

# Ethiopian Accused's Right to Speedy Trials: the Case of North Gondar Zone

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## ABSTRACT

Not only should justice be efficient and effective, but it should also be timely, meaning that the trial should be concluded as quickly as possible. The right to a speedy trial is one of the fundamental rights of accused persons under international and national law. Delays in the criminal justice system jeopardize justice in general, since quick trials are linked to better outcomes. It has a significant impact on the accused's socioeconomic and family rights. A defendant in a criminal case has a right to a speedy trial under the Federal Democratic Republic of Ethiopian constitution even though it provides no definition for it. This article is designed to explore the practical implementation of the right to speedy trials of accused persons in Ethiopia, specifically in the North Gondar Zone. In some instances, the accused may be released free after so many days passing in jail and our criminal procedure and criminal code have no provisions for compensating these kinds of individuals. The main objective of the study is to find out whether or not there is an effective implementation of the Criminal Code and Criminal Procedure Code on the right to speedy trial rights of accused persons. Thus, the paper is expected to show the underlying legal, institutional and socio-cultural challenges that hamper effective implementation of these laws. In order to achieve the objectives of the study, data be collected from oral and written sources. The qualitative methods applied to collecting data. Thus, key informant interviews with high court judges, woreda justice and court office heads, judges and prosecutors of the study area. Also, observation of dead files was conducted.

**Keywords:** Speedy Trials; Criminal Procedure; Accused Persons; North Gondar Zone; Ethiopia

## INTRODUCTION

The prosecution of criminals is one of the fundamental principles of the legal systems of almost all states of the world. To this end, countries have come up with their own legal and institutional mechanisms for combating and arresting crimes. One of the most effective ways of preventing and combating crime is by promulgation and implementation of criminal law. In this regard, the purpose of the 2005 Federal Democratic Republic of Ethiopia revised criminal code is to ensure order, peace and security of the state, its peoples, and inhabitants for the public good [1].

One of the main reasons for the right to speedy trial is to prevent a defendant from being held in custody for a long time, only to eventually be found innocent. An innocent citizen should not be required to spend many times/months, or even years, in prison. Also, the right to speedy trial reduces the stress on defendants and allows the defense to gather and present evidence while it is still fresh. A witness may struggle to recall the events leading to the charges, if several months/years pass before the trial.

The legal definition of a speedy trial is a trial conducted according to prevailing rules and procedures that takes place without

unreasonable or undue delay or within a statutory period. [2] In the USA, the right to a speedy trial is guaranteed to criminal defendants by the Sixth Amendment of the U.S. Constitution. The purposes of the right as explained by the U.S. Supreme Court are to keep a person who has not yet been convicted from serving lengthy jail time, to lessen the time that the accused must endure the anxiety and publicity of the impending trial, and to minimize the damage that delay might cause to the person's ability to present a defense. [3] Although the Constitution does not set out any specific time within which a trial must commence in order to be deemed speedy, some states have enacted laws establishing a limit whose expiration results in a dismissal of the charges.

The Ethiopian constitution and several human rights laws recognize the right to speedy trial. This right guarantees defendants against delay and allows the enforcement of several rights like fair trial regardless of the gravity of the crimes. Nevertheless, speedy trial rights in Ethiopia are clearly problematic, if not violated, as court judgments take quite a long time. Despite lesser enforcement of the rights in Ethiopia, the judiciary still prosecuted Colonel Mengistu Hailemariam and other senior officials for genocide and crimes against humanity. [4] Eventually, the trial took more than a decade

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before a judgment was reached and, hence, Mengistu's trial became the longest genocide trial ever [5].

The right to a speedy trial is commonly thought to be a right of an accused, but it actually benefits society as a whole and not just the individual accused. Guilty persons released on bail for too long tend to commit other crimes or flee the jurisdiction of the courts altogether. Defendants who are not bailed must spend "dead" time in local jails exposed to conditions destructive of human character. For those who are eventually found innocent, their potential to be contributing members of society through any kind of employment is lost during pre-trial imprisonment. The possibility of rehabilitating those who are eventually found guilty is diminished since correction procedures cannot be started until after trial. These non-productive conditions are achieved at a great financial expense to society. It reduces the time that an accused may suffer from personal anxiety and public suspicion. Also, it minimizes the chances that defenses will be prejudiced because of the disappearance of witnesses or the fading of memories over time. On the whole, the right enhances the integrity and fairness of an entire criminal proceeding.

