentary and physical evidence will be presented by the prosecution. The accused may or may not present evidence, as he chooses, and normally his strategy will depend on the nature of the case presented by the prosecution. The examining justice may then either discharge the accused or send him for trial before the appropriate court.

The English preliminary examination is designed primarily as a protection for the accused against unjust and obviously insufficient accusations. It also serves as a device by which the accused is informed of the entire case against him.

The preliminary examination is not without its critics. Particular criticism has been directed against the failure of the examination to function today as a real screening device. As recently as 1958, the Tucker Committee found that only between three and four percent of the preliminary examinations result in the discharge of the accused. It might be said, perhaps, that this is not so much an indictment of the examination as it is a commendation for the efficiency of the English police.

It seems certain that the public nature of the preliminary examination, with its full disclosure of the case contributes to the reduction of the number of cases actually tried in the superior courts.

The South African preparatory examination is similar to the English preliminary examination in most respects. Here too, we find that the preparatory examination is a prerequisite for the trial of a criminal case in a superior court. The examination is conducted in open court and is designed to determine whether the evidence presented by the public prosecutor is sufficient to warrant a trial on the charges.

2.6. Practical Application of Preliminary Inquiry in France

In France the concept of the preliminary examination is radically different from that existing in England and South Africa. As pointed out above, the English and South African inquiries constitute an evaluation of the evidence gathered by the police and presented by the prosecution. In France, however, I'instruction preparatoire is designed as an independent judicial investigation which will develop evidence indicating

either the guilt or innocence of the accused. We have here a transfer of the primary investigating function to the judiciary, and we also find the judiciary entering a criminal case at a much earlier stage of the proceedings. The preparatory examination is required before an accused may be required to stand trial for the most serious offenses, and is discretionary with the prosecutor in the case of the less serious type of offenses.

The French preparatory examination is conducted by the judge d'instruction, a magistrate designated to serve as such by the Minster of Justice for a three year period.

Since the object of the examination is to produce evidence the proceeding is designed to elicit all of the facts concerning the alleged offense. That this may not always be the case is indicated by Professor Vouin, as follows: "But one is not unaware that the examining magistrate shows a certain tendency to behave as an agent of the prosecution and, furthermore, that the preparatory examination is not exclusively his function, but also and in a very large measure, the activity of the police."

The preparatory examination consists of any number of "acts of inquiry" during which the magistrate will collect evidence from any available source. In addition examining witnesses, the magistrate may use any investigative technique appropriate to the case at hand, such as a visit to the scene of the crime, searches of premises (called "domiciliary visits"),and seizure of articles.

All available witnesses will be examined by the judge in private, and the statement of each witness will be reduced to writing and signed by the person testifying. These statements then become a part of the dossier or record of the examination, which is available for inspection by defendant or his counsel.

Certain specific protections are made available to the accused during the course of the examination. If he is represented by counsel, the accused may not be examined in the absence of his counsel without his consent, and counsel has a right to communicate freely with his client, even if the accused is in custody. In addition, any documentary evidence contained in the dossier must be furnished to defense counsel at least twenty-four hours prior to any examination of the accused.

There are no formal rules of evidence limiting the introduction of evidence at the preparatory hearing, and generally any evidence having some reasonable probative value will be admitted. All of the evidence so introduced will be weighed by the magistrate in arriving at the "profound personal conviction" that is the test for reaching his decision to discharge the accused (nonlieu) or commit him for the appropriate court (renvoi).

If it is believed that the evidence developed at the preparation examination discloses that the accused has committed a crime, the dossier must be forwarded to the Court of appeal. The procureur general will examine the dossier and then present the case to Chambre des Mises en Accusation, the Chamber of Committals of the Court of Appeal, for the second stage of the preparatory examination. The Chamber of Committals, consisting of three members of the Court of Appeal, considers all such cases solely on the basis of the dossier and the report of the procureur general, and determines whether the case should go to trial.

Although this phase of the screening process is limited to a review of the dossier prepared in the course of the preparatory examination, and is conducted without the presence and assistance of counsel, it provides an important added protection for the accused.

