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THE RIGHT TO A SPEEDY TRIAL IN ETHIOPIA: THE CASE OF TIGRAY

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June, 2017

THE RIGHT TO A SPEEDY TRIAL IN ETHIOPIA:
THE CASE OF TIGRAY

Thesis Submitted in Partial Fulfillment of the Requirements
for the Degree of Master of Laws (LLM) at the School of
Law, Bahir Dar University.

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June, 2017



The thesis titled “The Right to A Speedy Trial in Ethiopia; The Case of Tigray” by Mr. Awet Guesh is approved for the degree of Master of Laws (LLM)

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Declaration

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University Id. Number

Date

Acknowledgment

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List of abbreviations

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
Art.	Article
BPR	Business process reengineering
Banjul Charter	African Convention on Human and Peoples' Rights
CJP	Criminal Justice Policy
CPC	Criminal Procedure Code
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
FDRE	Federal Democratic Republic of Ethiopia
GC	General Comment
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IACtHR	Inter-American Court of Human Rights
IACHR	Inter-American Commission on Human Rights
OHCHR	Office of the High Commissioner for Human Rights
PDRE	People's Democratic Republic of Ethiopia
Proc. No.	Proclamation Number
UN	United Nation
USA/US	United States of America

Abstract

The right to a speedy trial of accused persons is recognized under Art. 20 (1) of the FDRE constitution and Art. 21 (1) of the constitution of National Regional State of Tigray. The right is also recognized under international and regional human rights instruments, in particular, Art. 14(3)(c) of ICCPR and Art. 7(1)(d) of the African charter. The right to a speedy trial plays a significant role by balancing two competing interests that infuse the criminal justice system; the search for the truth and the need to protect procedural rights of the accused throughout the process. The right to a speedy trial merges these interests by protecting the presumptively innocent accused persons from prolonged, oppressive incarceration that might result from delayed proceedings and by providing fresher evidence that will help the search for the truth.

The right activates with an institution of criminal charge against a person. But, if the person is arrested before he is charged, the right starts to operate upon detention. Compared to other rights of criminal defendants, the right to speedy trial is vague concept because speed of criminal proceedings cannot be defined objectively. What constitutes a 'reasonable' time of proceedings differs according to the nature and circumstances of the case in dispute, such as the complexity of the case, the conduct of the parties, what is at stake for the applicant and the handling by the authorities.

When we see the scope and implementation of the right to a speedy trial in Tigray region, it is being attacked through delays that occur at different stages of the criminal process. Various defective practices during investigation, prosecution and litigation have caused extended period of trials. Absence of legally prescribed time framework to finalize each stage of the criminal process and lack of consistently used criteria to determine reasonableness of time of proceedings have made justice actors reluctant in conducting speedy trials. Courts of the region are far from applying international human rights law. This has resulted in violation of not only the right to speedy trial, but also the right to a fair trial of accused persons.

Key words/phrases: right to speedy trial, reasonable time, arrested/accused persons, criminal proceedings, FDRE constitution

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The right to fair trial, as a norm of international human rights law, is a fundamental right which protects rights of accused persons from pre-trial to trial and post-trial stages of the criminal process. It is a guarantee against unlawful and arbitrary restriction or deprivation of other basic rights and freedoms.¹ It is a fundamental human right. Such fundamental importance of this right is demonstrated by current initiatives which propose to make the right non-derogable² as provided for in Article 4(2) of the International Covenant on Civil and Political Rights.³

The right to fair trial is set of fundamental rights, and fairness of a trial is measured by different standards which are usually numerous, complex, and ever growing.⁴ One of the standards to measure fairness of a trial is to determine how fast the criminal justice is served. That is, whether criminal cases are commenced and finalized within a reasonable time, without undue delay. Fairness of a trial is often affected by unjustified, lengthy pre-trial and trial delays. The assessment of what may be considered 'undue delay' will depend on the circumstances of a case. A delay of justice is often equal to denial of justice. There is an old saying which goes; 'Justice delayed is justice denied'.⁵ This shows how drastic the effect of delay on justice is. The suffering is particularly grave where arrested/accused are detained as

¹ Lawyers Committee for Human Rights, *WHAT IS A FAIR TRIAL? A Basic Guide to Legal Standards and Practice*, March 2000, P. 1. [Here in after, WHAT IS A FAIR TRIAL?]

² See Draft Third Optional Protocol to the ICCPR, Aiming at Guaranteeing Under All Circumstances the Right to a Fair Trial and a Remedy, Annex I, in: "The Administration of Justice and the Human Rights of Detainees, The Right to a Fair Trial: Current Recognition and Measures Necessary for Its Strengthening," Final Report, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 46th Session, E/CN.4/Sub.2/1994/24, June 3, 1994, at pp. 59- 62.

³ International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 March 1976).

⁴ WHAT IS A FAIR TRIAL? P. 2.

⁵ This maxim appears to be derived from its Latin form and translated first in E. Coke, Edward. Coke, *Institutes of the Laws of England*, 1st ed., London, 1642, p. 55. [Here in after, E. Coke, *Institutes of the Laws of England*]

a result of denial of bail.⁶ In such circumstances, they suffer long period of incarceration in a state of uncertainty about their fate.

The right to a speedy trial plays an important role by balancing two competing interests that infuse criminal justice system: the need to protect procedural rights of the accused and search for the truth.⁷ Though these interests are often in conflict with one another, “they do converge to support at least one conclusion: criminal defendants should have a meaningful right to a speedy trial.”⁸ The right to a speedy trial offers multiple purposes. It prevents presumptively innocent criminal defendants from undue and oppressive incarceration that might result from delayed proceedings; at the same time, it also ensures more accuracy in truth findings by indirectly mandating fresher evidence.⁹

The importance of the right to a speedy trial can also be elaborated by the fact that the protection or otherwise of the right has an implication on other rights of arrested/accused persons. In particular, it is linked to rights to liberty, presumption of innocence and the right to defend oneself.¹⁰ Since these persons are presumed innocent until proven guilty by court of law, their cases should be determined in a reasonable time without undue delay. Thus, because these persons are not yet convicted, any undue delay in the proceedings would not only interfere on their right to presumption of innocence, but also on their liberty and security.

The importance of the right to a speedy trial, as many commonly thought, is not limited to arrested/accused persons but its benefits extend to society as a whole.¹¹ In *Barker v. Wingo*¹², the Supreme Court of the United States declared that “[t]here

⁶ Department of Justice Canada, *Trial within a Reasonable Time: A working paper prepared for the Law Reform Commission of Canada*, Canada Comm. Group, Canada, 1994, [reproduced in 2008], p. 2.

⁷ Darren Allen, ‘The Constitutional Floor Doctrine and the Right to a Speedy Trial’, *Campbell Law Review*, 2004, vol. 26, issue 2, pp. 101-122, at p. 101.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Amnesty International, *Fair Trial Manual*, 2nd ed., Amnesty International Publications, London, 2014, p. 144. [Here in after, Amnesty International, *Fair Trial Manual*]

¹¹ Stephen F. Chepiga, ‘Speedy Trials: Recent Developments Concerning a Vital Right’, *Fordham Urban Law Journal*, 1975, Volume 4, No. 2, PP. 351-367, at p. 352. [Here in after, Chepiga, *Speedy Trials: Recent Developments*]

¹² United States Supreme Court, *Barker v Wingo*, 1972, pp. 407-514. [Here in after, *Barker v Wingo*]

is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.”¹³

The need and importance of quick disposal of criminal cases in the administration of criminal justice system is, thus, unquestionable. However, other basic fair trial norms which ensure justice should not be ignored in accomplishing the goal of speedy justice, as another common proverb goes saying ‘justice hurried is, justice buried’. Therefore, one has to balance the consideration of speed and justice.¹⁴

The right to speedy trial, interchangeably known as the ‘right to trial within a reasonable time’, protects individuals from undue delay in the criminal process. It is recognized in various international and regional human rights instruments.¹⁵ Ethiopia has ratified both ICCPR and the African Charter.¹⁶ Since Ethiopia is a party to these human rights instruments, it has undertaken the obligation to respect, protect and fulfill the right recognized under these instruments. Pursuant to the federal constitution¹⁷ of Ethiopia, these ratified international human rights instruments are integral part of law of the land.

The right is also recognized and protected under the national legal system implying that justice be delivered within a reasonable time. Accordingly, Art. 20(1) of FDRE Constitution states “[a]ccused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged.” In addition, the right is also implied to arrested persons against whom a charge has not been filed. Art 19(3) of the constitution requires that arrested persons be brought before a court within 48 hours so that judges must rule on legality of the arrest and on whether they should be released on bail pending the trial. The time between the first appearance of the arrested person before the court and charge, i.e. the time needed

¹³ Id, P. 519.

¹⁴ S.N. Sharma, ‘Fundamental Right to Seedy Trial: Judicial Experimentation’, *The Indian Law Institute*, 1996, Vol. 38, No. 2, PP. 236-242, at p. 236. [Here in after, Sharma, Fundamental Right to Seedy Trial]

¹⁵ The right is protected at international law in Article 14(3)(c) of the International Covenant on Civil and Political Rights, Article 7(1)(d) of the African Charter on Human and Peoples’ Rights, Article 8(1) of the American Convention on Human Rights and Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms.

¹⁶ Ethiopia has acceded to ICCR on 11 Jun, 1993. It has ratified the African Charter on 15 Jun, 1998.

¹⁷ Constitution of the Federal Democratic Republic of Ethiopia, 1995, *Federal Negarit Gazzeta*, Proc. No. 1, 1st Year No.1, Art 9(4). [Here in after, FDRE Constitution]

to conduct police investigation, is regulated by Art. 19(4). If arrested persons cannot make bail, police investigation should be completed within a time strictly required to accomplish the investigation. The aim of conducting police investigation within reasonable time, is respecting the arrested persons' right to a speedy trial.¹⁸

The regional national state of Tigray is one of the nine (9) constituting federal units established by Article 47(1) of FDRE constitution. The constitution of Tigray¹⁹ has used the same language in recognizing the right to a speedy trial. Accordingly, Art. 21(1) of the constitution prescribes that accused persons have the right to a public and speedy trial. In addition, arrested persons should be taken to court within 48 hours, and when denied bail, investigation should be fast enough to ensure their right to a speedy trial.²⁰

Both the FDRE and Tigray Constitutions do not, however, distinguish the right to a speedy trial to be enjoyed by an accused person who is released on bail during the pendency of his or her criminal proceedings, from the right to a speedy trial enjoyed by a person who has denied bail or whose liberty has restrained. Thus, the right applies to all accused persons whether or not they are released on bail.

This research involves assessment of implementation of the right to a speedy trial and aspires to identify the factors that obstruct its realization.

1.2 Statement of the problem

Under international human rights law, the right to trial within reasonable time begins from the time when the suspect is arrested or accused as the case may be. From that time onwards, justice should be delivered within a reasonable time. The right to speedy trial is concerned with the time when trials should commence and end. Therefore, the time allocated for investigation before charge is instituted is to be considered when measuring reasonableness of the time for commencement of the trial. Delays before commencement of the trial are delays on speedy trial.

¹⁸ Id, Art. 19(4).

¹⁹ Constitution of National Regional State of Tigray, Sene 1987, *Tigray Negarit Gazzeta*, Proc. No. 1/87, 3rd year.

²⁰ Id, Art. 20(3) & (4).

In Ethiopia, for those persons whose cases either under investigation or pending in courts, not only international human rights instruments ratified by Ethiopia, but also the national legal framework adheres to the rights of such persons to be brought before a judge promptly and to have a fair and public trial within a reasonable time after having been charged.

Of course, legal recognition of rights is the first important step to ensure their realization. But, this has never been enough unless it is practically applied for “[i]t is one thing to have an elaborate fair trial rights in a statute, but it is quite another thing to effectively apply and protect that right in practice.”²¹

Hence, in practice, there are serious problems and delays particularly with regard to police investigation at pre-trial stage. In addition, delayed trials are major causes of long periods of incarceration of suspected or accused persons.

First, with regard to arrested persons, although international law does not set specific limits on the length of time a person may be held before being charged, but it requires that it should be done “promptly”. Thus, any prolonged period would be contrary to human rights standards.

Article 19(3) of the Constitution provides;

Persons arrested have the right to be brought before a court within 48 hours of arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court.

The United States Department of States observed that at different instances, this requirement is not respected in practice.²² Sometimes, suspects are detained for more than 48 hours while they could have been brought before a court. As the researcher has observed some practices in the region, even weekend periods are not counted when the 48 hours are calculated. Accordingly, for persons who are arrested on Fridays (and at many instances on Thursdays), the 48 hours’ period extend up to Monday, about four days.

²¹ Sara Stapleton, ‘Ensuring a Fair Trial in the International Criminal Court: Statutory Interpretation and the Impermissibility of Derogation’, *New York University Journal of International Law and Politics*, 1999, vol. 31, No. 2, pp. 535-568, at p. 547. [Here in after, Stapleton, Ensuring a Fair Trial in the International Criminal Court]

²² United States Department of State: Bureau of Democracy, Human Rights and Labor; Country Reports on Human Rights Practices for 2015, Ethiopia.