### Historical Development of Right to Speedy Trials in Ethiopia

Globally, Englishmen formally claimed the right to speedy trial and public trial in the Magna Charta of 1215. [6] In the United States, it is extended to defendants in federal cases by the sixth amendment to the Constitution. [7] Also, many American states have specific legislation that governs speedy trials of accused persons. Thus, Magna Charta and the United States of America constitution can be considered as the foundation for the right to speedy trials of accused persons. Later on, international human rights instruments and domestic legislation also adopted the right to speedy trials of accused persons.

### Emperor Haile Selassie Constitutions (1931 and 1955 revised constitutions)

The first written modern constitution of Ethiopia, which was adopted in 1931, has no provision in relation to the right to speedy trials of accused persons. But the revised constitution of Ethiopia, which was adopted in 1955, introduced the right to speedy trials of accused persons in Ethiopia. It states that in all criminal prosecutions the accused, duly submitting to the court, shall have the right to speedy trial and---. [8] Accordingly, the revised constitution differs from its former one by introducing this new right to the country.

### 1987 Derg Constitution

The socialist Derg constitution does not incorporate any provision for the rights of speedy trials of accused persons. Moreover, the Dergu take power of regular courts and establish military courts and try to prosecute whatever the government wants.

### The 1995 FDRE Constitution

The current constitution has provisions in relation to the right to speedy trials of accused persons. According to article 20 (1), accused persons have the right to a public trial before an ordinary court of law within a reasonable time after being charged. It simply says within reasonable time and it may depend on the circumstances of the case. But the constitution did not give any clue to judge whether the time taken for a certain trial is reasonable time or not.

So it is up to the house of federation to interpret this provision.

### Criminal Procedure Code of Ethiopia (1960)

The criminal procedure code of Ethiopia also indirectly imposes duty on public prosecutors to file charges within fifteen days of the court having jurisdiction after receiving police investigation files. [9] But currently, public prosecutors are obliged to file charges in court within three up to five days after receiving police files under the BPR (business process reengineering). Under the criminal procedure code, the court may adjourn any hearing at any stage on its own motion or on the application of the prosecution or the defense if the interests of justice are served. [10] So adjournments cannot be granted by the court without good causes and interest of justice so required. For instance, if the mental illness of the accused is in question, it has to be checked by experts and this can be considered as an interest of justice for giving adjournments.

### Implementation and Challenges to Implement the Right to Speedy Trials of Accused Persons

The right to speedy trials of accused persons in Ethiopia is guaranteed under the FDRE constitution Article 20 (1) and of the criminal procedure code article 109 (1). According to Awoke Ayelign [11], the right to speedy trials has so many benefits, which include saving of time and resources for justice institutions when it is implemented practically. It has also had tremendous impacts on the development of the country by helping suspects who do not commit a crime go to their formal jobs without long stays in prison houses.

According to him, there is a standard or manual that is used by the Adirkayworeda prosecutor's office to judge whether a certain case is a speedy one or not. Criminal files brought by police should be responded to by the woreda prosecutor criminal branch within 3 (three) to 5 (five) days. However, because the geographical location of most kebeles in the woreda is difficult and unsuitable for locating the offenders, 98 percent of criminal cases are heard in RTD (Real Time Dispatch), as we call it in Amharic [12].

There are obstacles to implementing the right to speedy trials for accused persons in that woreda, including the absence of witnesses or evidence, the disappearance of the accused, the refusal of victims to cooperate with justice institutions after arbitration, the repetition of appointments by judges, the difficult topography, and a lack of transportation access to bring the necessary evidence and witnesses [13].

According to Adirkayworeda court president, almost all criminal files are handled by RTD in collaboration with police and public prosecutors in order to ensure accused persons' right to speedy trials. [14] According to him, since the topography of the woreda is such a difficult one, once the suspect is released on bail there is a probability of non-appearance and to prevent it, the justice institutions use RTD as one solution to avoid delay of justice [15].