2.7. Practical Application of Preliminary Inquiry in United States

The function of a preliminary examination has been described in Puttkammer, Criminal. Law Enforcement 6 (U. of Chi. L. Sch. Papers, 1941): "A person is arrested. It may very well be that even the most superficial look at the facts would at once show that he could not possibly be guilty of the offense charged. It is nothing more than obvious fairness to him, then, that he should be discharged at the soonest possible moment. Accordingly promptly after an arrest the arrested person is entitled to be brought before a judge-in this phase of the work we usually refer to him as a 'magistrate' - so that the latter may decide whether, if the state's evidence is true, it presents a strong enough case to warrant holding our man for further proceedings, or whether the showing is so weak that there is no chance of a conviction. From this it will be plain that the preliminary examination is a stage in the entire proceedings which is almost wholly to the advantage of the accused, but even so it is also capable of serving a very real function as an aid to prosecution. The prompt questioning of the future witnesses for the state may prevent or show up all sorts of inconsistencies in their testimony later on, when there has been a chance to tamper with them."

The state can be forced to reveal its evidence to justify a finding of "probable cause." The accused has the right to present witnesses, to cross-examine and to insist upon the presence of his counsel.

A. ***Probable cause finding***:- If from the evidence it appears that there is probable cause to believe that an offense has been committed. The magistrate shall send the case to the forth with hold him to answer in district court.

B. ***Records***:- After concluding the proceeding the federal magistrate transmit to the clerk of the district court all papers in the proceeding.

1. On application to a federal magistrate, the attorney for a defendant has the right to have the recording of the hearing on in connection with his preparation for trial.
2. On application of a defendant addressed to the court; an order may issue that the federal magistrate make available a copy of the transcript, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay in which case the expense shall be paid by the director of the administrative office of the United States Courts.

2.8. Practical Application of Preliminary Inquiry in Soviet Union

In accordance with soviet legislation most criminal cases pass through the stage of preliminary investigation before they are brought into the court, an exception being made for such minor crimes as battery or insult. This category of cases are called private prosecution cases.

The activities of the investigation bodies are strictly regulated by the law. The criminal procedure codes of the Union Republics state specifically which organ of investigation may investigate this or that case, what procedure should be applied, what rights and duties this organ possesses and what methods of collecting and investigating evidence it may use.

The activity of the organs of investigation is of a preliminary nature. This means that the court which is to examine a case is not committed to the

conclusions of preliminary investigation but studies and assesses evidence again. The task of the investigation bodies is to prepare the case for court hearing and facilitate the court's collection and investigation of evidence.

To day preliminary investigation is exercised in two forms:

a. Preliminary investigation, carried out by the investigators of the USSR procurator's office, the investigators of the USSR ministry of the Interior and the investigators of the state security committee of the USSR. The investigators are empowered by the law to conduct a preliminary investigation of the most complicated cases and of the most dangerous crimes.
b. Inquiry, is, the preliminary investigation of less dangerous crimes, carried out chiefly by the militia bodies, and by the commanders of military units, by governors of corrective labour institutions in respect of persons kept in prison, by fire department bodies in cases of violation of rules for the prevention of fire and by labour protection inspectorates in cases of violation of safety rules and labour protection rules. With few exceptions, an inquiry is conducted subject to the same procedural rules as are applicable to the inquiry carried out by investigators.

Despite the fact that all the aforementioned bodies belong to different departments, have their own structure and competence, they pursue common goals, discharge common tasks, observe a single procedural law and act on common principles. The legality of their activity is supervised by the procurator general of the USSR and the procurator subordinate to him.

Preliminary investigation is carried out in the following stages.

- The investigator or organ of inquiry is duty bound to accept and examine any statement from citizens on a crime that has been committed or is in preparation and is obliged to take decision on the merits of the statement within a statutory period.
- If the material adduced or the statement made in this way contain any elements of a crime, the investigator or the organ of inquiry is duty bound to carry out a preliminary investigation, collect and examine all evidence, take measures to compensate for the damage inflicted by the crime, secure the summoning to court of an accused and other persons concerned and take other actions provided for by the criminal procedure law.
- Upon the completion of the preliminary investigation of a criminal case, the investigator or the organ of inquiry sends the case with an indictment to the procurator for his approval.
- If the procurator, after verification, concurs with the indictment, the approves it and passes the case on to a court.

While discharging his duties the investigator has the right to detain a person suspected of a crime, to question citizens and official as witness to the crime, to make the requisite searches and inspections, order an expert investigation, withdraw the requisite documents and exhibits during the investigation, select measures if prevention in respect to defendants (a written under taking not to leave one's place of residence, bail, surety, and detention).