Despite constitutional provision that requires police investigation to be carried out within a time strictly required by the investigation, there are no time frames on length of police investigation and request for remand except for some crimes specifically governed by special laws such as the Anti-terrorism proclamation.²³ The Criminal Procedure Code of Ethiopia²⁴ prescribes that each remand to be granted for police investigation is a maximum of fourteen days on each occasion. However, it has not specified the maximum possible repetitions of remand beyond which it is not allowed. With court authorization, suspected persons, particularly those suspected of serious offenses, can be detained for 14 days without being charged and for additional 14 days as long as investigation continues. Thus, even before a formal charge is instituted, suspects often suffer a lengthy pre-trial detention period for several weeks and months. In the absence of specific time limits, police investigators cannot be serious and careful in conducting investigations, and nor can judges be more responsible in examining police reports and in granting additional time for remand.

Lack of collaboration between police and public prosecutor has prolonged the time needed for crime investigation. Delays are common even for minor crimes. Regarding delays during investigation, the Ministry of Justice, in its five years' strategic plan²⁵, has stated that in the administration of criminal justice, it has evaluated that cases are not investigated speedily and the required evidences are not gathered and organized mainly because of non-involvement of the prosecutor in the investigation process along with police.²⁶

Article 20 (1) of FDRE states “[a]ccused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged...” However, due to different factors attributable to courts and other justice actors in

²³ Anti-Terrorism Proclamation, 2009, Federal Negarit Gazzeta, Proc. No. 652, 15th year, No. 57. It has set a maximum of 4 months of period for investigation. Art 20(3).

²⁴ Criminal Procedure Code of Ethiopia, 1961, Negarit Gazzeta, Extraordinary issue, Proc. No. 185, No. 1, Art. 59.

²⁵ Ministry of Justice & Region Justice Bureaus (Justice Sectors) Five Years (2010/11-2014/15) Strategic Plan, Ministry of Justice, July 2010.

²⁶ *Id.*, P. 45.

the region, trials are not conducted in a reasonable time causing undue delay in the administration of the criminal justice system.

Backlog of cases around courts presents major threat in the right to speedy trial of accused persons. Courts are overloaded with case of both civil and criminal nature. The number of pending cases is seriously disproportional to the number of judges and other staffs. For example, as of 30, March 2009, in a period of seven months, regular courts in the region have entertained over 133,344 cases, while the number of serving judges is 381.²⁷ On average, a judge had to deal with 350 cases, but it is even higher in cities where a judge had to see about 550-600 cases in the stated period which is seriously disproportional; presumptively, a cause of delay.

Unlike other jurisdictions, the legal and judicial remedy for undue delay of proceedings in the Ethiopian criminal justice system is weak. The Criminal Justice Policy of Ethiopia²⁸ has provided a remedy, but no concrete, applicable laws exist yet. The Policy devises a room to punish public prosecutors and police investigators who fail to finalize investigation and institute a charge in the prescribed time as a result of which suspects who are denied bail are suffering incarceration.²⁹ However, this remedy is an administrative measure to be taken against prosecutors and police which is not helpful to suspects whose cases have unjustifiably delayed though it may have a deterrent effect on similar future conducts.

The above mentioned and other legal and practical problems in pre-trial and trial stages of the criminal process may cause delay in the criminal process. These factors generally have the impact of hindering the quality and effectiveness of the criminal justice system and violate due process and fair trial rights of arrested/accused persons, particularly, the right of these persons to have their cases be heard speedily. Hence, these and other factors that cause delay need to be studied and examined seriously as delayed justice is by no means less than denial of justice.

²⁷ Supreme Court of Tigray, combined work implementation report as of *megabit* 30, 2009 EC (March 2017).

²⁸ Criminal Justice Policy of the Federal Democratic Republic of Ethiopia, Council of Ministers, February 4, 2004.

²⁹ *Id.*, Art. 3(7).

1.3 Objective of the study

1.3.1 General objective

The general objective of this study is to assess the implementation of the right to speedy trial of arrested/accused persons in the National Regional State of Tigray.

1.3.2 Specific objectives

In addition to the main research objective, the study has the following specific objectives;

- ✓ To analyze the scope of the right in the region in light of international human rights standards;
- ✓ To assess awareness of judges, public prosecutors, arrested/accused persons and their lawyers about this right and how often they claim it;
- ✓ To identify the problems that encounter the right to speedy trial in the region;
- ✓ To assess the impact of delay of proceedings on accused persons and in the administration of the criminal justice system;
- ✓ To explore new dimensions for better realization of the right to speedy trial of arrested/accused persons.

1.4 Research Questions

In order to achieve the research objectives, the study is intended to answer the following main and specific research questions.

1.4.1 General Question

The central research question which the study aims to answer is, to what extent is the right to a speedy trial of arrested/accused persons enforced in Tigray region?

1.4.2 Specific Questions

In addition to the general research question, the study has aimed at answering the following specific questions;

- ✓ At what stage of the criminal proceedings does the right to speedy trial start to operate?
- ✓ What are the factors that hinder implementation of the right to a speedy trial in Tigray region?
- ✓ What remedies do judges provide to undue delay of proceedings?

- ✓ What are the impacts of delay on the arrested/accused persons and on the criminal justice system?

1.5 Significance of the study

The researcher believes that this research has the following advantages:

- It helps identify the major problems associated with protection and realization of the right to speedy trial of arrested /accused persons;
- It increases awareness of arrested/accused persons on this right and enables them to claim it;
- It proposes solutions for better implementation of the right;
- It also gives recommendation for the legislative and policy makers as well as practitioners;
- It contributes as additional reference for further studies to academicians and students who are interested in the study of the right to speedy trial in general and particularly in the Ethiopian context.

1.6 Methodology of the study

A qualitative research methodology is used to conduct the research because qualitative research is inherently reflective and this study is basically concerned in identifying and assessing implementation of the right to speedy trial of arrested/accused persons in the research area.

Interviews and selected court decisions are used as primary sources. Interviews are conducted with Judges, Prosecutors, Police investigation officers, Advocates and Victims of undue delay. In addition, relevant international, regional and domestic legal instruments are consulted.

The region consists of seven (7) administrative zones, where each zone is divided in to woreda administrations. Courts, Justice Bureau and Police Commission are also organized at regional, zonal and woreda levels. Accordingly, five zones are selected to conduct the research based on their size and the relatively high number of cases disposed of by them. Thirty participants across these zones are involved in the research who are selected using purposive sampling because it has enabled the researcher to select samples who have close connection with the issues.

The study employs semi-structured interview as main data gathering tool because it gives flexibility to modify some questions in order to get detail information. In addition, the researcher has made personal observations and extensive examinations to the relevant police investigation reports, court cases as well as public prosecutor files in order to acquire more detail data.

Finally, after making extensive literature reviews and collecting the data which are necessary to undertake this research, the collected data is interpreted and analyzed qualitatively.

1.7 Literature Review

The issues that are addressed in this study have been discussed by a number of scholars. These scholars have written about the right to fair trial in general and the right to speedy trial in particular. Despite making deep investigations and searches about earlier researches on this area in Ethiopia, however, the researcher could not find enough studies. Mengistu Worku,³⁰ discussed about the right to speedy trial in connection with delay of proceedings. However, scope of the study is very narrow which is limited to a specific case; delay of justice in the prosecution of Derg officials for genocide and crimes against humanity. It focused on measuring reasonableness of the proceedings in light of barker tests. It did not see the wide range of the problem and the causes in relation to other crimes.

1.8 Scope of the study

The scope of the research is confined to the right to speedy trial of arrested/accused persons. The right to speedy trial, under international human rights law, applies both to civil and criminal proceedings. But the scope of the study is limited to the right to speedy trial of accused persons in criminal cases which begins to operate from the time when the suspect is arrested or accused, as the case may be, up to the final court decision from which appeal is no longer possible.

Geographically (the spatial scope), the study is delimited to the laws and practices within National Regional State of Tigray. International and regional treaties to

³⁰ Mengistu Worku, 2008/9, Delay of justice in Ethiopia and the Genocide trial of Derg officials, Central European University.

which Ethiopia is party and federal laws including the Criminal Justice Policy which are applicable in the region are deliberated.

The researcher has chosen the region of Tigray as study area because he had some work experience in the region while he had been engaging in legal aid services where he had the opportunity to represent clients in criminal cases. In addition, the region is convenient to the researcher both in terms of residence and work area.

1.9 Limitation of the study

Despite determined efforts to prepare a strong and comprehensive study, inadequate time and lack of relevant and organized data system in the region present a threat on quality of the research.

1.10 Organization of the study

This research paper contains five chapters. Chapter one is the introduction part which briefly introduces back ground of the study, statement of the problem, objective of the study, research questions, significant of the study, methodology of the study and scope of the study. Chapter two presents conceptual frameworks surrounding the right which mainly comprises of the meaning and development of the right to speedy trial, its importance and experiences of selected national jurisdictions. Chapter three is allocated to analysis of legal frameworks in which the international and regional human rights systems and national legal instruments that guarantee the right to a speedy trial are discussed. Chapter four, which is the main part of the study, analyzes & interprets the data collected from various sources. Finally, chapter five contains the conclusion and recommendations in which the researcher suggests what should be done in the future.

CHAPTER TWO

CONCEPTUAL FRAMEWORKS

2.1 Introduction

The right to a speedy trial implies individuals have the right to have their cases be heard in reasonable time. Compared to other procedural safeguards, the speedy trial right is a vague concept. It is difficult to determine with precision the speed of a trial in a case because it is relative to circumstances. Reasonable time is subjective; what constitutes a “reasonable time” is determined according to the circumstances of the individual case, such as the complexity of the case, the conduct of the parties, what is at stake for the applicant and the handling by the authorities.³¹

In order to claim a violation of the right to a speedy trial, first and foremost, there should be a presumably prejudicial delay in the proceedings. Delay is defined as a period of time when somebody has to wait longer because of a problem that makes something slow or a situation in which something does not happen when it should.³² Thus, delay in criminal justice can be defined as the situation in which proceedings take longer time than it is reasonably necessary for their completion.

When delay in criminal proceedings becomes undue, it undermines defendants’ rights to a speedy trial. Prolonged periods of incarceration increase tension and anxiety for victims and witnesses, and it adversely affects public confidence in the justice system.³³

The remedy available for violation of the right to a speedy trial differs across jurisdictions. In some jurisdictions, such as Canada and USA, the minimum remedy for failure to try a person within a reasonable time is stay of proceedings.³⁴ In other

³¹ Amnesty International, *Fair Trial Manual*, p. 144.

³² Albert Hornby, *Oxford Advanced Learners Dictionary*, 6th ed., Oxford University Press, London, 2001, p.307.

³³ American Bar Association, *Speedy Trial and Timely Resolution of Criminal Cases*, ABA Standards for Criminal Justice, Washington D.C, 3rd ed., 2006, p. 28. [Here in after, ABA standards, *Speedy Trial and Timely Resolution*]

³⁴ Zvikomborero Chadambuka, ‘Serious Offences and The Right to Trial Within a Reasonable Time’, *Essex Human Rights Review*, 2013, Vol. 9 No. 1, pp. 1-10, at p. 3. [Here in after, Chadambuka, Serious Offences]

jurisdictions, such as England and South Africa, this remedy is applied only when the ability to have a fair trial is undermined (e.g. when evidence has disappeared) or when there exist special circumstances in the case to justify stay of proceedings.³⁵

In this chapter, discussion is made on the history, development and importance of the right to a speedy trial. Experience of selected jurisdictions on the right is discussed as well. Emphasis is given to the scope of the right and the remedies available to its violation.

2.2 Development of the right

A delayed justice has been considered in all civilized systems as one of the most malicious occurrences to a human society.³⁶ With respect to the fundamental right to a speedy trial, its history and philosophy goes back to the 13th Century of the common law of England where it has its roots in the natural rights.³⁷ It was further recognized and developed by the Magna Carta of 1215³⁸ which the English barons exacted from King John.³⁹ It provides that justice or right will not be sold, denied or deferred to any man.⁴⁰ The right to a speedy trial was implemented in England by special writs designed to protect citizens from perpetual imprisonment where bail was not allowed.⁴¹ Coke has also said that a lengthy pre-trial detention is against the law and delay in a trial by itself would be denial of justice.⁴²

One such writ was the Habeas Corpus Act of 1679,⁴³ which is seen historically as the precursor to the development of sixth amendment right of the United States.⁴⁴

³⁵ Ibid.

³⁶ MS. Anmol Jain, 'Right to Speedy Justice in India', Online, *LAW MANTRA International Monthly Journal*, 2015, Vol. 2, Issue 8. [Here in after, Anmol, Right to Speedy Justice in India].

³⁷ Ibid.

³⁸ 17 John, C.39, 1215, England.

³⁹ Sharma, *Fundamental Right to Seedy Trial*, p. 236.

⁴⁰ Magna Carta, Ch. 40: "We will sell to no man, we will not deny or defer to any man either justice or right."

⁴¹ E. Coke, *Institutes of the Laws of England*, p. 42.

⁴² Sharma, *Fundamental Right to Seedy Trial*, p. 236.

⁴³ 31 Charles II, Ch. 2, 27 May, 1679. This act allowed bail upon request for all except those charged for treason or a felony. However, people in these two categories would be released on bail if they were not indicted at the next term of court unless the King's witnesses could not be produced. The act also provided for complete discharge for those not charged and tried by the second term.

⁴⁴ Kevin J. Caplis, 'The Speedy Trial Guarantee: Criteria and Confusion in Interpreting its Violation', *DePaul Law Review*, 1973, Vol. 22, Issue 4, Article 7, PP 839-869, at p. 840. [Here in after, Caplis, *The Speedy Trial Guarantee*].