When we look at the annual report of Adirkayworeda Court, a total of 406 files were there waiting for the decision of the court and among these 402 cases were decided in the 2012 budget year, only 4 cases were transferred to the 2013 budget year. When we calculate the performance rate, it is 99.04%.

Gizachew Muchie said, since the North Gondar Zone is a new zone established in recent years, it has so many problems implementing the right to speedy trials of accused persons. [16] According to him,

the barriers to implementing the right to speedy trials of accused persons can be classified as internal and external ones. The internal ones are related to the courts themselves, which includes lack of human resources (judges), budget, and efficient work systems and case flow management systems. [17] External factors can be associated with witnesses and evidence, topography or geographical location and transport related problems, disappearance of witnesses to appear before the court in the trial process etc [18].

Under the public prosecutor establishment proclamation, the law allows the public prosecutor to draw the charge at any time when it is found necessary. It states that the federal attorney general has the power to institute criminal case charges by representing the federal government, litigates, and withdraws charges when found necessary in the interest of the public, resumes withdrawn charges. However, with the Prime Minister's approval, issue a directive regarding the withdrawal of cases of national importance. [19] As a result, this law has a negative impact on the speedy trials of accused persons because the charges have been withdrawn, it is unknown when it will resume, and, to some extent, it is harsh for suspects who are in jail because of that specific crime are not bail able. Therefore, allowing public prosecutors to withdraw charges at any time of the proceeding without any conditions attached to it or saying courts hampers the right to speedy trials of accused persons because they have spent a long time without justice.

Calling of additional evidence or witness has required its own additional proceeding time to hear this evidence. To some extent, it may take three to four months to locate and bring these witnesses to court.

The mental illness or health of the accused is another barrier to implementing the right to speedy trials of accused persons in the North Gondar Zone. Because, after committing the crime, some suspects attempt to mislead justice by claiming insanity or being mentally ill as a result of the crime, and at this point, the court orders the Amanuel Hospital (the only hospital in the country responsible for checking mental health conditions) to investigate their mental health situation. Therefore, checking the mental status of the given accused is a process and by itself requires long periods of time and, due to this, long adjournments are granted by the court, so this makes speedy trials at risk. [20] There is one case at hand currently in the high court in which the mental status of the suspect is questioned and the case is sent to Amnauel Hospital for checking.

[21] Another problem in relation to speedy trials is related to the defense of the accused. As we know, the accused has the right to defend and present witnesses during litigation as per article 20 (4) of the FDRE constitution, but not knowing the addresses of defense witnesses when the suspect asked for defense witness is one problem for implementing the right to speedy trials of accused persons. [22] The accused did not specify the kebele (specific resident) of their witness and due to this problem, there is a case at hand in the high court that lapsed for more than 6 months. [23] Further, there is a topographic barrier to finding and calling these witnesses to appear in the court of law.

### Files Observed in the North Gondar Zone High Court (cases) and Cassation case

File number 02-28795 Mr. EjargewChanie (4 people) vs Government (Public prosecutor) the file was opened on March 10/07/2010 e.c and the crime was homicide. The final decision was

delivered on January 01/04/2012 e.c and the decision is 18 years of imprisonment for each offender. When we calculate the time that the charge was brought and the decision delivered, it takes 1 year and 9 months period, which is contrary to that of the high court, which is 60 days (2 months) to finish the same kind of case. When we observe the file we understand that the unavailability of witnesses was the cause for the delay [24].

- File number 02-28593 Mr. Miheret Amarevs Government (Public prosecutor) the file was opened on February 19/06/2010 e.c and the crime was an attempted homicide. The final decision was delivered on January 05/05/2012 e.c and the decision is 5 years of imprisonment for the offender. When we calculate the time that the charge was brought and the decision delivered, it takes 1 year and 11 months period, which is contrary to that of the high court, which is 60 days (2 months) to finish the same kind of case.

