

The Right to Speedy Trials of Accused Persons in Ethiopia, the Case of North Gondar Zone

Sileshi Walelign*

Associate Professor, Department of sociology, Addis Ababa University

ABSTRACT

Justice should work not only efficiently and effectively but also work timely means the trial be as speedy as possible. One of the basic rights of accused persons in international and national legislations is the right to speedy trials of accused persons. Delay in criminal justice system defeats justice more pervasively, because speedy trials relates to the right to life and liberty of persons. It has also profound effects on socio-economic and family rights of the accused persons. A defendant in a criminal case has a right to a speedy trial under the FDRE 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 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 study is to find out whether or not there is an effective implementation of criminal code and criminal procedure code on these speedy trials 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 collect data. Thus, key informant interviews with high court judges, woreda justice and court office heads, experts, judges and prosecutors of the study area. Also observation of dead files conducted.

Keywords: Speedy trials; Criminal procedure; Accused persons; 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 to combating and arresting of 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. 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 to be found innocent. An innocent citizen should be not required to spend many times/months in grave cases years imprisoned. Also the right to speedy trial reduces the stress on defendants and allows the defence 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 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. In 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. 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

*Corresponding author: Sileshi Walelign, Associate Professor, Department of sociology, Addis Ababa University, Ethiopia; Email: sileshiwale2021@gmail.com

Received Date: April 11, 2021; Accepted Date: september 4, 2021; Published Date: September 14, 2021

Citation Walelign S (2021). The right to speedy trials of accused persons in Ethiopia, the case of North Gondar Zone 7: p058

Copyright: © 2021 Walelign S. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

several human rights laws recognized the right to speedy trial. This right guarantees defendants against delay and allows the enforcement of several rights regardless of the gravity of the crimes. Nevertheless, speedy trial right in Ethiopia is clearly problematic, if not violated as court judgments take quite long time. Despite lesser enforcement of the right in Ethiopia, the judiciary still prosecuted Colonel Mengistu Hailemariam and other senior officials for genocide and crimes against humanity. Eventually the trial took more than a decade before a judgment was reached and hence Mengistu's trial became the longest genocide trials ever. 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 individual defendants. 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 speedy trial and public trial in the Magna Charta of 1215. In the United States, it is extended to defendants in the federal cases by the sixth amendment to the Constitution. Also many American states have specific legislations that govern speedy trials of accused persons. So Magna Charta and the USA constitution can be considered as the foundation for the right to speedy trials of accused persons. Later on international human right instruments and domestic legislations also adopt 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 have 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 prosecution the accused, duly submitting to the court, shall have the right to speedy trial . So 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 to the rights of speedy trials of accused persons.

The 1995 FDRE Constitution

The current constitution has provisions in relation to the right to speedy trials of accused persons. Under article 20(1) state that accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. It simply says within reasonable time and it may depend on circumstances of the case. But the constitution did not give any clue to judge 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 with in fifteen days to the court having jurisdiction after receiving police investigation files. But currently public prosecutors are obliged to file charges to the court within three days after receiving police files under the BPR (business process reengineering). Under the criminal procedure code the court may of its own motion or on the application of the prosecution or the defense adjourn any hearing at any stage there of where the interests of justice so require. So adjournments cannot be granted by the court without good causes and interest of justice so requires. For instance if the mental stability of the accused is in question it has to be checked by experts and this can be considered as interest of justice for giving adjournments. So the historical development of the right to speedy trials of accused persons is not well developed in Ethiopia and it is possible to say it is at its youngest age and need more and more researches and legal developments.