Eventually the maxim “[j]ustice delayed is justice denied”⁴⁵ became deeply-rooted in the English criminal law and was spread to its Colony; America. Inherited from English law, colonial America then included the right to a speedy trial as part of its common law tradition, first through the Virginia Declaration of Rights of 1776⁴⁶ then through the 6th amendment to the constitution.

The Virginia Declaration of Rights, one of the earliest documents to emphasize the protection of individual rights, is thought to have been inspired by the writings of John Locke and Montesquieu.⁴⁷ It had conveyed basic rights to individuals. One such right guarantees speedy trial of accused persons. The full text of Article 8 of the Declaration reads;

That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers.⁴⁸

The declaration played an important role for the development of other declarations of human rights for states in North America. It had heavily influenced several other instruments mainly, the United States Declaration of Independence (1776) and French Declaration of the Rights of Man and of the Citizen (1789).⁴⁹ Importance of the Declaration of Independence of America in this regard is that, because it was not local as Magna Carta, it is often taken as the first step for human rights in spreading all around the world.⁵⁰

⁴⁵ E. Coke, *Institutes of the Laws of England*, at 55.

⁴⁶ The Virginia Declaration of Rights, adopted on June 12, 1776.

⁴⁷ Erdem İzzet Külçür, ‘Duration of Detention and Right to Trial within a Reasonable Time in Scope of European Convention on Human Rights’, *Istanbul Commerce University, Social Sciences magazine*, 2014, Vol. 12, No. 24, PP. 173-203, at 178. [Here in after, Erdem Külçür, Duration of Detention and Right to Trial within a Reasonable Time]

⁴⁸ The full text is available at;

<http://www.law.gmu.edu/assets/files/academics/founders/VirginiaDeclaration.pdf> [last accessed on 12 April, 2017]

⁴⁹ Erdem Külçür, Duration of Detention and Right to Trial within a Reasonable Time, p. 179.

⁵⁰ Oral Sanders, *Political History*, 8th ed., Ankara, Istanbul, 2000, p.144, as quoted by Erdem Külçür, Duration of Detention and Right to Trial within a Reasonable Time, p. 179.

The speedy trial as a modern concept owes its origin to the Sixth Amendment to the Constitution of the United States of America which entitles accused persons with the right to a speedy and public trial by an important jury.⁵¹

The major development to the right, however, came with the emergence of the contemporary international human rights law at the end of World War II, following establishment of the United Nations and prosecution of German and Japan officials.

Devastated by the atrocities of War, governments committed themselves towards establishing the United Nations, primarily responsible to sustain international peace and security, and protection of human rights. This paved a way for the development of modern human rights in the mid 1940's. The right to speedy trial is then developed within the broad right of a "fair trial rights" because the former is one basic component of the later.

Since then, it has been recognized in almost all charters and conventions under international human rights instruments. The right appeared in the texts of these instruments as 'the right to trial within a reasonable time'. The most important are the ICCPR, African Charter, ACHR and ECHR.

2.3 Importance of the Right

The right to a speedy trial has multiple of purposes both to individuals and the society as a whole. The right protects the interests of justice for the accused, victims of the crime and the public at large.⁵² The following brief discussion presents the major benefits of the right.

1. Benefits to the defendant

The right to a speedy trial provides the criminal defendant several guarantees and purposes. Since the right forms a basic element of the right to a fair trial, it improves

⁵¹ The full text reads; "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an important jury."

⁵² Human Rights Committee, General Comment 32, Art. 14 (Ninetieth session, 2007), Compilation of General Comments and General Recommendations, Adopted by Human Rights Treaties Treaty Bodies, U.N. Doc. CCPR/C/GC/32, para. 35.

the reliability and fairness of the whole criminal proceeding.⁵³ It has the following specific benefits.

First of all, the right to a speedy trial prevents prolonged pre-trial incarceration and its impacts.⁵⁴ Lengthy pre-trial incarceration has an overall unavoidable impact on the detainees. It particularly affects the defendant's liberty and security, health and economic rights. Criminal defendants are presumed innocent until proven guilty. Though detained because of 'reasonable' suspicion of committing a crime, these persons are not yet convicted; there is a possibility that they may not be found guilty. The right to speedy trial, which requires trials be conducted within a reasonable time, avoids excessive pre-trial incarceration.

Secondly, the right to a speedy trial reduces the time that an accused may suffer from personal anxiety and public suspicion as undue delay in criminal process increases periods of tension and anxiety on the defendant and it endangers presumption of innocence.⁵⁵ The right to trial within a reasonable time, as protected under international law, aims to limit the state of uncertainty that encounter an accused person and any stigma attached to the accusation, despite the presumption of innocence.⁵⁶ Thus, accused persons, though presumed innocent, should be given the opportunity to defend themselves and to have their name cleared and reputation re-established at the earliest possible time.⁵⁷ Expeditious disposal of cases, therefore, avoids these problems.

Another benefit of the right is that it minimizes the danger that might happen to the defense.⁵⁸ Evidence may be deteriorated through lapse of time. Consequently, delay in the proceedings inevitably leads to loss or destruction of evidences and/or disappearance of witnesses. It may also result in witnesses being unable to recollect past events which may have faded in their memory through time.⁵⁹ Thus, because

⁵³ Marc I, Steinberg, 'Right to Speedy Trial: The Constitutional Right and Its Applicability to the Speedy Trial Act of 1974', *Journal of Criminal Law and Criminology*, 1975, Vol. 66, Issue 3, pp. 229-239, at p. 229.

⁵⁴ *Ibid.*

⁵⁵ ABA standards, *Speedy Trial and Timely Resolution*, p. 28.

⁵⁶ General Comment 32, para. 35.

⁵⁷ Chadambuka, *Serious Offences*, p. 3.

⁵⁸ Caplis, *The Speedy Trial Guarantee*, P. 84.

⁵⁹ *Ibid.*

the right guarantees that the fact-finding process of the criminal proceedings be carried out promptly, it avoids impairment to the defense which puts the defendant in a better position to defend himself.

2. Benefits to the Society

Though the guarantee of speedy right is designed to protect interests of individuals arrested or accused of a criminal offense, frequently, however, these persons do not make use of it.⁶⁰ Even worse, they may want to delay the process. It would not be strange if defendants who are granted bail and expect conviction, try to delay trial as long as possible.⁶¹ When there are delays in the criminal process, defendants may easily escape conviction because delayed cases are more easily challenged by defense attorneys.⁶² Society is interested to see justice be made as quickly as possible. Such an interest demands that criminal proceedings be conducted within a reasonable time. Hence, timely conducted criminal trials have the following public benefits.

First, prosecution, like the defense, would be impaired by delay in the proceedings.⁶³ The prosecution, well equipped and with all government backing, can be in a better position to preserve evidences. Yet, it cannot avoid deterioration of evidence or disappearance of witnesses. Nor can it restore the declined memory of witnesses. This may limit ability of the public prosecutor to get the defendant convicted through courts.

Second, it is in the interest of public to see criminals be brought to trial and get punished for their conducts. When the criminal process is fast enough to secure speedy trials, since punishment is applied close to the time of the commission of the crime, it is more likely to serve its purpose (deterrence, rehabilitation or retribution).⁶⁴ The faster it is applied, the more effective it becomes.

⁶⁰ Chepiga, *Speedy Trials: Recent Developments*, pp. 352-353.

⁶¹ *Ibid.*

⁶² _____ (Notes), 'The Right to a Speedy Criminal Trial', *Columbia Law Review*, 1957, Vol. 57, No. 6, pp. 846-867, at pp. 846. Available at <https://www.jstor.org/stable/pdf/1119862.pdf> [last accessed on 22 April, 2017]. [Here in after, _____ (Notes), *Right to a Speedy Criminal Trial*]

⁶³ Caplis, *The Speedy Trial Guarantee*, P. 841.

⁶⁴ Erdem Külçür, *Duration of Detention and Right to Trial within a Reasonable Time*, p. 175.

Second, the right minimizes the infliction of anxiety upon victims and witnesses caused by delays in the proceedings. If the criminal process is to be more healing of victims' wounds, trials should be commenced in short period of time as possible, and finalized within reasonable time. The same is needed to witnesses who might suffer as a result of undue delay.

Generally, since the society has a legitimate interest in prompt adjudication of criminal cases; it is clear that a delay in the whole process and administration of punishment may undermine the trust of the people in the criminal justice system.⁶⁵ Due to these benefits, society has an indispensable interest in expeditious disposal of cases, and delay of justice often entails societal cost. However, this cost to the society should be used as a catalyst to properly implement the right to a speedy trial of arrested/accused persons since the right is primarily designed to protect their interests.⁶⁶

2.4 Experience of Countries

A. The United States of America

The right to a speedy trial in a criminal prosecution is one of the most basic rights protected by the United States Constitution. The right has been derived from a provision of Magna Carta and it was a right so interpreted by Coke, "We will sell to no man, we will not deny or defer to any man either justice or right".⁶⁷ Almost the same language was used in the Virginia Declaration of Rights of 1776 and from there in to the Sixth Amendment.⁶⁸ The framers of the US constitution were familiar with the philosophy of Magna Carta and its interpretations in England. They considered the right so fundamental that they took it to their constitution.⁶⁹

In the United States, the right is granted to defendants in federal cases by the sixth amendment to the Constitution. Through incorporation, it was made applicable against the states as a fundamental right under the Fourteenth Amendment Due

⁶⁵ ABA standards, *Speedy Trial and Timely Resolution*, p. 28.

⁶⁶ Caplis, *The Speedy Trial Guarantee*, P. 841.

⁶⁷ *Id.*, p. 848.

⁶⁸ *Ibid.*

⁶⁹ D. J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures*, 1st ed., Clarendon Press, Oxford, 1996, p. 189.

Process Clause thereby extended protection to defendants in state prosecutions.⁷⁰ However, when the constitutional amendment was to be made on the right to a speedy trial, some writers of the Bill of Rights resisted the need for such amendment arguing the right was found as part of liberty.⁷¹ But, since the people wanted this right secured, it was guaranteed in the sixth amendment.⁷²

Through the speedy trial right of the 6th Amendment, the right is enforceable against states. Most States have, in their respective Constitutions, provision similar to this effect.⁷³ Besides, most of the States have enacted statutes which provide for speedy trial of criminal cases. The Speedy Trial Act of 1974⁷⁴ was enacted more as a response to growing protection against crimes being committed by accused out on bail.⁷⁵ It establishes a set of time limits for all major events in the prosecution of criminal cases including information, condemnation and allegation.

Scope and application of the right

In the USA, the right to a speedy trial is governed by constitutional and statutory laws though they differ in scope. Statutes typically cover the period between the holding of the defendant to answer, or his commitment, and the commencement of trial, while the constitution (including state constitutions) applies to further stages of the prosecution as well.⁷⁶

The speedy trial guarantee begins when the state initiates criminal prosecution and applies only to those persons who have been accused in the course of that prosecution.⁷⁷ However, activation of the right does not necessarily follow indictment or other formal charge as it may begin at an earlier stage if the suspect is restrained, through arrest or detention, before he is charged.⁷⁸ Yet, the right can

⁷⁰ United States of America Supreme Court, *Smith v. Hooey*, 1969, pp. 374-84.

⁷¹ Caplis, *The Speedy Trial Guarantee*, p. 840.

⁷² *Ibid.*

⁷³ _____ (Notes), *Right to a Speedy Criminal Trial*, p. 847.

⁷⁴ Congress, by the Speedy Trial Act 1974, pub, L No. 93-619, 88 Stat 2076, 18 U.S.C.A 3161-74, has codified the law with respect to the right, intending to "give effect to the 6th amendment right to a Speedy Trial" S Rep. No. 1021, 93rd Congress, 2nd Sess. 1(1974).

⁷⁵ _____ (Notes), *Right to a Speedy Criminal Trial*, p. 847.

⁷⁶ _____ (Notes), *Right to a Speedy Criminal Trial*, pp. 847-848.

⁷⁷ *Barker v Wingo*.

⁷⁸ *Ibid.*

never arise before there is a charge or restraint, despite the fact that the prosecution had knowledge about the offense long before its actions have begun.⁷⁹

Constitutionality criteria to determine violation of the right to speedy trial

The United States Supreme Court decision in the *Barker v Wingo*⁸⁰ is the most important case law with respect to the right to speedy trial. In this case, the court established factors to be considered to determine whether there is a violation of the right to a speedy trial. These are; length of the delay, reasons for the delay, failure to assert the right to a speedy trial and prejudice to the accused person.

1. Length of the delay

Generally, delay cannot be determined solely by reference to periods of time which is long; nor can it be held reasonable merely because it is of short duration.⁸¹ Rather the length of delay is to some extent a triggering mechanism to the other tests.⁸² In *Barker v. Wingo*, the Supreme Court stated that: “the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge”.⁸³ Thus, it is only when the length of the delay is presumed to be prejudicial to the accused, i.e., a prima facie evidence showing an unreasonably protracted delay, that the other three factors are considered.

2. Causes of the delay

This test involves consideration of sources of the delay and the motives behind them.⁸⁴ The defendant cannot make a benefit of delays attributable to his conduct. These include delays caused as a result of his pre-trial motions or dilatory pleadings,⁸⁵ his incompetency to stand trial,⁸⁶ his express or implied consent to

⁷⁹ _____ (Notes), *The Right to a Speedy Criminal Trial*, p. 848.