- File number 02-28643 Mr. Yeshiwondim Kunin (3 people) vs Government (Public prosecutor) the file was opened on February 22/06/2010 e.c and the crime was homicide. The final decision was delivered on January 27/05/2012 e.c and the decision is 20 years of imprisonment for each offender. When we calculate the time that the charge was brought and the decision delivered, it takes 1 year and 11 months period, which is contrary to that of the high court, which is 60 days (2 months) to finish the same kind of case [25]. The case was heard in the absence of the offenders because they vanish after committing the crime.

- Cassation File number 116405 and Volume 23 the decision was rendered on March 2/2008 e.c the proceeding was between the Oromia ethics and anti-corruption commission and Tewdros Abreha Qeleti.

The basic issue in this file was the effect of alteration of charges vis-à-vis the issue of the right to speedy trials of the accused. The case was opened at Finfine Zuria Oromia Liyu Zone High court. After the opening of the charge, the court lasts for one year and 6 months to entertain the case and adjourn it for decisions. But at that moment, the Oromia Ethics and Anti-corruption commission prosecutors came up with the issue of altering the charge to that court and that court in file no-11311 and on 23/04/2007 e.c denied the alteration of the charge. Based on this order of court, Oromia Ethics and Anti-corruption commission prosecutors brought their appeal to the Oromia Supreme Court; filed no-192830 on 3/06/2007 the Supreme Court rejected the decision of the Oromia high court decision and allowed the prosecutors to alter the charge [26]. Again, an appeal was filed with the Oromia Supreme Court Cassation bench, which decided by file no-203090 on 01/10/2007 that allowing the public prosecutor to change the charge after the file was adjourned for decision was considered as reopening the case, which is a violation of the right of accused persons to speedy trials under article 20 (1) of the constitution, and the cassation bench

Based on the decision of the Oromia Supreme Court Cassation decision, an appeal was brought to the Federal Supreme Court Cassation Bench. The federal Supreme Court states that, as per Article 118 and 119 of the criminal procedure code, the court can allow the alteration or addition of charges before any judgment is rendered. But when allowing this alteration or addition of charges, the court should give/substantiate its legal reason for that decision. Here the issue is whether the alteration of the charge is important for the court to give correct and fair justice for the public [27]. Therefore, as far as it is believed that a correct and just decision

was rendered based on the alteration or addition of charges and by following the provided provisions of the criminal procedure code, it cannot be considered as a violation of the right to speedy trials of the accused persons.

Accordingly, the Federal Supreme Court Cassation Division decided that altering or adding of charges as per article 118/119 of the criminal procedure code at any stage of proceeding before judgment cannot violate the right to speedy trials of accused persons and ordered the high court to accept the new charge and continue the proceeding and give its final judgment.

This raw data shows the number of judges as well as support staff in the High Court and woreda courts. When we see the number of judges in the high court, both on civil and criminal benches, there are 7 judges, including the presiding one. There are two criminal bench judges among these, and meeting the number of judges on the criminal bench is even more difficult. To avoid this difficulty, they use the head of the high court as a judge to fill the gap (Table 1).

Criminal case files data in the North Gondar zone in different woredas, including the zone itself, starting from July 1/2011 e.c up to June 30/2012 e.c (Table 2).

According to this report or data, there are a total of 5474 crime cases heard by the courts in the North Gondar Zone. From these total cases, 239 (from high court) and 5118 (from each woreda and sub-woreda courts) total 5357 files are performed in the budget year. Performed means decisions are reached by the respective courts and files are closed. The remaining 117 files are transferred to the next budget year 2013 [28].

Additionally, when we see the report, more crime files are found in

Debark Woreda, where 982 crime files are opened in it. The next in file number is Jana Mora Woreda, which has 879 files opened.

The N/G/Z/High court should focus on the transfer of files to the next budget year since it transferred 61 criminal files to the next budget year. When we look at the transfer rate of woreda courts, Jana Mora woreda court transferred 22 files to the next budget year, while Beyeda transferred 15 files. Dabatworeda transfers 3 fewer files to the following year [29]. Sub woreda courts have all transferred no files to the next budget year, and it is preferable to scale up their experience to worda courts for better file performance in the given budget year.