Having recognized that the evidence collected is sufficient for compiling an indictment, and having acquainted the injured party, the plaintiff and the respondent with the materials of the case, the investigator must enable the defendant and his defense counsel to take cognizance of the relevant materials, hear their petition and, if necessary, carry out an additional instigation.

The public is draw into the detection of crimes in various forms through meeting requests to assist the investigator on relevant matters, through rendering assistance to the inquiry bodies by means of volunteer public order patrols and so on. However the investigator cannot charge a member of the public with performing procedural actions: interrogations; inspections searches, e.t.c. These kinds of action may be performed only by the investigator or the person conducting the inquiry.

All decisions concerning the lines of investigation and its conduct are taken by the investigator independently, with the exception of cases where the law requires the sanction of the procurator. Arrests, searches, seizures of correspondence and various other actions are performed by the investigators only with the sanction of the procurator given in writing. The investigator is fully responsible for the legality and timeliness of all requisite investigations.

The procurators who supervises the investigation has the right to give instructions to the investigator in charge of all matters concerning the line and conduct of investigation. Should the investigator disagree with the procurator's instructions as regards the qualification of a crime, the scope of the indictment, the dispatch of a case for adjudication in court or the quashing of a case, he is entitled to submit the case to a higher procurator with his objections in writing. In such instances the higher procurator either cancels the instruction of the lower procurator or transfer the case to another investigator.

CHAPTER THREE

3.1. Practical application of preliminary inquiry in Addis Ababa

Before the case passes to preliminary inquiry court for investigation, police officer will investigate the offences committed in the territory of Addis Ababa. If the committed offence is not serious, the sub city and. Sub city branch police departments shall have the power to investigate. But if they are serious offences like homicide and robbery the Addis Ababa policy commission investigation main department will investigate such crimes. But some times after the commission of such crimes the commission investigation officer may not arrive soon. To protect and collect evidences sub city investigator will be at the place of the crime and perform their duty until the commission investigators come. Finally the sub city investigator will transfer to the commission investigators all evidences that are collected by him. Similarly in the case of bodily in jury the victim may not die immediately. After the commission of such offences sub city investigator will investigate the case. But of during investigation the victim dies, the sub city investigator will send the file and if there is a suspect the suspect and all documentary, material and testimony evidences will be sent to the commission. The Addis Ababa police commission investigation main department is the only department which has a duty to investigate a serious offence like robbery, homicide a crime of theft committed against the property of the state and other grave offenses or any offences which is difficult to investigate by the capacity of sub city police.

This investigation department has three different investigation sections. 1. Homicide 2. Robbery and grave theft 3. Economic and other different crimes investigation section 4. Police forensic investigation section. All

investigators come from the sub city departments. Investigation procedures are strictly followed by investigators. Investigators will collect evidence against the case diligently, identify suspects, issue search and arrest warrants given by the court. After arrest investigation will start by receiving the statement of the suspect. This process is performed confidentially as because of the nature of the crime and other co-suspects are shall out side police control and the available evidence may be lost.

After 48 hours the investigation officer will bring the suspect to the Addis Ababa first instance court Lideta Branch for remand. But if the police arrest suspect without sufficient cause the court itself may release on bail or will give order to police to release the suspect. Until the police conclude the investigation and transfer the case to the public prosecutor he or she may ask additional remand to complete his investigation.

During investigation if the offense has a serious nature the police officer will prepare his case for the preliminary inquiry at Arada First instance court. This bench is the nearest court to the commission. Every serious offence committed inside the territory of Addis Ababa is subjected to investigate on by this court. The duty to conduct inquiry such cases is an additional duty of this bench.

To start this inquiry, the police will send a statement to the chief of public prosecutor in with a description of the offence and will show the serious nature of the elements. The head of public prosecutor after evaluating the case decides, whether it is subject to the preliminary inquiry. After this he/she address a petition to the court, requesting the preliminary inquiry office of the court to open the file and assign a judge for inquiry. This assigned judge will adjourn the case of at this stage the prosecutor does not contact the judge. The investigator will then inform the public prosecutor of the day fixed. Until the date comes the public

prosecutor and the police will discuss on the case including their witness. After the completion of this step police by calling the witness to his offices or other means will inform the day fixed by the court and additionally inform the time, place of the court and hearing.