⁸⁰ *Barker v Wingo*. In this case, Barker was charged with murder and he was brought to trial after five years. The delay was caused by the need to try an accomplice earlier who was tried no less than six times. However, the trial process was extremely complicated and long. During this ongoing process, Barker initially had agreed to adjournments. He only began to assert his right to a speedy trial three-and-a-half years after the charges had been laid.

⁸¹ United States Supreme Court, *United States v. Bandy*, 1968.

⁸² Caplis, *The Speedy Trial Guarantee*, p. 845.

⁸³ *Barker v. Wingo*, at P. 531.

⁸⁴ Caplis, *The Speedy Trial Guarantee*, p. 848.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

delays caused by the government,⁸⁷ or from his fleeing from justice.⁸⁸ Thus, only governmental delay is considered.

Even when there is governmental delay, the intent behind it is to be examined. When delay is presumptively prejudicial, the state needs to assert sufficient justification.⁸⁹ However, proof of bad intent by the government to harm the defendant is not necessary for it is enough if the government has made a “deliberate choice for a supposed advantage”.⁹⁰

3. The defendant's assertion of the right

The right to a speedy trial is considered as a personal right of the accused which needs to be properly asserted. In relation to this right, there grew the “demand doctrine” in which an accused must claim his right to a speedy trial, otherwise he is considered to have impliedly waived that right.⁹¹

However, the Supreme Court, in Barker case, rejected this doctrine stating that “[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process...”⁹² Therefore, the defendant's failure to demand the right cannot be taken as waiver to be used against him though its assertion does give a strong weight under the balancing test.

4. Prejudice to the defendant

Assessing the extent to which a delay has resulted in prejudice to the accused is an important factor in determining whether there has been a violation of the speedy trial guarantee. As to what constitutes prejudice, the Supreme Court, in Barker case, has stated that it is to be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. These interests relate mainly to prevention of undue and oppressive pre-trial incarceration, minimizing anxiety and

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Richard Uviller, ‘Barker v. Wingo: Speedy Trial Gets a Fast Shuffle’, *Columbia Law Review*, 1972, Vol. 72, No. 8, pp. 1376-1402, at p. 1395.

⁹⁰ Caplis, *The Speedy Trial Guarantee*, p. 849.

⁹¹ Id, p. 850. In United States Supreme Court, *United States, Bruce v. United States*, 1965, 7 years of delay was unreasonable but waived by failure to demand trial.

⁹² *Barker v. Wingo*, at P. 527.

concern to the accused (involving right to liberty and security) and limit the extent to which delay may impair the defense.⁹³

Considering these interests of the accused and the other three balancing tests, courts can determine if there is a violation of the right to a speedy trial in a specific case.

Remedy for violation of the right to a speedy trial

In the United States, the remedy for failure to decide charges expeditiously is drastic one, dismissal of the charges, as the ordinary remedy for the violation of this right.⁹⁴ Whether showing a prejudice is necessary condition for dismissal was unsettled issue.⁹⁵ While some courts had taken prejudice immaterial when there is undue delay,⁹⁶ other courts had viewed it as one of the constitutive elements of unjustified delay.⁹⁷

As far as dismissal of the charges on prejudice is concerned, the courts follow different paths as to the burden of proving the existence of prejudice.⁹⁸ Three approaches have been adopted by courts.⁹⁹ The first one places the burden of showing prejudice upon the accused¹⁰⁰ while in the second instance, prejudice is presumed as a result of long delay.¹⁰¹ Thirdly, the burden rests with the prosecution when there is substantial or extraordinary delay in which case it is required to prove that the accused suffered no serious prejudice.¹⁰²

Finally, the effect of a dismissal for violation of the constitutional right to speedy trial is a bar to subsequent charges for the same crime.¹⁰³ But, the effect of statutory violation of the right on subsequent prosecutions does vary under speedy trial

⁹³ Id, P. 532.

⁹⁴ United States Supreme Court, United States, *Strunk v United States*, 1973. Considering alternative remedies, but concluding that dismissal must remain- 'the only possible remedy').

⁹⁵ F. D. L., Jr., *The Lagging Right to a Speedy Trial*, *Virginia Law Review*, 1965, Vol. 51, No. 8, pp. 1587-1620, at p. 1591. [Here in after, *The Lagging Right to a Speedy Trial*]

⁹⁶ In United States Supreme Court, United States, *United States v. Barnes*, 1959, case dismissed after 10 years of delay, but prejudice was not discussed.

⁹⁷ *The Lagging Right to a Speedy Trial*, p. 1592.

⁹⁸ Id, pp. 1592-1593.

⁹⁹ Id, p. 1593.

¹⁰⁰ See, e.g., United States Supreme Court, United States ex rel. *Von Cseh v. Fay*, 1963. The accused failed to show prejudice since he was free on bail.

¹⁰¹ Caplis, *The Speedy Trial Guarantee*, p. 848.

¹⁰² Ibid.

¹⁰³ *The Lagging Right to a Speedy Trial*, p. 1593.

statutes.¹⁰⁴ There are three approaches; while some statutes treat it as a bar to another prosecution, other statutes do not. The third one is somehow medium approach in which dismissal bars subsequent prosecutions if it is a misdemeanor, but not for a felony.¹⁰⁵

B. India

Most of the world's modern constitutions have recognized the right to speedy trial as a fundamental right of accused/arrested persons. But, the Indian constitution¹⁰⁶ has not. The Constitution of India, despite being large and detail,¹⁰⁷ does not specifically and explicitly provide for the right to speedy trial.

Unjustifiably delayed trials were major problems facing the criminal justice, as a result of which a large number of prisoners were suffering in various prisons of the country.¹⁰⁸ The problem went to the extent that detainees were awaiting trials for more than the time they could have spent in prison had they been convicted.¹⁰⁹ The Supreme Court paid an attention to the issue when the Indian Express newspaper wrote a story about the condition of pre-trial detainees in state of Bihar, some of them were in jail for five to ten years, and even more without being brought to trials.¹¹⁰ These aggravated problems triggered the Supreme Court of India to establish the right to speedy trial under the constitution through interpretation of Article 21¹¹¹ in *Hussainara Khatoon v State of Bihar*.¹¹² The case presented the court with the abusive prosecuting agencies affecting rights of thousands of poor people.¹¹³ It was held that such delay was totally unjustified and in violation to

¹⁰⁴ Caplis, *The Speedy Trial Guarantee*, p. 859.

¹⁰⁵ *Ibid.*

¹⁰⁶ Ratified on 26 Nov, 1949, [effective date 26 January, 1950].

¹⁰⁷ It is the world's longest constitution with 448 articles and 101 amendments so far, the latest being made on 8 September, 2016.

¹⁰⁸ K. N. Chandrasekharan Pillai, 'Right to Speedy Trial in India- A Review', *Cochin University Law Review*, 1987, PP. 109-116, at p. 109.

¹⁰⁹ *Ibid.*

¹¹⁰ Analysis of the legal position in India on speedy trial versus judicial delay, Available at: <http://alrc.asia/article2/2008/06/2-analysis-of-the-legal-position-in-india-on-speedy-trial-versus-judicial-delay/> [last accessed on 22 April, 2017]

¹¹¹ Article 21 of the Indian constitution protects of life and personal liberty which reads; "No person shall be deprived of his life or personal liberty except according to procedure established by law."

¹¹² India Supreme Court, *Hussainara Khatoon v. State of Bihar*, 1979.

¹¹³ Upendra Baxi, 'Right to Speedy Trial: Geese, Gander and Judicial Sauce (State of Maharashtra v. Champalal)', *Journal of Indian Law Institute*, 1983, Vol. 25, No. 1, PP. 90-105, at p. 94.

fundamental rights under article 21. Particularly, the court stated that “[t]here can ...be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.”¹¹⁴

Scope and application of the right

As stated above, the Constitution does not confer the right to speedy trial on the accused. The Constitution makers did not explicitly mention the defendants’ right to speedy proceedings. The first two decades following independence saw no special attention being paid towards the issue of the length of time in prison for the under trial.¹¹⁵ Later in 1973, the Indian Criminal Procedure Code¹¹⁶ was enacted which came up with some provisions designed to regulate the pace of the criminal process and ensure expeditious disposal of cases.

The Code of Criminal Procedure which brought some new dimensions with respect to the right to speedy trial, has embodied the following considerations.¹¹⁷

- an accused person should get a fair trial in accordance with accepted principles of natural justice;
- every effort should be made to avoid delay in investigations and trial which is harmful not only to individuals involved but also to society
- the procedure should not be complicated and, to the utmost extent possible, ensure a fair deal to poorer sections of the community

Sections 167, 309 and 468 of the Code combine the above mentioned changes particularly relating to speedy trial, elimination of delays in investigating and trial proceedings.

Where it is not possible to complete an investigation and bring the arrested person to the nearest magistrate within 24 hours (as stipulated under Section 57 of the

¹¹⁴ Id, at p. 1369.

¹¹⁵ Jayanth K. Krishnan and C. Raj Kumar., ‘Delay in process, denial of justice: The Indian Jurisprudence and empirics of speedy trial in comparative perspective’, *Georgetown journal of International Law*, 2011, vol. 42, pp. 747-784, at p. 758.

¹¹⁶ The Code of Criminal Procedure, 1973, Act No. 2 of 1974. [Here in after, CPC of India]

¹¹⁷ K. L. Bhatia *et al*, ‘Delay: A Riddle Wrapped in A Mystery Inside an Enigma’, *Journal of Indian Law Institute*, 1997, Vol. 37, No. 1, PP. 42-72, at p. 45. [Here in after, Bhatia *et al*, Delay: A Riddle Wrapped]

code), and additional time is needed, then Section 167 has provided a statutory time limit within which an investigation should be finalized. Accordingly, where an investigation is to be made on serious crimes punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, it should be completed within ninety (90) days. In all other cases (where the investigation relates to any other offence), it shall be completed in a period not exceeding sixty (60) days.¹¹⁸ The code further provides that if the police fail to complete the investigation within the statutory timeframe, it shall lead to release of the accused in custody on bail.¹¹⁹ This provision protected arrested persons against protracted and unjustifiable delay in police investigation.

On the other hand, Section 309 of the code, which aims to minimize delay arising at the trial stage, requires that a trial be conducted as expeditiously as possible.¹²⁰ Section 468 provides that no court shall take cognizance of an offence except as specified after expiry of the period of limitation.¹²¹ These provisions, taken together, aim to avoid undue delay in the whole criminal process in thereby protects violation of the right to speedy trial under Art. 21 of the Constitution.¹²²

The Supreme Court has held that the right to a speedy trial, as it flows from Art. 21, begins from the time the person is arrested by the police, and it encompasses all the stages namely, investigation, inquiry, trial, appeal, revision and retrial.¹²³ As to the factors to be considered in determining undue delay in the proceedings, the court has stated the following;

While determining whether undue delay has occurred (resulting in violation of Right to speedy trial) one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on - what is called the systemic delays.¹²⁴

¹¹⁸ CPC of India, 5, Section 167(2) a.

¹¹⁹ Ibid.

¹²⁰ Bhatia *et al*, Delay: A Riddle Wrapped, p. 46.

¹²¹ Ibid.

¹²² Id, p. 47.

¹²³ India Supreme Court, A.R. Antulay v. R.S. Nayak, 1992, at p. 225.

¹²⁴ Id, at p. 270.

It has also been made clear that the right cannot be denied on the ground that no demand for the right was made. But, if the accused make a claim of the right, it will be taken as additional factor giving weight to the assessment of delay.¹²⁵

The Supreme Court of India has also dealt with the application and enforceability of international conventions, particularly the ICCPR,¹²⁶ to clarify rights guaranteed by the constitution. For example, in *People's Union of India v Union of India*,¹²⁷ the Supreme Court has stated that courts can rely upon ICCPR provisions to explain and give effect to the fundamental rights guaranteed by the Constitution.

Remedy for violation of the right to a speedy trial

Under sec. 482 read with 483, CPC lays that every possible measure to be taken to dispose of the case expeditiously and properly. Adjournments cannot be granted unless circumstances go beyond the control of judiciary.¹²⁸ The judiciary is under responsibility to check arrested/accused persons are brought to trial within time. Overcrowded courts, inadequate resources and financial insufficiency cannot be the reasons for deprivation of a person.¹²⁹

In many cases, where there exist undue delays, the court has decided to quash the proceedings so as to achieve justice, not just individual justice but also social justice.¹³⁰ For example, in the case *Abdul Rahman Antulay v. R.S. Nayak*¹³¹, it has declared certain aspects and guidelines regarding the speedy trial and stated that quashing of cases should depend upon nature of the case.

C. Republic of Namibia

Namibia is a democratic state that functions under a constitution¹³² which contains a Bill of Rights that are incorporated in chapter three. Chapter three of the Namibian

¹²⁵ Sharma, *Fundamental Right to Seedy Trial*, at p. 238.

¹²⁶ India has ratified ICCPR on 10th April 1979.

¹²⁷ *People's Union of India v Union of India*, AIR 1997 (3) sec 433.

¹²⁸ *Constitutional Right to Speedy Trial*, Law Articles - Legal Source Online, available at <http://www.legalservicesindia.com/article/article/constitutional-right-to-speedy-trial-571-1.html>

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*, also *India Supreme Court, State of Maharashtra v. Champalal*, 1981, p. 1678.