### The Role of Judges' Job Performance Evaluation System in Implementing the Right to Speedy Trials of Accused Persons

The Amhara region supreme court adopted a new directive to regulate the judges' job performance evaluation activities on December 27/2008 e.c., which is known as "The Amhara National Regional State Supreme Court Judges job performance evaluation directive No 1/2008." The main objective of the directive is to follow the judges are conducting and implementing their decision as per the constitution, and other legislation that is adopted by the legislature and also in line with international agreements that are adopted by Ethiopia. It also aims to ensure the quality of judges' decisions, the ethics of judges, and to take appropriate action if any violations occur [30]. As per this aim, one of the constitutionally guaranteed rights is the right to speedy trials of accused persons. So judges have the responsibility to follow the implementation of this right on the ground whenever entertaining criminal cases at their hand.

Table 1: Human Resource of the North Gondar Zone Courts. Source: North Gondar Zone annual report, 2012.

S.No.	Name of institution	Employees Currently in their jobs		Total
		Male	Female	
1	North Gondar Zone High Court	28	32	60
2	Woreda Courts(inside the zone)	177	186	363
	Total	205	218	423

Table 2: Criminal case files data in the North Gondar zone. Source: N/G/Z/High Court Annual Report, 2012.

Name of the court	Direct Charges				Appeals				Total crime files		
	Transferred from 2011	New charges	Total	Performance	Transferred to 2013	Transferred from 2011	New Appeals	Total		Performance	Transferred to 2013
N/G/Z/ High Court	47	228	275	225	50	14	236	250	239	11	525
Debark Woreda Court	6	976	982	976	6	-	-	-	-	-	982
DabatWoreda Court	11	684	695	692	3	-	-	-	-	-	695
AdirkayWoreda Court	1	405	406	402	4	-	-	-	-	-	406
TelemetWoreda Court	2	330	332	326	6	-	-	-	-	-	332
BeyedaWoreda Court	12	819	831	816	15	-	-	-	-	-	831
JanamoraWoreda Court	10	869	879	857	22	-	-	-	-	-	879
Woken Sub Woreda Court	0	330	330	330	0	-	-	-	-	-	330
Tirayina Sub Woreda Court	2	125	127	127	0	-	-	-	-	-	127
Zaarima Sub-Woreda Court	0	350	350	350	0	-	-	-	-	-	350
Wasel Sub-Woreda Court	0	17	17	17	0	-	-	-	-	-	17
Total			5224	5118	106	14	236	250	239	11	5474

## The Role of Ethical (Code of Conduct) of Judges for Implementing the Right to Speedy Trials of Accused Persons

Judicial ethics are a prerequisite for the highest standards in the execution of justice. [31] Judicial ethics, as a system of professional values and as an institutional instrument of the judiciary, is an integral part of court administration which is based on the principle of self-regulation. [32] Judges are important public officials whose authority reaches every corner of society. Judges resolve disputes between people, and interpret and apply the law by which we live. Through that process, they define our rights and responsibilities, determine the distribution of vast amounts of public and private resources, and direct the actions of officials in other branches of government.

The high importance of judicial ethics in the administration of justice is undeniable; therefore, constant attention to the enforcement of judicial ethics should be given. So, judicial ethics and bench leadership has its own contribution to achieving the goals of speedy trials of accused persons.

### Appearing at Work Place Timely

One of the basic ethical principles and duties is that any judge should carry out his functions diligently, efficiently and effectively. [33] As a result, any judge must make an immediate decision on any case that has been exhaustively argued over, and he may not delay such a decision unless there is a compelling reason to do so, lest he embarrass the clients involved [34]. For instance, non-appearance of witnesses may be one cause for delaying the trial, so the judges should give orders to avoid the problem. Delaying any case at hand without good reason can thus be grounds for disciplinary action. Giving accurate decisions/orders on causes that hinder speedy trials of accused persons is expected from judges in the trial process.

In addition, the judge must appear in place of his duty with due observance of working hours and may not be absent from his duty or depart there earlier without good cause. [35] As a judge, it is necessary to respect working hours.