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 the right to speedy trials have so many benefits which includes saving of time, resources of justice institutions when it is implemented practically. It has also tremendous impacts for the development of the country by helping the suspects who does not commit a crime going to their formal jobs without long stay at prison houses. According to him there is a standard or manual that is used by the Adirkay woreda prosecutor's office to judge whether a certain case is speedy one or not. The woreda prosecutor criminal branch should respond to criminal files that brought from police within 3(three) up to 5(five) days. But practically since the geographical location of most kebeles in the woreda are difficult one and not suitable to find the offenders, in most cases 98 percent of criminal cases are entertained in RTD(Real Time Dispatch) what we call it in Amharic ተገኝተኝ. There are barriers to implement the right to speedy trials of accused persons in that woreda, these includes un availability of witnesses or evidence, disappearance of the accused, refusal of

the victims to cooperate with justice institutions after arbitration, repetition of appointments by judges, difficult topography and lack of transport access to brought the necessary evidence and witnesses are among the factors that hinder speedy trials of accused persons. Adirkay woreda court president states that almost all criminal files are entertained through RTD in collaboration with police and public prosecutor to implement the right to speedy trials of accused persons. According to him since the topography of the woreda is as such difficult one, once the suspect released on bail there is probability of non-appearance and to prevent it the justice institutions use RTD as one solution to avoid delay of justice. When we look the annual report of Adirkay woreda Court totally 406 files was there waiting the decision of the court and among these 402 cases was decided in the 2012 budget year only 4 cases transferred to the 2013 budget year. When we calculate the performance rate it is 99.04%. Gizachew Muchie said since North Gondar Zone is a new zone established in recent years it has so many problems to implement the right to speedy trials of accused persons. According to him the barriers to implement the right to speedy trials of accused persons can be classified in to internal and external ones. The internal ones are related with in the courts themselves which includes lack of human resources (judges), budget, and in efficient work systems and cash flow management systems. The external factors can be associated with witnesses and evidences, topography or geographical location and transport related problems, un willingness of witnesses to support the trial process etc. Under the public prosecutor establishment proclamation the law allows the public prosecutor to withdraw the charge at any time when it found necessary. It states that the federal attorney general has the power to institutes criminal case charges by representing the federal government, litigates, and withdraws charge when found necessary in the interest of the public, resumes withdrew charge. However issues directive concerning the withdrawal of cases having national interest with consultation of the Prime Minister. So this law has its own negative impact on the speedy trials of accused persons since the charge withdrawn it is not known when will begin again and to some extent it is harsh for suspects who are in jail due to that particular crime is not bail able one. Therefore allowing public prosecutor to withdraw charges at any time of the proceeding without any conditions attached with it or saying of courts hamper the right to speedy trials of accused persons because, they are spent long time without justice. Calling of additional evidence or witness has also required its own additional proceeding time to hear these evidences. To some extent it may require 3 up to 4 months to find and brought these witnesses to the court. The mental status or health of the accused/suspect is another barrier to implement the right to speedy trials of accused persons in North Gondar Zone. Because after committing the crime some suspects try to mislead justice by saying I am insane or mentally not normal that is why i am committing this crime, and at this time the court orders the Amanuel Hospital to check up their mental health situation. At this time this process 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. There is one case at hand currently in the high court which the mental status of the suspect is questioned and the case sent to Amnauel Hospital

for checking. Another problem in relation with speedy trials is related with defense of the accused. As we know the accused has the right defend and present witness 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. They did not specify the kebele of their witness and due to this problem there is a case at hand in the high court that lapse for more than 6 month.

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

3.1.1 File number 02-28795 Mr Ejargew Chanie (4 people) vs Government (Public prosecutor) the file were 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 on each offenders. When we calculate the time that the charge was brought and the decision delivered time it takes 1 year and 9 months period which is contrary to the to be of the high court which is 60 days (2 months) to finish the same kind of cases. When we observe the file we understand that unavailability of witness was the cause for the delay. File number 02-28593 Mr Miheret Amare vs Government (Public prosecutor) the file were opened on February 19/06/2010 e.c and the crime was an attempt homicide. The final decision was delivered on January 05/05/2012 e.c and the decision is 5 years of imprisonment on the offender. When we calculate the time that the charge was brought and the decision delivered time it takes 1 year and 11 months period which is contrary to the to be of the high court which is 60 days (2 months) to finish the same kind of cases. File number 02-28643 Mr Yeshiwondim Kunin (3 people) vs Government (Public prosecutor) the file were 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 on each offenders. When we calculate the time that the charge was brought and the decision delivered time it takes 1 year and 11 months period which is contrary to the to be of the high court which is 60 days (2 months) to finish the same kind of cases. The case was entertained in the absence of the offenders since they disappear 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 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 this moment the Oromia Ethics and Anti-corruption commission prosecutors come with the issue of altering the charge to that court and that court in file no-11311 and on 23/04/2007 e.c deny the alteration of the charge. Based on this order of court Oromia Ethics and Anti-corruption commission prosecutors brought their appeal to Oromia Supreme Court, file no-192830 on 3/06/2007 the supreme court rejects the decision of the Oromia high court decision and allowed the prosecutors to alter the charge. Again appeal was brought to Oromia Supreme court Cassation bench and by file no-203090 on 01/10/2007 decided