¹³¹ *Abdul Rahman Antulay v. R.S. Nayak*, 1988 AIR 1531, 1988 SCR Supl. (1)1.

¹³² *Constitution of the Republic of Namibia*, 21 March 1990, (it is amended three times, the last being made on 13 October, 2014). Available at: http://www.icla.up.ac.za/images/constitutions/namibia_constitution.pdf [accessed on May 1, 2017]

Constitution contains fundamental Human Rights and Freedoms.¹³³ Article 12 of the Constitution contains guarantees that aim to protect fair trial rights of an accused person. Article 12(1)(b) of the Constitution provides a speedy trial guarantee by which accused persons have the right to a “trial within a reasonable time”.¹³⁴

The right to trial within a reasonable time

The Namibian Constitution did not define reasonableness. It can be interpreted to mean that a party duty bound to ensure reasonableness, properly and diligently fulfils its obligation in that excessive delay, if any, is attributable to cause beyond its control.¹³⁵

However, the judiciary has come up with various decisions dealing with the determination of what is a reasonable period. Of these decisions, *S v. Heidenreich*¹³⁶ is an important case law where the High Court of Namibia applied a speedy trial provision contained in article 12(1)(b) of the Constitution of Namibia.¹³⁷ This case is important because it has established criteria to be applied in determining whether a delay constitutes a violation of the right to speedy trial, and the appropriate remedy where there exists a breach of that right.¹³⁸

In determining whether there has been a breach of the speedy trial provision, Hannah J., in *Heidenrich* case, has held that “... courts must endeavour to balance the fundamental right of the accused to be tried within a reasonable time against the public interest in the attainment of justice in the context of the prevailing economic, social and cultural conditions to be found in Namibia.”¹³⁹ The implication of this is that “the weight to be given to each factor will vary according to the prevailing circumstances.”¹⁴⁰

¹³³ Id, Articles 5-25.

¹³⁴ The full text reads: “A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.”

¹³⁵ Sam K Amoo, ‘The Jurisprudence of the Rights to a trial within a reasonable time in Namibia and Zambia’, *Namibia Law Journal*, 2010, Volume 2, Issue 2, PP. 3-30, at p. 16.

¹³⁶ Namibia High Court, *S v Heidenrich*, 1996, No. 229.

¹³⁷ Derek Obadina, ‘The Right to Speedy Trial in Namibia and South Africa’, *Journal of African Law*, 1997, Vol 41, No. 2, 229-238, at p. 229.

¹³⁸ Ibid.

¹³⁹ *S v Heidenrich*, p. 204.

¹⁴⁰ Id, p. 205.

On the question of what is a reasonable period of time, the Court has held that:

Reasonable is of course a relative term and what constitute a reasonable time for the purpose of are 12(1)(b) must be determined according to the facts of each individual case. The courts must endeavor to balance the fundamental right of the accused to be tried within a reasonable time against the public interest in the attainment of justice in the context of the prevailing social, economic and cultural conditions to be found in Namibia ... what is found at the end of the day is a value judgement.¹⁴¹

Therefore, reasonableness or otherwise of the period of time spent in conducting a trial is to be assessed on case by case basis taking different factors in to account.

Remedy for violation of the right to speedy trial

The last phrase in Art. 12(1)(b) of the constitution provides the effect for failure to try an accused person within a reasonable time is release of the accused. But, the provision is not clear as to what it means by “shall be released”. As a result, there have been discrepancies in interpreting “release” of the accused.

The Supreme Court has noted that “release” is understood in mandatory and peremptory terms.¹⁴² In meeting the peremptory requirement, the court has set out the following forms of release from the trial to be legitimate:¹⁴³

- (i) A release from the trial prior to plea on the merits, which does not have the effect of a permanent stay of the prosecution and is broadly tantamount to a withdrawal of the charges by the State before the accused had pleaded. This form of release will encompass:
 - (a) Unconditional release from detention if the accused is still in detention when the order is made for his/her release;
 - (b) Release from the conditions of bail if the accused had already been released on bail prior to making the order;
 - (c) Release from any obligation to stand trial on a specified charge on a specified date and time if the accused had previously been summoned or warned to stand trial on a specified charge, date and time.
- (ii) An acquittal after plea on merits.
- (iii) A permanent stay of prosecution, either before or subsequent to a plea on the merits.

The order of release of an accused in either of the above forms often depends on the degree of the prejudice caused by the delay and by the jurisdiction of the court giving such an order.¹⁴⁴ Permanent stay of proceedings is a constitutional remedy

¹⁴¹ Heidenreich, at p. 236.

¹⁴² Namibian Supreme Court, Margaret Malama-Kean v The Magistrate, District of Oshakati and the Prosecutor General, 2002, p. 246-247.

¹⁴³ Ibid.

¹⁴⁴ Clever Mapaure *et al* (eds.), *The Law of Pre-Trial Criminal Procedure in Namibia*, African Books Collective, Oxford, Project MUSE, 2014, p. 64. [Here in after, Mapaure *et al*, *Pre-Trial Criminal Procedure in Namibia*]

applied by superior courts¹⁴⁵ when the accused person's right to speedy trial has been violated.¹⁴⁶ In order to succeed with this remedy, the accused must show that trial has not been conducted within a reasonable time as a result of which he has suffered irreversible trial prejudice, such as substantial damage to his defense.¹⁴⁷

The constitution has devised a room for application of international laws in Namibia. The cumulative reading of Articles 143¹⁴⁸ and 144¹⁴⁹ of the Namibian Constitution indicates international instruments adopted by Namibia are enforceable in the country. Namibia has ratified the ICCPR on 10 April 1984. Thus, ICCPR and the jurisprudence of Human Rights Committee with regard to the right to a speedy trial are applicable to Namibia.

2.5 Conclusion

This chapter has discussed the historical evolution of the right to a speedy trial, its importance as well as experience of states. The right to speedy trial has its root in the early 13th century England, the Magna Carta. It was transplanted to American colonies then to the whole world. It endows multiple of advantages both to the criminal defendant and the state. Most of all, it avoids lengthy pre-trial incarceration which might result due to delay. The state has also an interest in expeditious disposal of criminal cases. But, these benefits to the state and public should be used as motivation to protect the speedy trial right of defendants.

Some states have shown better protection of the right, particularly in setting out clear criteria of determining reasonableness of time of proceedings and in applying redress when the right is found to have been violated. The subsequent chapter discusses the international, regional and national legal frameworks of the right.

¹⁴⁵ The lower courts do not have jurisdiction to hear constitutional matters as the inherent jurisdiction is vested with superior courts, the Supreme Court and High Courts.

¹⁴⁶ Mapaire *et al*, *Pre-Trial Criminal Procedure in Namibia*, 3, p. 63.

¹⁴⁷ *Ibid*.

¹⁴⁸ It reads: All existing agreements binding upon Namibia shall remain in force, unless and until the National Assembly under Article 63(2)(d) hereof otherwise decides.

¹⁴⁹ It reads: Unless otherwise provided by this Constitution, or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.

CHAPTER THREE

LEGAL FRAMEWORK THAT GUAANTEE THE RIGHT TO A SPEEDY TRIAL

3.1 Introduction

Under international laws, the right to a speedy trial which is based on presumption of innocence and on the right to liberty has two sets of standards. The first set of standards applies only to people detained before trial. The second applies to everyone charged with a criminal offence, whether or not detained.¹⁵⁰ In both sets of standards, all criminal proceedings should begin and be finalized within reasonable time. But, ‘reasonableness’ is subjective; one cannot objectively define what reasonable is and what is not. Thus, what constitutes a “reasonable time” is determined according to the circumstances of the individual case.¹⁵¹

Generally, the period to be considered in the determination of reasonable time, as discussed in subsequent sections, contains the total length of the proceedings, including the time until the trial begins, an appeal to a higher court, if any, up to the final judicial body.

This chapter discusses the legal frameworks of international and regional human rights systems as well as national legal system in relation to the right to a speedy trial. It deliberates the scope of the right and its commencement, the factors to be considered in assessing the reasonability or otherwise of a period of trials and the remedy available to violations of the right.

3.2 International Legal Framework

3.2.1 International Covenant on Civil and Political Rights

ICCPR provisions dealing with the right to a speedy trial (the right to a trial within a reasonable time) are found in Articles 9 and 14. While Art. 9 generally deals with the right to liberty and security of a person, Art. 14 is about fair trial rights of an accused person. The specific provisions that implied the right to speedy trial are;

¹⁵⁰ Amnesty International, *Fair Trial Manual*, p. 70.

¹⁵¹ *Id.*, p. 144.

Article 9 (3);

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to *trial within a reasonable time* or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. [emphasis added]

Article 14(3)(c);

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: To be *tried without undue delay*. [emphasis added]

A. Relation between Articles 9(3) and 14(3)(c)

Before making discussion on each provision, it is wise first to see what sort of relation exist among the two.

The complaints submitted under ICCPR concerning undue delay in being brought to trial have often been considered simultaneously under Articles 9(3) and 14(3)(c) because the right to speedy trial is implicated in the two provisions. There is a difference in language usage in that while Art. 9(3) stipulates the right to ‘trial within a reasonable time’, the language used by Art. 14(3)(c) is the right to ‘be tried without undue delay’. An important question here is; what is the relation between the two provisions? Or, do these provisions offer identical or distinct rights?

To this question, John Hookey¹⁵² has discussed two possible answers. First, the provisions do not guarantee distinct rights in that the right to be tried without undue delay, in Art. 14(3)(c), is an elaboration of the vague concept of ‘reasonableness’ under Art. 9(3).¹⁵³ The second view is that the two provisions are related, but focus on distinct topics; deprivation of liberty in the first case, and the right to a fair trial in the second. They were very likely drafted, debated, and amended in some degree of isolation from each other.¹⁵⁴

Travaux Preparatoires of the covenant support this second view. Accordingly, the 1955 Annotations On the Text of the Draft International Covenants On Human

¹⁵² John Hookey, ‘The Prompt Trial Right: Australian Isolationism and International Law’, *Australian Journal of Human Rights*, 1994, Vol. 1, No. 1, PP. 117-139, p. 123. [Here in after, Hookey, The Prompt Trial Right]

¹⁵³ Ibid.

¹⁵⁴ Ibid.

Rights¹⁵⁵ shows while Art. 9(3) appeared in its present form¹⁵⁶, the draft of Art. 14¹⁵⁷ do not even resemble to the current Art. 14(3)(c).¹⁵⁸ Art. 14, back then, did not include any reference to the right to a trial without undue delay let alone an explanation to trial within a reasonable time in Art. 9(3).¹⁵⁹

The right to a trial without undue delay under Art. 14(3)(c) was first introduced in 1959 as one of the three changes¹⁶⁰ made to Art. 14 by the Third Committee.¹⁶¹ There is no evidence from the *Travaux Préparatoires* which shows the right to be tried without undue delay under Art. 14(3)(c) was purposely selected as a better explanation to the right to trial within a reasonable time in Art. 9(3). Art. 14 was being deliberated and amended separately from Art. 9.¹⁶²

Generally, the second view which suggests the two provisions are related, but focus on distinct topics seems appropriate. Art. 9(3) focusses on the rights of arrested or detained persons only. It does not apply to persons whose liberties are not restricted following criminal charges. These persons are protected under Art. 14 the substance of which is trial rights applicable to persons charged with a criminal offence.¹⁶³

Thus, an act may give raise to a violation of both provisions. This overlap between Arts 9(3) and 14(3)(c) can be shown by *D. Taylor v. Jamaica*, where the Human Rights Committee¹⁶⁴ found a violation both of 9(3) and of 14(3)(c) since there had been a lapse of 27 months between arrest and trial.¹⁶⁵ Similarly, in *Sooklal v. Trinidad and Tobago*¹⁶⁶, the Committee found a violation of both articles. It found a violation of 9(3) because the complainant was held in detention for three years

¹⁵⁵ General Assembly, Official Records, Tenth Session, New York, 1955, Annexes, Agenda Item 28, Part II Document A/2929.

¹⁵⁶ *Id.*, p. 35.

¹⁵⁷ *Id.*, p. 42.

¹⁵⁸ Hookey, *The Prompt Trial Right*, p. 123.

¹⁵⁹ *Ibid.*

¹⁶⁰ The others changes were; the rights to counsel and the right to be present when being tried, paragraph d of Art. 14.

¹⁶¹ *Travaux Préparatoires*, 1966 of ICCPR, Document A/4299 of 3 Dec 1959, para.56.

¹⁶² Hookey, *The Prompt Trial Right*, p. 124.

¹⁶³ *Ibid.*

¹⁶⁴ The Human Rights Committee is established under Art. 28 of the ICCPR, and it is mandated to monitor and supervise the implementation of the rights set out in that Covenant.

¹⁶⁵ Human Rights Committee, *D. Taylor v. Jamaica*, Comm. No. 705/1996, (Views adopted on 2 April 1998), para. 7.1.