### Performing the Files as per time provided by their Work Rules

The law imposes time constraints on the completion of a particular case in the proceedings. So judges should respect these time limitations and should finish with those limitations. Any judge should have the responsibility to observe the laws, regulations and directives of the country [36].

### The Necessity of Speedy Trial Standards

There should be clear and provided standards by the law to measure whether a certain proceeding is a speedy one or not. The basic aim of speedy trial standards is to minimize and eliminate the uncertainty surrounding speedy trial rights and to determine how the interest of the accused and the public in prompt trials should be defined, protected and achieved [37].

The text of the standards is divided into four parts [38]

1. Trial calendar: It tries to govern the management of the criminal trial calendar. It may be determined based on the nature or graveness of the crime.
2. Determine what a speedy trial is: specific time limit is the

backbone of speedy trial right and requires the adoption of time limitation expressed in terms of days, months. There may be delays that can be excluded in computing the time for trial.

Special procedures: it relates to the obligation of the public prosecutor to notice and the availability of the prisoner to the court of law. It involves undertaking to obtain the presence of the prisoner for trial [39].

1. Consequences of denial of speedy trial: there should be consequences in case of failure to achieve the right to speedy trials of accused persons.

It is difficult to say whether a certain criminal proceeding is a speedy one or not without a given standards. In case of violations of these standards, the law should provide a remedy. In the trial calendar, there should also be priorities in scheduling criminal cases to effectuate the rights of the accused to a speedy trial and the interest of the public in prompt disposition of the criminal case. [40] Thus, the trial of criminal cases should be given preference over civil cases and the trial of accused in custody (prison) should be given preference over the other criminal cases to implement speedy trial rights of the accused.

The court should control the trial calendar and the public prosecutor should be required to file a public record and reports to the court for the reasons of delay. Finally, the court should grant continuance only on the basis of good cause in the interests of the prosecutor's office and the general public [41].

## CONCLUSION

The term speedy is relative in the legal context. There are factors that the court should take into consideration when a defendant claims a violation of the right to speedy trials of accused persons. These are called "balancing tests" which include the length of the delay itself. The reasons for the delay are the major ones.

Usually the time between filling of charges and the suspects' arrest counts against the time the government has to get the case to trial, because the constitutional right to speedy trial typically depends on the date of arrest or presentation of formal charges. Thus, any time that the defendant spends avoiding arrest typically does not count against the government.

Generally, in other countries, specifically in the USA, a convicted defendant can establish a violation of the constitutional right to speedy trial; the court must set aside the conviction, vacate the sentence, and dismiss the charging document [42].

In our cases, the constitution or criminal code and procedure code does not have such kind of remedy for whom they are victims of violation of speedy trial rights. Therefore, the legislature shall provide new legislation that provides remedy in case of failure to implement the right to speedy trials of accused persons by the government on the ground.

The criminal justice system in a country is designed to protect the citizens of that country from the onslaught of criminal activities of a section of the community which indulges in such acts. The outcome of any criminal justice system is to inspire confidence and create an attitude of respect for the rule of law.

An efficient criminal justice system is one of the cornerstones of good governance. When we think of the criminal justice system, it consists of the police, prosecuting agency, various courts. Prison and a host of other institutions connected with the system.

Case flow management is a set of principles and techniques that enhance greater processing efficiency, reducing delays and case backlogs, and encouraging overall better service from the courts. Case flow management promotes early court control of cases and active court management of the progression of cases from initial filing to disposition. So our courts from federal to state levels should implement case flow management system as one basic system to implement the right to speedy trials of accused persons.

The overall workload of the court can be reduced by maintaining an effective case flow management system. The legislature should incorporate legal provisions that specifically deal with speedy trial issues and in case of failure to implement the right there should be dismissal of the charge or compensation for the victim.

Courts should give special attention to the right to speedy trials of accused persons as far as the issue is in their hands. The judge should specifically state not only the date but also the specific time that the trial will start in the given case. Additionally, among the ethics of judges appearing in the work place within time provided by the government and giving decisions on files as per the time provided by their work rule or BPR are the basic principles of judge's ethics that are relevant to implementing speedy trials of accused persons.

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