At the day fixed the suspect will come from police custody. Also the investigation police officer and his witnesses will appear before the court. If the witnesses are more than one except one witnesses others will be stay out side from the court room. The judge will open the inquiry by giving his by introducing the case to the suspect, and the witness will assure veracity of his testimony by oath by putting his hands on Bible or Kuran. After oath the witness will give their testimony by responding to the question of public prosecutor. After the completion of this testimony the court may ask any question to the witness that help to clarify the given testimony. Next the court gives the chance to the suspect to cross examine his witness. Finally the witness will sign on their testimony to indicate that is given by him/her. Before concluding this inquiry the judge will inform the suspect to give his defense witness list. But if the suspect is not willing to give the judge not push to give judge will not push them to record their list. The judge summarizes the inquiry and the file will be closed. The court will inform the police that he could get a copy of inquiry from the archives of the court write contained the testimony of the witnesses, the question forwarded by the suspect to the witness for cross examination if there is list of defense witnesses, answers given by the witnesses to the questions of the suspect, the questions of the judge passed to the witnesses and answers given by the witnesses the date, name of suspects, the name and signature of the judge.

3.2. Rights of the Suspect in Custody

3.2.1. The Right to Bail

Unless exceptional cases right the accused in the hands of the police has a write to set a bail. Police should release suspects with surety but if it has reason to deny this rights of the suspect, this suspect can claim his right to bail from the court. After the court weighs the reasons it may also deny the right of bail or release the suspect if grounds of refusal police does not satisfy the court.

3.2.2. The Right to Speedy Trial

Every suspect in custody has the right to appear at the nearest court for investigative remand. The court will give a reasonable time for investigation. Of the suspect is reasonably accused of that particular case. The court can give additional time for the completion of police investigation. After this the completed file will be sent to the proper public prosecutor for preparing a charge with in 15 days. The court controls adjournments and gives the public prosecutor additional time for preparing a charge ensuring that the right of speedy trial of the suspect is not violated.

3.2.3. The Right of Habeaus Corpus

If the investigative police officer detained the accused without the permission of the court and without reasonable cause or illegally and if the suspect is in prison with out remand or court warrant, the accused has the right to habeas corpus there is to be released from illegal detention.

3.2.4. The Right to Assistance of Defense Counsel

In a criminal proceeding the accused bog not have a legal knowledge. For ensuring justice and equality suspects should have assistance of legal aid.

3.3. Practical Problems of Preliminary Inquiry in Addis Ababa

For the purpose of this research to show the practical problems of preliminary inquiry the concerned officials have been interviewed and recent cases are presented.

The interviews indicate that before the case passes to the main trial, police has full power to investigate the case. Police do not request the high court public prosecutor whether the case needs a preliminary inquiry[1]. He/she will investigate the case and ask the federal first instance court public prosecutor office to conduct a preliminary inquiry, if the case is serious by its nature because based on Art 539 and 671 of the criminal law. The public prosecutor conduct the inquiry over the cases, using testimony given at the time of police investigation. But some times if the police send the case without preliminary inquiry to the high court public prosecutor for prosecution, the high court public prosecutor may order police to conduct preliminary inquiry before the charge is made.[2]

As we have seen from the practical application of preliminary inquiry procedure the suspect in police custody does not know when the inquiry is required, even may not have an idea what preliminary inquiry means. Only the police will apply to the court and the inquiry court will decide when it will conduct it.[3] Additionally the court will order the police to give

information to the suspect of the adjournment, and if he has a defense lawyer that he can appear with him.[4] But on the day fixed to conduct the preliminary inquiry, there is no proof that the police have given this information to the suspect and his right to assistance by legal aid or lawyer.[5] But if police did not give this information to suspects there is no provision on what to do on the day fixed. This practice does not respect the suspects right to receive legal assistance.

The inquiry court does not have power to close the file and release suspect with or without bail, if the case has not a serious nature or the suspect disproves the alleged offence by his cross examination or proves his innocence.[6] When we see the cases of homicide investigated by the Addis Ababa police commission, from police investigation file number 972/2000 police asked the public prosecutor to present, one witness the inquiry court. But the witness did not appear at the day fixed and the court closed the file.[7] After a certain period police found the witness and asked for the re-start of the inquiry and the court conducted the inquiry again.[8]

The court will adjourn the case of its inquiry, it may adjourn for a day, a week or more. Under normal conditions, preliminary inquiry is conducted during the remand given by the remand court.[9]