¹⁶⁶ Human Rights Committee, *Sooklal v. Trinidad and Tobago*, Comm. No. 928/2000 (2001).

prior to his trial¹⁶⁷ and a violation of 14(3)(c) because he waited for a period of seven years and nine months from the time of his arrest to the date of his trial.¹⁶⁸

To sum up, the right to be tried without undue delay protected under 14(3)(c) overlaps with the right to trial within a reasonable time or to release under 9(3). A period of time under both provisions must be assessed in circumstances of each case. Art.9(3), however, applies specifically to periods of pretrial detention.¹⁶⁹

B. The right to trial within a reasonable time under Art. 9(3)

Art. 9(3) applies to persons whose liberty has been deprived as a result of arrest or pre-trial detention. It requires that detention should be an exception and should last no longer than it is necessary in a particular case.¹⁷⁰ Pre-trial detention is not an internationally accepted default practice.¹⁷¹ However, it does not *per se*, constitute a human rights violation.¹⁷² International law does not prohibit the use of pre-trial detention in criminal proceedings, but requires that it shall be used as a means of last resort.¹⁷³ In fact, it recognizes the need for pre-trial detention provided it is applied fairly, reasonably and carefully.¹⁷⁴

Some of the factors to evaluate whether or not pre-trial detention has been applied properly is assessment of ‘promptness’ in bringing the detainee before a judge or other authorized officer and ‘reasonability’ of length of the detention. The Human Rights Committee, in its General Comment 8, stated that pre-trial detention should be an exception and as short as possible.¹⁷⁵

¹⁶⁷ Id, para. 4.7.

¹⁶⁸ Id, para. 4.8.

¹⁶⁹ Open Society Justice Initiative, *Case Digests: International Standards on Criminal Defence Rights*, UN Human Rights Committee Decisions, 2013, p. 40

¹⁷⁰ Amnesty International, *Fair Trial Manual*, p. 70.

¹⁷¹ Leslie, R, *Bail and Detention*, 2012, Wits Justice Project, p. 3.

¹⁷² Martin Schonteich, *Pre-trial detention and human rights in Africa Prisons*, 2013, p. 104. Available at http://www.hsrcpress.ac.za/downloadpdf.php?pdf=file=files_African_Prisons.pdf [Here in after, Schonteich, *Pre-trial detention and human rights*]

¹⁷³ United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), adopted by the General Assembly, G.A. Res. 45/110, U.N. Doc. A/RES/45/110, December 14, 1990, Rule 6.

¹⁷⁴ Martin Schonteich, *Pre-trial detention*, p. 104.

¹⁷⁵ Human Rights Committee, General Comment 8, Art. 9 (sixteenth session, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN. Doc. HRI/GEN/1Rev.1 at 8 (1994), para 3.

The Committee did not give precise time-limits in interpreting ‘promptness’. Instead, it relied on subjective assessment where it has reflected that delay in taking the arrested before a judge or other officer may not exceed “a few days”.¹⁷⁶ Ideally, this “a few days” requirement is understood as a period of time not exceeding 48 hours.¹⁷⁷ An important point is that the duty to bring a detainee promptly before a judicial authority is automatic.¹⁷⁸ It does not depend upon the request of the detainee.¹⁷⁹

When does the right begin to operate?

As far as the beginning of the right is concerned, Mr. Bertil Wennegren, in his individual opinion has stated;¹⁸⁰

While 9, paragraph 1, of the Covenant covers all forms of deprivation of liberty by arrest or detention, the scope of application of paragraph 3 is limited to arrests and detentions "on a criminal charge". It would appear that the State party interprets this provision in the sense that the obligation of the authorities to bring the detainee before a judge or judicial officer does not arise until a formal criminal charge has been served to him. It is, however, abundantly clear from the Travaux Préparatoires that the formula "on a criminal charge" was meant to cover as broad a scope of application as the corresponding provision in the European Convention. All types of arrest and detention in the course of crime prevention are therefore covered by the provision, whether it is preventive detention, detention pending investigation or detention pending trial. The French version of the paragraph (“detenu du chef d'une infraction pénale”) conveys this meaning better than the English version.

Since the right is about the commencement and end of a trial, the time lapsed before beginning of the trial for investigation purpose needs to be considered in measuring reasonableness in conducting a trial. This should lead us to the conclusion that the beginning of the right goes back to the time the accused was first arrested.

What does ‘reasonable’ time mean?

There is no a straightforward answer as to what ‘reasonable’ time mean and what is constitutes. According to Trechsel, the simplest way to determine observance of “reasonable time” requirement in criminal proceedings would be to introduce a

¹⁷⁶ Human Rights Committee, General Comment 8, para 2.

¹⁷⁷ Human Rights Committee, Concluding Observations: Zimbabwe, CCPR/C/79/Add.89, 1998, para. 17.

¹⁷⁸ Lawyers Rights Watch Canada (LRWC), *Pre-Trial Release and the Right to be Presumed Innocent: A Handbook on Pre-Trial Release at International Law*, 2013, p. 34.

¹⁷⁹ Human Rights Committee, Concluding Observations: Republic of Korea, CCPR/C/79/Add.114, 1 November 1999, at para. 13.

¹⁸⁰ Human Rights Committee, *Kelly v Jamaica*, Comm. No.253/1987, (1991), Appendix II.

fixed time frame. However, he suggested that at times such an approach might lead to injustice.¹⁸¹

Reasonable time may be interpreted through consideration of how diligent and reasonable did a state act in the determination of the case that delay in the proceedings is attributable to cause beyond its control.¹⁸² However, in *B. Lubuto v. Zambia*, the Committee has also made it clear that “the difficult economic situation” of a State party is not an excuse for not complying with the Covenant.¹⁸³ It has underlined in this respect that “the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe”.¹⁸⁴

The Human Rights Committee has held that what constitutes “reasonable time” is a matter of assessment for each particular case.¹⁸⁵ However, “[t]he lack of adequate budgetary appropriations for the administration of criminal justice...does not justify unreasonable delays in the adjudication of criminal cases.”¹⁸⁶ In addition, written proceedings being used to undertake criminal investigations cannot be used as a defense to justify delays.¹⁸⁷

Remedy for failure to try within reasonable period

Article 9(3) of the ICCPR requires release of the detainee as a remedy for failure to decide charges expeditiously. Detainees must, therefore, be granted provisional

¹⁸¹ Stefan Trechsel. *Human Rights in Criminal Proceedings*, 1st ed., Oxford university press, Oxford, New York, 2006, p. 137.

¹⁸² Arusha Gopaul, *The Impact and Constitutionality of Delayed Trials on the Rights of a Suspect or Accused Person During Criminal Proceedings*, (LLM dissertation, University of South Africa, 2015). [Unpublished, available at; http://uir.unisa.ac.za/bitstream/handle/10500/19103/dissertation_gopaul_a.pdf?sequence=1], p. 15 [last accessed on 27 March, 2017]

¹⁸³ Human Rights Committee, *B. Lubuto v. Zambia*, Comm. No. 390/1990 (Views adopted on 31 October 1995), para. 7.3.

¹⁸⁴ *Ibid.*

¹⁸⁵ Office of High Commissioner for Human Rights, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9, United Nations, 2003, p. 191 [Here in after, OHCHR, *Human Rights in the Administration of Justice*]. See also Human Rights Committee, *N. Fillastre v. Bolivia*, Comm. No. 336/1988, in UN doc. GAOR, A/47/40, (Views adopted on 5 November 1991), p. 306, para. 6.5.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

release if they are detained for long period of time that exceeds “reasonable” in the circumstances as a result of which the detention became arbitrary.¹⁸⁸

C. The right to be tried without undue delay under Art. 14(3)(c)

The numerous rights of an accused person incorporated under Art. 14 aim at ensuring the fair trial rights of the accused. By upholding a series of rights to individuals, it strives to serve the interests of justice.¹⁸⁹ A violation of one of these rights, would affect administration of justice in a variety of ways. As far as delay of proceedings is concerned, Edward Coke said that delay leads to denial of justice. According to Coke:

Every subject of this realm, ... may take his remedy by the course of the law and have justice and right for the injury done to him, freely without sale, fully without denial and speedily without delay... it must be Free, because nothing is so criminal as justice on sale; Full, because justice ought not limp; Speedy, because delay is indeed denial.¹⁹⁰

Therefore, the proper implementation of Art 14(3)(c), i.e. conducting trials without undue delay, is necessary.

What it means to be tried “without undue delay”?

The precise meaning of what the term “undue delay” constitutes is not set out in the ICCPR or in its *Travaux Préparatoires*.¹⁹¹ However, it has been addressed by the jurisprudence of the Human Rights Committee (HRC). Accordingly, in its General Comment No. 32, which has replaced General Comment No. 13, the HRC stated that the right to be tried without undue delay, as stipulated under Art 14(3)(c), is a guarantee that;

“... relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place ‘without undue delay’.”¹⁹²

¹⁸⁸ Lawyers Rights Watch Canada (LRWC), *Pre-Trial Release and the Right to be Presumed Innocent: A Handbook on Pre-Trial Release at International Law*, 2013, p. 36.

¹⁸⁹ HRC, General Comment 32, Para. 35.

¹⁹⁰ E. Coke, *Institutes of the Laws of England*, p. 55-56.

¹⁹¹ Marc Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights*, Martinus Nijhoff Publishers: Dordrecht, 1987, p. 297.

¹⁹² General Comment 32, para 35.

The last phrase “...whether in first instance or on appeal” and jurisprudence of the Committee show 14(3)(c) is to be read together with sub-Art (5),¹⁹³ so that review of conviction and sentence must be made available without delay”.¹⁹⁴

What is Delay in criminal proceedings?

Niki Tobi¹⁹⁵ has defined delay as an excessive prolongation of proceedings by the prosecution in bringing the accused to trial or by the court during trial, which has the legal consequence of not only affecting the liberty of the accused but also his right to fair trial.¹⁹⁶

Nevertheless, HRC has abstained from defining delay. Rather, it favors on a case by case assessment of the circumstances of each individual case.¹⁹⁷ Decisions of the Committee show that reasonableness of a delay is determined primarily through consideration of the length of time it takes to reach a final decision,¹⁹⁸ complexity of the case¹⁹⁹, and the author’s and the state party’s contribution to the delay²⁰⁰.

The Human Rights Committee has reaffirmed its stance on subjective assessment of reasonableness of the time lapsed in conducting trial in its GC No. 32, where it exactly noted that reasonable has to be assessed in the circumstances of each case taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities.²⁰¹

¹⁹³ Art 14(5) of ICCPR reads; Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

¹⁹⁴ Human Rights Committee, *Earl Pratt and Ivan Morgan v Jamaica*, Comm. No. 225/1987 (Views adopted on 7 April, 1989), para 13.3 –13.5.

¹⁹⁵ Niki Tobi, ‘Delay in the administration of justice’, in C Nweze, *Essays in honour of honourable Justice Eugene Ubaezona*, Fourth Dimension Publishing Co. Ltd: Enugu, 1997.

¹⁹⁶ *Id.*, p. 135.

¹⁹⁷ Human Rights Committee, *Siewpersaud et al v Trinidad and Tobago*, Comm. No. 938/2000, UN Doc CCPR/C/81/D/938/2000 (2004), para 6.2.

¹⁹⁸ Human Rights Committee, *Bozize v Central Africa Republic*, Comm. No 428/1990 (1994), paras. 2.1 and 5.3.

¹⁹⁹ Human Rights Committee, *Franz and Maria Deisl v Austria*, Comm. No 1060/2002 (2004), para.11.5-11.6.

²⁰⁰ Human Rights Committee, *Bernard Lubuto v Zambia*, Comm. No 390/1990 (1995), para.7.3.

²⁰¹ *Id.*, para. 35.

Criteria to Determine “Reasonableness” of time of proceedings

1. Complexity of the case

Complex cases need relatively longer periods of time for their disposal than simple cases. But, it is not clear as to what factors must be taken into consideration in examining complexity of cases. The practice shows the number of charges, the number of accused persons, the number of witnesses, the volume of evidence and the complexity of the facts and legal issues are considered in determining complexity.²⁰²

It is in principle for the State party concerned to show that the complexity of a case is such as to justify the delay under consideration by the Committee. On the other hand, seriousness of an offence should be seen separately from complexity of the case. Serious cases require due attention, nonetheless, seriousness is not a reason for delay, if it is simple.²⁰³

2. Conduct of the accused

Another criterion in assessing whether proceedings were conducted within a reasonable time is evaluating conduct of the accused. However, only intentional delays attributable to the defendant are considered. This primarily relates to delays caused by the absence of an absconding accused and other dilatory tactics intended to cause delay in the proceedings.

On the other hand, the accused is not obliged to cooperate actively in criminal proceedings against himself. Delays caused by the defendant in the exercise of his procedural rights in good faith must not be taken into account in evaluating reasonableness of time of proceedings.²⁰⁴

3. Conduct of the authorities

Human rights law obliges states and their authorities with the duty to enforce human rights. It is the duty of authorities to ensure that proceedings are conducted within

²⁰² Amnesty International, *Fair Trial Manual*, p. 145.

²⁰³ Human Rights Committee, *Boodlal Sooklal v Trinidad and Tobago*, Comm. No. 928/2000 (2 February 2000), CCPR/C/ 73/D/928/2000.

²⁰⁴ HRC, *Taright et al v Algeria*, Comm. No. 1085/2002, UN Doc. CCPR/C/86/D/1085/ 2002 (31 March, 2006) paras. 8.4 and 8.5.

reasonable time. If authorities, either intentionally or negligently, fail to advance proceedings at any stage, or if proceedings take unjustifiably long time to complete specific measures, the time will be deemed unreasonable.²⁰⁵ Likewise, if the criminal justice system itself hinders the speedy conclusion of proceedings, the right to a speedy trial may be violated.²⁰⁶

To summarize the discussion on criteria to determine reasonableness of period of trials, let us see to the following factors which are considered by Human Rights Committee.²⁰⁷

- Complexity of the legal issues being determined²⁰⁸
- Conduct of the accused, including whether or not adjournments were requested by them or delay tactics adopted²⁰⁹
- Length of each individual stage of the proceeding²¹⁰
- Any detrimental effect caused by the delay upon the individual's legal position²¹¹
- Availability of remedies to accelerate the proceedings, and whether these were called upon²¹²
- Outcome of any appellate proceedings²¹³

It is generally accepted approach that all these factors do not need to be present in every case and are considered in a balancing process to reach a decision on a case by case basis.²¹⁴

²⁰⁵ Amnesty International, *Fair Trial Manual*, p. 146.