that allowing the public prosecutor to alter the charge after the file was adjourned for decision considered as it beginning the case as new one and it is in violation of the right to speedy trials of accused persons under article 20(1) of the constitution and the cassation bench of Oromia supreme court validates the decision of the High court that means denying alteration of the charges as it is contrary to speedy trials of accused persons specially who are in prison without bail rights. Based on the decision of the Oromia Supreme Court Cassation decision an appeal was brought to 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 does the alteration of the charge is important for the court to give correct and fair justice for the public. Therefore as far as it is believed that 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 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.

Human Resource of the North Gondar Zone Courts

S.NO	Name of institution	Employees Currently in Total	
		Male	Female
1			
2			

Source: North Gondar Zone annual report, June 2012 e.c

This raw data shows both the number of judges and supporting staffs in the High court and woreda courts. When we see the number of Judges in the high court both in civil and criminal benches they are 7 judges including the presiding one. Among this the criminal bench judges are two and it is even difficult to fulfill the number of judges in criminal bench. To avoid this difficulty they use the head of the high court as a Judge to fill the gap. Criminal case files data in North Gondar zone in different woreda including the zone itself starting From July 1/2011 e.c up To June 30/2012 e.c

Direct charges	Appeals	Total criminal files

Name of the court	Perfor- mance	Transfe- red to	Transfe- red from	New Ap- peals	Total	perfor- mance	Transfe- red to	
N/ G/ Z/ Hig h Co urt	225	50	14	236	250	239	11	525
Deb ark Wo red a Co urt	6	976	982	976	6	-	-	982
Dab at Wo red a Co urt	11	684	695	692	3	-	-	695
Adi rkay Wo red a Co urt	1	405	406	402	4	-	-	406
Tele met Wo red a Co urt	2	330	332	326	6	-	-	332
Bey eda Wo red a Co urt	12	819	831	816	15	-	-	831
Jan am ora Wo red a Co urt	10	869	879	857	22	-	-	879
Wo ken Sub Wo	0	330	330	330	0	-	-	330

red a Co urt										
Tira yina Sub Wo red a Co urt	2	125	127	127	0	-	-	-	-	127
Zaa rim a Sub - Wo red a Co urt	0	350	350	350	0	-	-	-	-	350
Was el Sub - Wo red a Co urt	0	17	17	17	0	-	-	-	-	17
Tot al		522 4	511 8	106	14	236	250	239	11	547 4

Source: N/G/Z/High Court Annual Report, June 2012

We can understand from this report or data is that totally 5474 crime cases entertained by the courts which are found in North Gondar zone. From these total cases 239(from high court) and 5118(from each woreda and sub-woreda courts) totally 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 transferred to the next budget year 2013. Additionally when we see the report more crime files are found in Debark woreda which is 982 crime files are opened in it. The next in file number is Jana Mora Woreda which is 879 files is 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 more files which are 22 and Beyeda transferred 15 files to the next budget year. Dabat woreda transfer fewer files to the next year which is 3. Sub woreda courts all of them transferred no files to the next budget year and it is better to scale up their experience to worda court for better performance of files in the given specific budget year.

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

Starting from December 27/2008 e.c the Amahara region supreme court adopted new directive to regulate the judges job

performance evaluation activities which is called “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 legislations that are adopted by the legislature and also in line with international agreements that are adopted by Ethiopia. It also aimed in ensuring the quality of the decisions of judges, ensuring ethics of judges and if any violation happens to take the necessary measures. As per this aim one of the constitutionally guaranteed rights ids 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.

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. Judicial ethics as a system of professional values and as an institutional instrument of judiciary is an integral part of court administration which is based on the principle of self-regulation. 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 in achieving the goals of speedy trials of accused persons.