If parties at the preliminary inquiry stage do not speak, hear or understand properly the Amharic language, the inquiry court will not provide a translator. In the case of breach of trust investigated by the Addis Ababa police commission the victim was a Chinese citizen and another one witness has same national but the suspect was an

Ethiopian. After the investigating police asked the public prosecutor to conduct a preliminary inquiry, the Chinese nationals were preparing to return their country. On the day fixed for the hearing after the suspect and witness appeared the court could not get a translator who is capable to translate, from Chinese to Amharic and from Amharic to Chinese. A woman working at the residence of the victims was told by the court that she can translate. The court assigned the woman as a translator and by this way the inquiry was conducted. If there is no competent translator a suspect may be prejudiced.

During the preliminary inquiry only eye witness as will appear, but not the material evidence.[10] The public prosecutor and police do not focus on the material evidence, because they think the material evidence does not have probative value. It is believed that material by itself cannot prove the commission of an offense.

In the preliminary inquiry the state witness only will appear. If the defense witness are not found after giving their testimony at police investigation the testimony of state witnesses at the preliminary inquiry will be admissible.[11] This is an advantage to the state. After the preliminary inquiry is conducted, there is no fear of non-appearance of the witnesses. But in the preliminary inquiry the defense witnesses do not know of the inquiry. This is a disadvantage for the suspect. The defense witness may die or suddenly can change there address. Non-hearing of defense witnesses should be considered as a disadvantage for the suspect.

3.4. Legal Problems of Preliminary Inquiry In Ethiopia

The preliminary inquiry is supported by a legally binding rule in the criminal procedure code Art 80-93. These rules have their problems as we can see as follows.

First when the suspect appears for a preliminary inquiry at the preliminary inquiry court unless he has a sufficient legal knowledge they do not appear with their witness or their attorney or the inquiry court does not provide for support to suspects to enable them to be protected from illegal prosecution. As we have said earlier, suspects under police custody will not be provided with legal assistance because police investigation is conducted in a confidential manner. Also suspects during preliminary inquiry do not have access to assistance by defense attorneys and only appear suddenly for inquiry and he come from police custody and there will be a violation of human and legal rights; therefore they may fear from defend themselves by cross examination. Every accused has a right to counsel under the Ethiopian constitution. But the criminal procedure law does not say anything about this right but some times the inquiry judges will inform the police "If the suspect can have an attorney he should come with". But from my interview, I realized that suspects do not get this information. Due to failure of proper defense the evidence given at the preliminary inquiry is completely considered as evidence for the main trial.[12]

Second the Art 84 provides that public prosecutor or and police call only witness as similarly in the practice, material evidence is not present. If the witnesses do not appear, change address are incapable to give testimony or go outside of Ethiopia. This material evidence should not have a probative value.

Third giving adjournments for the preliminary inquiry is not a necessary means because the suspect is under custody, because police will ask remand for investigation. Until police complete his investigation, the suspect will stay in custody. Between his staying, the preliminary inquiry will be conducted. Therefore giving order by the inquiry court to enable stay the suspect custody is not a necessary provision.

Fourthly there are some instances where the suspect come to inquiry to the court they may not completely understand Amharic language but there is no rule form where an independent and competent interpreter should come. From my interview interpreters were brought mostly by the police.[13] It shows the impartial procedures of preliminary inquiry. Because suspects have a constitutional rights to get an interpreter. If he does not understand the language.[14] Art 20(2) of the Ethiopian revised constitution. Also the inquiry court can call any witness if they are relevant to its inquiry and if it thinks fit their relevance for giving a correct judgment.[15] But to which judgment? Why it involved in this task? It also exposes the court to partiality and supports the state. Because collecting evidence is the task of police or prosecutor.

Fifth the court in the preliminary inquiry do not have power to release the suspect what ever the case may be. But from the history of the Ethiopian criminal procedure law at the project level the court had a power to release, if it does not get a sufficient reason to conduct the inquiry but finally this power is excluded from the revised procedure code.[16] The reason is, the inquiry court is not competent to evaluate evidence of the case. But the evidence investigated by this inquiry court is considered as evidence and admissible in the main trial. And if the witness again cannot appear for hearing and the suspect cannot disprove

the alleged offences a testimony given at the inquiry court will be used. Therefore if this is the case Art 144 Cr. P. C. The court finds innocence of the suspect, he must be released on bail. Other wise, the screening of the case by preliminary inquiry is purposeless.