²⁰⁶ *Ibid.*

²⁰⁷ These factors are generally taken from different decisions of the committee, hence they are to be treated as illustrative, not exhaustive.

²⁰⁸ Human Rights Committee, *Deisl v Austria*, Comm. No. 1060/2002, UN Doc CCPR/C/81/D/1060/2002 (2004), paras. 11.2–11.6.

²⁰⁹ Human Rights Committee, *Cagas v Philippines*, Comm. No. 788/1999, UN Doc CCPR/C/73/D/788/1997 (2001), para 7.4, Human Rights Committee, *Johnson v Jamaica*, Comm. No. 588/1994, UN Doc CCPR/C/56/D/588/1994 (1996), para 8.9.

²¹⁰ Human Rights Committee, *Deisl v Austria*, Comm. No. 1060/2002, UN Doc CCPR/C/81/D/1060/2002 (2004), paras 11.2–11.6.

²¹¹ *Ibid.*

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Chadambuka, Serious Offences*, p. 2.

Concluding remarks

The right to be tried without undue delay is basic element and an important feature of the fair trial right, because of its subject matter and location in 14.²¹⁵ However, observance of the right under 14(3)(c) alone is not sufficient condition to guarantee fair trial, which is broad and often complex. In other words, it is clear that the right to be tried without undue delay is, both procedurally and conceptually, an independent and distinct right. Therefore, a successful complaint can be made based on Art. 14(3)(c), without any requirement other than to show undue delay.²¹⁶

A complainant is not required to show that the trial was unfair as a result of breach of the right to a speedy trial under paragraph 3(c). It is sufficient for him to show that paragraph 3(c) has been breached. In these circumstances, the trial is conclusively presumed to be inconsistent with 14, and unfair.²¹⁷

In addition, the committee has held the fact that the accused did not have asserted his right to a speedy trial cannot be used as a defense to avoid responsibility for a delayed proceeding by the state.²¹⁸

3.2.2 Other international instruments

International human rights law has protected the right to a speedy trial, often known as the right to a trial within a reasonable time, in many of its instruments. These instruments include, but not limited to; Art. 20 (4)(c) of Statute of International Criminal Tribunals for Rwanda,²¹⁹ Art. 21 (4)(c) of the Statute of International Criminal Tribunals for the former Yugoslavia²²⁰ and Art. 67(1)(c) of ICC Statute,²²¹

²¹⁵ Hokey, *The Prompt Trial Right*, Australia.5, p. 129.

²¹⁶ HRC, *Pinkney v Canada*, Comm. No. 27/1978, UN DOC. CCPR/C/OP/1 at p. 95.

²¹⁷ Hokey, *The Prompt Trial Right*, Australia.5, p. 129.

²¹⁸ *Earl Pratt and Ivan Morgan v Jamaica*, para. 13.4.

²¹⁹ United Nations Security Council, Statute of the International Criminal Tribunal for Rwanda (as amended on 13 October 2006), 8 November 1994. available at <http://www.refworld.org/docid/3ae6b3952c.html> [accessed 14 May 2017]

²²⁰ United Nations Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia (as amended on 29 September 2008), 25 May 1993. available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept08_en.pdf [last accessed on 14 April, 2017]

²²¹ Rome statute of the international criminal court, July 1998, UN Doc. A/CONF.183/9, United Nations treaty series, vol. 2187, No. 38544, last amended 29 Nov 2010, *entered in to force on 1 July, 2002*.

Art. 37(a)(c) of Convention on the Right of the Child,²²² Art. 38 of the UN body of principles for the protection of all persons under any form of detention or imprisonment.²²³

3.3 Regional Human Rights Systems

3.3.1 European Human Rights System

Like in the ICCPR, the right to speedy trial is implicated in two provisions of the European Convention;²²⁴ Arts 5(3) and 6(1). But, through the jurisprudence of the European Court of Human Rights, the relation between the two provisions has been made clear. Despite close connection between the two provisions, they differ on the right they sought to protect.

Article 5(3);

Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled *to trial within a reasonable time or to release* pending trial. Release may be conditioned by guarantees to appear for trial. [emphasis added]

Article 6(1);

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing *within a reasonable time*... [emphasis added]

A. Relation between Articles 5(3) and 6(1)

Generally, the scope of Art. 6(1) is wider than 5(3).²²⁵ The right implicated by Art. 5(3) guarantees the right to liberty and security of person. It applies to those who are in detention and the question involves their trial within a reasonable time or release.²²⁶ It aims to protect individuals whose liberty has been deprived through detention or arrest as a result of criminal suspicion. Under this provision, authorities must act with “special diligence” in bringing persons arrested or detained to trial.²²⁷

²²² Convention on the Right of the Child, adopted by way of General Assembly resolution 44/25 of 20 November 1989. [entered into force on 2nd September 1990.

²²³ Adopted by General Assembly resolution 43/173 of 9 December 1988.

²²⁴ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950, as amended by Protocol No. 11 European Treaty Series - No. 5.

²²⁵ Robin C.A. White & Clare Ovey, *The European Convention On Human Rights*, 5th ed., Oxford university press, Oxford, 2010, P. 272. [Here in after, Robin and Clare, *The European Convention On Human Rights*]

²²⁶ Chadambuka, *Serious Offences*, p. 4.

²²⁷ Robin and Clare, *The European Convention On Human Rights*, p. 272.

On the other hand, Art. 6(1) relates to a fair trial right of obtaining a decision on the merits without delay²²⁸, and this must be considered differently.²²⁹ It guarantees fair trial rights which implies that persons charged with criminal offence, irrespective of the fact that their liberty has been deprived, are entitled to trial within a reasonable time. Though it applies to all accused persons, special diligence and priority is required in conducting a trial is within a reasonable time when the accused person is detained.²³⁰ Another difference with both provisions is while the fair trial right under Art. 6 is generally applicable in both civil and criminal cases, the right in Art. 5 (3) is implemented in only criminal cases.²³¹

B. Trial within a reasonable time under Art. 5(3)

As far as the right incorporated in Art. 5(3) of the Convention is concerned, the ECtHR, in *Wemhoff v. the Federal Republic of Germany*²³², has held that “it is the provisional detention of accused persons which must not...be prolonged beyond a reasonable time”.²³³ In addition, the court has held that reasonableness of the detention must be assessed in each case according to its special features.²³⁴

Regarding the nature of obligation imposed by the provision, the ECtHR, in *Neumeister v. Austria*²³⁵, held that “this provision cannot be understood as giving the judicial authorities a choice between either bringing the accused to trial within a reasonable time or granting him provisional release even subject to guarantees.”²³⁶

Furthermore, the court stated:

The reasonableness of the time spent by an accused person in detention up to the beginning of the trial must be assessed in relation to the very fact of his detention. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is

²²⁸ Chadambuka, *Serious Offences*, p. 4.

²²⁹ European Court of Human Rights, *Stögmüller v Austria*, Judgment of 10 November 1969, Series A, No. 9, p. 40.

²³⁰ Chadambuka, *Serious Offences*, p. 4.

²³¹ *Ibid.* See also Erdem Külçür, *Duration of Detention and Right to Trial within a Reasonable Time*, p. 176.

²³² European Court of Human Rights, *Wemhoff v. the Federal Republic of Germany*, Application No. 2122/64, Judgment of 27 June 1968, Series A, No. 7, p. 22.

²³³ *Id.*, para. 5, OHCHR, *Human Rights in the Administration of Justice*, p. 192.

²³⁴ *Id.*, para. 10.

²³⁵ European Court of Human Rights, *Neumeister v. Austria*, Application No. 1936/63.

²³⁶ *Id.*, para. 4.

essentially to require his provisional release once his continuing detention ceases to be reasonable.²³⁷

According to ECtHR, three steps are required in order to evaluate legitimacy of detention under Art. 5(3).²³⁸ First, existence of reasonable suspicion to put the suspect under detention.²³⁹ Secondly, there should also be sufficient ground to justify continued detention.²⁴⁰ Finally, authorities shall act diligently to justify length of the proceedings.²⁴¹

The court has also indicated that reasonable suspicion alone is not sufficient condition to hold a person under detention for longer time unless such deprivation of liberty is justified by judicial authorities. Moreover, 'special diligence' displayed by national authorities in the conduct of the proceedings should be determined.²⁴² It is also held that detained persons are entitled to have their cases given priority and conducted with particular expedition.²⁴³

Commencement and end of the periods to be taken into account

To determine 'reasonableness' of a detention, one needs to establish the beginning and end of the detention period. It is relatively easier to ascertain the beginning of the time which is usually the time when the suspect or accused is arrested. The end period of detention is the day on which the charge is determined, even if only by a court of first instance.²⁴⁴ Hence, it is not the day on which the case is determined in last instance, or when the judgement becomes final.

²³⁷ Ibid.

²³⁸ Caroline L. Dthavidson, No Shortcuts on Human Rights: Bail and the International Criminal Trial', *American University Law Review*: Vol. 60, Issue. 1, Article 1, PP. 1-67, at p. 23. [Here in after, Caroline, No Shortcuts on Human Rights]

²³⁹ European Court of Human Rights, Tomasi v. France, Application No. 12850/87, 1982, 15 Rep. 1, 49-50.

²⁴⁰ Ibid.

²⁴¹ Id, at 50; see also European Court of Human Rights, Debboub alias Hussein Ali v. France, Application No. 37786/97, 2001, at pp. 1302, 1314.

²⁴² European Court of Human Rights, Assenovet *al v.* Bulgaria, Application No. 24760/94, Judgment of 28 October 1998, Report 1998-VIII, p. 3300, para. 154.

²⁴³ United Nations, *Human Rights and Pre-trial Detention: A Handbook of International Standards Relating to Human Rights*, Professional Training Series No. 3, 1994, UN-Docs HR/P/PT/3, p. 17.

²⁴⁴ European Court of Human Rights, Wemhoff v. the Federal Republic of Germany, Application No. 2122/64, Judgment of 27 June 1968, Series A, No. 7, p. 22, para. 9.

With respect to ‘promptness’, the European Court, in *Brogan et al v United Kingdom*²⁴⁵, found a violation of Art. 5(3) of the European Convention because a person was held for four days and six hours.²⁴⁶ More specifically, the court has held;

...the word “promptly” [in Art 5(3)] is clearly distinguishable from the less strict requirement [reasonable time] in the second part of paragraph...[which] is to be assessed in each case according to its special features ... the significance to be attached to those features can never be taken to the point of impairing the very essence of the right guaranteed by 5 para. 3 ...that is to the point of effectively negating the State’s obligation to ensure a prompt release or a prompt appearance before a judicial authority.²⁴⁷

Finally, a review on whether or not the ‘promptness’ requirement has been observed must be made automatically and must not depend on the application of the detained person.²⁴⁸

C. Trial within a reasonable time under Art. 6(1) of ECHR

The right to a hearing “within a reasonable time”, as articulated in Art. 6(1) of the ECHR, is a right that accounts for more judgments of the European Court of Human Rights than on any other issue.²⁴⁹

According to ECtHR interpretations, the right to a trial within a reasonable time under Art. 6(1) is a fair trial right which guarantees expeditious commencement and completion of trial of an accused person, and it applies irrespective of detention of the accused.²⁵⁰

Commencement and end of the periods to be taken into account

In the determination of ‘reasonableness’ of time of trials, two basic issues should be identified. First is identifying the beginning and end of the period. Secondly, assessing reasonableness of the time between the two points of time.²⁵¹

²⁴⁵ European Court of Human Rights, *Brogan et al v United Kingdom*, 10/1987 (1988).

²⁴⁶ *Id.*, para 62.

²⁴⁷ *Id.*, para. 59.

²⁴⁸ European Court of Human Rights, *McKay v. the United Kingdom*, Application No. 543/03, Judgment of 3 October 2006, at para. 34.

²⁴⁹ Nuala Mole and Catharina Harby, *The right to a fair trial*, 2nd ed., Council of Europe; Strasbourg, 2006, p.36.

²⁵⁰ Caroline, *No Shortcuts on Human Rights*, p. 23.

²⁵¹ Erdem Külçür, *Duration of Detention and Right to Trial within a Reasonable Time*, p. 188.

With respect to the first issue, various decisions of the ECtHR show that the start of the period to be taken into consideration can be the day a person is either charged,²⁵² arrested,²⁵³ or committed for trial.²⁵⁴ And the end of this period is normally when the case is finalized in last instance, which is when appeal is no longer possible²⁵⁵ or when the proceedings are discontinued.²⁵⁶

As far as the second issue is concerned, in the determination of reasonableness of the length of the proceedings, has not yet decided an absolute time limit to determine whether or not the length of time is reasonable.²⁵⁷ The Court has consistently held that “it is to be assessed in the light of the particular circumstances of the case, ...in particular the complexity of the case, the applicant’s conduct and that of the competent authorities”.²⁵⁸ In some situations, however, state parties to the ECHR are required to act with a higher standard where the applicant has a significant stake in the outcome case. For example, in *Vallee v France*²⁵⁹, the ECtHR held ‘exceptional diligence’ is essential to accelerate proceedings.²⁶⁰

²⁵² European Court of Human Rights, *Kemmache v. France*, Judgment of 27 November 1991, Series A, No. 218, p. 27, para. 59.