Appearing at Work Place Timely

One of the basic ethical principles and duties is any judge shall carry out his functions diligently, efficiently and effectively. Accordingly any judge shall instantly decide on any case which has been argued over exhaustively, instead, he may not rather delay such determination short of appropriate reason and hence forth embarrass the clients concerned. For instance, non-appearance of witnesses may be one cause for delaying the trial, so the judges shall give orders to avoid the problem. So delaying any case at hand without good cause can be a ground to result in disciplinary measures. 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 the place of his duty with due observance of working hours and may not absent from his duty or depart there from earlier without good cause. As a judge it is necessary to respect working hours.

Performing the Files as per time provided by their work rules

There are time limitations of the law to finish a certain case in the proceedings. So judges should respect these time limitations and should finish with in those limitations. Any judge shall have

the responsibility to observe the laws, regulations and directives of the country. The Necessity of Speedy Trial Standards There should be clear and provided standards by the law to measure whether a certain proceeding is speedy one or not. The basic aim of speedy trial standards is to minimize and eliminate the uncertainty surrounding speedy trial right and to determine how the interest of the accused and public in prompt trials shall be defined, protected and achieved.

The text of the standards divided in four parts

• :

It tries to govern the management of the criminal trial calendar. It may be determined based on the nature or graveness of the crime.

•

Specific time limit is backbone of speedy trial right and requires the adoption of time limitation expressed in terms of days, months. There may be necessity delays that can be excluded in computing the time for trial. Special procedures: it relates with the obligation of the public prosecutor to notice to and the availability of the prisoner to the court of law. It involves undertake to obtain the presence of the prisoner for trial.

•

There should be consequences in case of failure of achieving the right to speedy trials of accused persons.

It is difficult to say a certain criminal proceeding is speedy one or not without a given standards. In case of violations of these standards, the law should provide a remedy. In trial calendar, there should be also priorities in scheduling criminal cases to effectuate the rights of the accused to a speedy trial and interest of the public in prompt disposition of the criminal case. 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 shall 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 up on showing of good cause as far as the interest of the prosecutor office and public at large.

CONCLUSION

The term speedy is relative in the legal context. There are factors that the court should take in to consideration when a defendant claims a violation of the right to speedy trials of accused persons. These are called “balancing tests” which includes the length of the delay itself, the reason 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 USA of 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. In our cases whether 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 legislations that provide remedy in case of failure of implementing 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 citizen so that country from the onslaught to 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 criminal justice system it consists with the police, prosecuting agency, various courts. Prison and the host of other institutions connected with the system. Case flow management is a set of principles and techniques that enhance greater processing efficiency, thereby reducing delays and case backlogs and encouraging generally better services from 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 shall 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 of implementing the right there should be dismissal of the charge or compensation for the victim ones. Courts should give special attention for 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 cases. Additionally, among the ethics of judges appearing in work place within time provided by the government and giving decisions on files as per the time provided by their work rule or BPR is the basic principles of judge’s ethics that are relevant one to implement speedy trials of accused persons.

REFERENCE

1. Constitution of the Federal Democratic Republic of Ethiopia Proclamation, 1995, Federal Negarit Gazeta, Proclamation No.1/1995, 1st Year No.1
2. The criminal code of Federal Democratic Republic of Ethiopia, Proclamation No 414/2004
3. Criminal Procedure Code of Ethiopia, 1960, Proclamation no. 185.
4. Stephen F. Chepiga, Speedy Trials: Recent Developments Concerning a Vital Right, 4 Fordham Urb. L.J. 351 (1976).
5. Delay of Justice in Ethiopia and the Genocide trial of Derg officials, Speedy trial right for defendants by VDM Verlag Dr. Müller.
6. Judge Mindaugas Šimonis, an Appeals Court Judge at the Kaunas Regional Court in Lithuania, as well as a lecturer at the Faculty of Law at Vytautas Magnus University.

7. John W. Poulos and Jerry P. Coleman, Speedy Trial, Slow Implementation: The ABA Standards in Search of a Statehouse, 28 Hastings L.J.357 (1976).