Finally, the inquiry court will hear the state witnesses but why this court only records the list of defense witness of the suspect Art 89/3/? This is the advantage for the state for preservation of witness testimony but if suspects have an interest to call their defense witness the court do not hear. They may not appear, they may die and can go abroad and could be incapable to give testimony. Therefore suspect defense witnesses must be heard. Other wise we shall consider the law does not give emphasis for the protection of suspect defense witnesses generally.

CONCLUSION AND RECOMMENDATION

Conclusion

The preliminary inquiry has its own role in different countries for screening of cases. But there are different methods of inquiry. For example in France, it is an independent judicial investigation, which will develop evidence indicating either the guilt or innocence of the accused. But the English one is evaluation of evidence gathered by the police. Also in Ethiopia the inquiry court investigates evidence collected by the police transfers the report to the high court for trial.

As we have seen from different countries the practice has the same purposes and goal. Today, in the world type and a number of cases is increasing from day to day. It is useful specially to bring suspects to justice promptly after arrest and police investigation. In most countries after inquiry the magistrate or the inquiry courts have the right to grant the bail right of the suspect after their investigation and there are complete and procedural rules for the inquiry.

But when we come to the Ethiopian preliminary inquiry the law provided relevant provisions that helps to conduct a preliminary inquiry but this means of screening does not completely satisfy the interest of justice. The Ethiopian revised constitution has proclaimed that suspects under prison or jail have specific rights. But during this inquiry from the stage of opening the file to preliminary inquiry by police, a suspect under police custody will not have access of information to what the police, public prosecutor and the judge are doing. Also he does not know his adjournment given by the inquiry court and no body informs him of his right to a defense lawyer, unless the court provides this attorney. He appears and is examined by the court.

Under the above given circumstances a statement given by the witness to the inquiry court is admissible to the main trial. This inquiry does not give emphasis to material evidence and if the court discovers that the evidence cannot prove the alleged offences and if the suspect disproves the facts by cross examination the court do not have power to set a bail or closing the file. But it may call any witness if it thinks it is relevant for its investigation.

Generally preliminary inquiry is a very effective screening way of cases. But unless we provide a fair and independent procedure, it does not achieve the intended result.

Recommendation

We have seen certain practical and legal problems of the Ethiopian preliminary inquiry. To modify this device make it effective means adjustment, legal amendments and filling procedural gaps by relevant provisions.

When police open the preliminary inquiry file not only the police but the suspect himself must attend and informed about the inquiry, which day is fixed for inquiry and to appear with his defense attorney. Unless we inform him or provide an attorney how can we think illiterate people can defend them selves.

The inquiry court must have a power to release the suspect on bail after the evaluation of evidence. When it proves the suspect did not commit the offense it should close the file. From the recent collected cases we understand the court only closes the file if the witness does not appear at the day fixed. The law does not give such power to the court. According to the criminal procedure code Art 59, every arrested person must appear before the remand court with in 48 hours after arrest. This

inquiry is also conducted before this period. Therefore giving adjournment by the inquiry court for its purpose is not necessary. It may affect the speedy trial right of the suspect because remand court itself will accept the demand of additional remand as a ground. Additionally if parties are do not speak or understand the Amharic language the translator will be presented by the police. It may affect the right to get the assistance of interpreter.

During preliminary inquiry only eyewitness will be present for this purpose. But material evidences will not be brought. However the material evidence should may disprove the alleged facts. In this hearing the defense witness will not be heard but the state witnesses will be heard.

As far as the legal aspect Art 82(2) Cr. Pr. C. provided the inquiry court shall adjourn but normally preliminary inquiry is conducted when after the police investigation remand is given and is conducted before the final day of remand fixed by the remand court. Therefore giving adjournment for inquiry is unnecessary. Additionally on the day of inquiry suspects are present without lawyer. Therefore the court itself has to give information to the suspect and also has to give evidence presented against him according to Art 20(4) of revised constitution. The court some times can call witnesses if it thinks fit necessary. This court should not be performing the tasks of the state.

There is no common concept of preliminary inquiry. And there is no uniform understanding of what preliminary inquiry mean. Some of them use it as a means of institution of prosecution and others as a means of preservation of evidences. Also others consider the inquiry is, in the advantage of the state. Therefore to create a common understanding of this device in a legally and full manner trainings in the law schools and job training should be given for legal practitioners and public at large.

Annex