²⁵³ European Court of Human Rights, *Yagci and Sargin v. Turkey*, Judgment of 8 June 1995, Series A, No. 319-A, p. 20, para 58.

²⁵⁴ European Court of Human Rights, *Mansur v. Turkey*, Judgment of 8 June 1995, Series A, No. 319-B, p. 51, para. 60.

²⁵⁵ See e.g. ECtHR, *Yagci and Sargin v. Turkey*, 8, para 58; European Court of Human Rights, *Eckle v Germany*, Judgment of 15 July 1982, Application No. 8130/78, at para 76; European Court of Human Rights, *Grigoryev v Russia*, Judgment of 23 October 2012, Application No. 22663/06, at para 91.

²⁵⁶ European Court of Human Rights, *Grigoryan v Armenia*, Judgment of 10 July 2012, Application No. 3627/06, at para 126.

²⁵⁷ Nuala Mole & Catharina Harby, *The Right to a Fair Trial*, A guide to the implementation of Art. 6 of the European Convention on Human Rights, Human Rights handbooks, No. 3, Council of Europe Press, 2006, p. 25.

²⁵⁸ OHCHR, *Human Rights in the Administration of Justice*, p. 269. See European Court of Human Rights, *Pelissier and Sassi v France*, Judgement of 25 March 1999, Application No. 25444/94, para. 67.

²⁵⁹ European Court of Human Rights, *Vallee v France*, Judgment of 26 April 1994, Application No. 22121/93, Series A, No. 289, p. 11. The applicant was suffering from an incurable disease with low life expectancy, thus had a crucial stake in receiving compensation.

²⁶⁰ Obiokoye Onyinye Iruoma, *Eradicating delay in the administration of justice in African courts: a comparative analysis of South African and Nigerian courts*, (LLM dissertation, University of Pretoria, 2005), p. 16. [Unpublished, available at: http://repository.up.ac.za/bitstream/handle/2263/942/obiokoye_io_1.pdf?sequence=1&isAllowed=y] [Here in after, Obiokoye, *Eradicating delay in administration of justice in African courts*]

Criteria to assess ‘reasonableness’ of time of proceedings

1. Complexity of Case

Complex cases need more time and careful attention in handling them than simple cases. Hence, complexity of a case can be one reason for lengthy proceedings because it grants more latitude to the state in dealing with the case.²⁶¹ In examining whether complexity of a case justifies the length of proceedings, ECtHR has identified factors to determine the complexity. These include, but not limited to, the number of accused, the number of witnesses or expert witnesses, the volume of evidence to be examined and difficulty of gathering it, international aspect of the case (involvement of foreign element), difficulty of legal issues arising from the case or the intervention by other persons²⁶².

Nonetheless, though complexity of case constitutes a reason for extended proceedings, it cannot be considered as a valid ground if the trial has been unjustifiably prolonged.²⁶³

2. Conducts of the Applicant

The right to speedy trial is designed primarily to protect accused persons from long periods of incarceration under state of uncertainty. But, sometimes these persons may well come delay and try to avoid trial as long as possible particularly if they are granted bail.

In order to hold a state party for a violation of the right to speedy trial under the convention, the delay must be the result of official authorities’ conducts. Delays which are the result of conducts attributable to the accused do not always constitute violation of the right unless the delay was specifically intended.²⁶⁴ However, the accused cannot be held responsible for delays caused by making use of his rights,

²⁶¹ Marc Henzelin and Héloïse Rordorf, ‘When Does the Length of Criminal Proceedings Become Unreasonable According to the ECtHR?’, *New Journal of European Criminal Law*, 2014, Vol. 5, Issue 1, PP. 78-109.

²⁶² Van Dijk et al., *Theory and Practice of the European Convention on Human Rights*, 4th ed., p. 607.

²⁶³ Erdem Külçür, *Duration of Detention and Right to Trial within a Reasonable Time*, p. 190.

²⁶⁴ *Ibid.*

particularly, the right not cooperate with the judicial authorities.²⁶⁵ The ECtHR, in Yağci case, has held that the accused person is under no obligation to cooperate actively with the judicial authorities under Art. 6(1) of the convention. Specifically, the court noted that the accused is not to be blamed for taking “full advantage of the resources afforded by national law in their defense”.²⁶⁶ The conduct of the accused, even if to some extent slow down the proceedings, cannot, on its own, explain delay.²⁶⁷ Delays can be attributed to the accused only when he deliberately obscures the process.²⁶⁸

3. Conducts of Authorities

When a proceeding prolongs beyond reasonable time as a result of conducts which can be ascribed to administrative or judicial bodies, the state is held responsible for any delay. This can relate either to total inactivity of authorities or their activities being slow that lead to delay.²⁶⁹ For example, in the case *Arsov v The Former Yugoslav Republic of Macedonia*, the court has found a violation of the right to a fair trial among others on the fact that the local Court had been completely inactive for a period of two years and eight months, and that the procedure had been dormant for another year after that.²⁷⁰ In other circumstances, the Court has also given special attention to periods of inactivity.²⁷¹

Finally, even ascertaining that the final judgment would not have been changed had the trial been conducted within a reasonable time cannot serve as an excuse for delay.²⁷² For example, such defense wasn't admitted by the Court in *Zana vs Turkey*. The Turkish government argued a person who is convicted by other crime

²⁶⁵ OHCHR, *Human Rights in the Administration of Justice*, p. 270.

²⁶⁶ European Court of Human Rights, *Yagci and Sargin v. Turkey*, judgment of 8 June 1995, Series A, No. 319-A, p. 20, para. 66.

²⁶⁷ Ibid, see also European Court of Human Rights, *Zana vs Turkey*, Application no. 18954/91, Judgment of 25 November 1997, para.79.

²⁶⁸ OHCHR, *Human Rights in the Administration of Justice*, p. 270.

²⁶⁹ Holger Hembach, “The length of proceedings in the jurisprudence of the European Court of Human Rights”, at <<http://echr-online.info>>

²⁷⁰ European Court of Human Rights, *Arsov v The Former Yugoslav Republic of Macedonia*, application no. 44208/02, Judgment of 19 October 2006, para 43.

²⁷¹ See for example European Court of Human Rights, *Vachev v Bulgaria*, Application no. 42987/98, Judgment of 8 July 2004, para 96.

²⁷² Erdem Külçür, *Duration of Detention and Right to Trial within a Reasonable Time*, p. 192.

which is under execution is not in danger of deprivation of liberty; therefore, breaching reasonable time does not harm him. But, the court stated that the danger of being punished for another crime in addition to punishment still getting executed is sufficient for convicted to be suffered.²⁷³

3.3.2 The African Human Rights System

Article 7(1) of the African (Banjul) Charter stipulates;

Every individual shall have the right to have his cause heard. This comprises; ... (d) *the right to be tried within a reasonable time* by an impartial court or tribunal. [emphasis added]

The right to trial within a reasonable time is one of the basic elements of the right to fair trial which is specifically designed to ensure that criminal charges are not brutally extended. Through this provision, the African Charter seeks to control the criminal process, particularly delay in the proceeding, thereby avoiding long pre-trial incarceration and as well as delay in trials to minimize deprivation of liberty and harm that could happen to victims.

Nevertheless, the fair trial guarantee under Art. 7 of the charter is generally less comprehensive compared to the ICCPR or its counterpart regional instruments; the American and European Human Rights Conventions. Recourse has to be made to the jurisprudence African commission on Human and Peoples' Rights,²⁷⁴ which is mandated to promote and protect Human and Peoples' Rights enshrined in the charter and to interpret provisions of the charter.²⁷⁵

In addition, the provision is to be read in light of Art. 60²⁷⁶ of the charter which clearly authorizes the commission to be inspired and guided by international human

²⁷³ European Court of Human Rights, Zana vs Turkey, Application no. 18954/91, Judgment of 25 November 1997.

²⁷⁴ African Commission on Human and Peoples' Rights (the commission), as established by Art. 30 of the African charter.

²⁷⁵ Id, Art. 45.

²⁷⁶ The Banjul Charter, Art. 60 reads: The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

rights law, particularly from UDHR and other instruments adopted by the United Nations in the field of human rights.²⁷⁷

Consequently, gaps in the charter can be fulfilled through interpretations to be made by the African Commission. Yet, there is little to discuss as far as the works of the African Commission on 7 of the charter is concerned. It did not have dealt with the matter sufficiently. It has so far addressed very few cases based on the right to trial within a reasonable time, Art. 7(1)(d) of the charter.

Through one of the works of the African Commission, this guarantee is further reinforced by the Resolution on Fair trial²⁷⁸, which provides that “[p]ersons arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within reasonable time or to be released.”²⁷⁹

With regard to delay in criminal proceedings, in one of the few cases that are addressed by the African Commission, the Constitutional Rights Project v Nigeria,²⁸⁰ the Commission held:

In a criminal case, especially one in which the accused is detained until trial, the trial must be held with all possible speed to minimize the negative effects on the life of a person who, after all, may be innocent.²⁸¹

In Haregowoin Gabre-Selassie and IHRDA v. Ethiopia,²⁸² the Commission found violation of Art. 7(1)(d) of the charter because the victims (*Dergue* officials) were incarcerated for fifteen (15) years and twelve (12) years of the beginning of the trial, and by the time the decision was made their trial was not concluded. Specifically, the Commission stated that:

...the right to an impartial hearing within a reasonable time is one of the cardinal elements of the right to fair trial. 7(1)(d) not only provides that every person charged with a criminal offence has the right to be tried without undue delay/within a reasonable time by an impartial

²⁷⁷ Dr. Ibrahim Ali Badawi El-Shiekh, “Preliminary Remarks on the Right to Fair Trial Under the African Charter on Human and People’s Rights”, <www.hrlibrary.umn.edu> [last accessed on 17 April, 2017].

²⁷⁸ Resolution on the Right to Recourse and Fair trial, 11th ordinary Session of the African Commission on Human and Peoples’ Rights, Tunis, Tunisia, 2-9 March, 1992.

²⁷⁹ *Id*, Paragraph 2 (c).

²⁸⁰ African Commission on Human and Peoples' Rights, Constitutional Rights Project v Nigeria, Comm. 153/96.

²⁸¹ *Id*, paras. 19-20.

²⁸² African Commission on Human and Peoples' Rights, Haregowoin Gabre-Selassie and IHRDA (on behalf of Former Dergue Officials) v. Ethiopia, Comm. 301/2005.

court or tribunal, but that an individual who is accused and held in custody is entitled to have his or her case resolved promptly.²⁸³

In another Nigerian case, *Huri-Laws v. Nigeria*²⁸⁴, the African Commission found a violation of Arts 7(1)(d) and 26 (independence of Courts) of the African Charter because victims had been detained for several weeks and months respectively without any charges being brought against them.²⁸⁵

Even within the limited cases that came to its attention, the African Commission has failed to extensively comment on 7(1)(d) of the Charter.²⁸⁶ The Commission did not define what constitutes “reasonable time”. Nor did it establish criteria for a case by case determination of “reasonableness” requirement under Art. 7(1)(d). In these decisions, the commission, in describing delay in the proceedings, used terms such as ... “denial of justice” or “does not meet with the spirit and purport of Art. 7(1)(d)”, which instead of clarifying the meaning of the provision, have created further ambiguity.²⁸⁷ It did not give clear meaning as to when a criminal proceeding, which has been unjustifiably delayed, would violate Art. 7(1)(d) of the Charter.²⁸⁸

Another point worth mentioning is that the African Commission has come up with an interpretation showing the right to a speedy trial is implicated under Art. 6 which guarantees the right to liberty and security of a person. The Commission, while attempting to clarify and elaborate on the content of Art. 6, has found a violation of the right due to unduly protracted period of detention. For example, imprisonment of over twelve years without a trial,²⁸⁹ three years of detention without a trial²⁹⁰ or even three months of detention without a trial²⁹¹ constituted a violation of Art. 6.

²⁸³ Id, para. 215.

²⁸⁴ African Commission on Human and Peoples' Rights, *Huri-Laws v. Nigeria*, Comm. No. 225/98 (2000).

²⁸⁵ Id, at para. 46.

²⁸⁶ Robert P Barnidge Jr., ‘The African Commission on Human and Peoples’ Rights and the Inter-American Commission on Human Rights: Addressing the right to an impartial hearing on detention and trial within a reasonable time and the presumption of innocence’, *African Human Rights Law Journal*, 2004, Vol. 4, No. 1, PP. 108-120, at 113.

²⁸⁷ Obiokoye, *Eradicating delay in administration of justice in African courts*, p. 19.

²⁸⁸ Ibid.

²⁸⁹ African Commission on Human and Peoples' Rights, *Krishna Achuthan (on behalf of Aleke Banda) v. Malawi*, Comm. 64/92.

²⁹⁰ African Commission on Human and Peoples' Rights, *Amnesty International (on behalf of Orton) v. Malawi*, Comm. 137/94.

²⁹¹ African Commission on Human and Peoples' Rights, *Vera Chirwa v. Malawi*, Comm. 154/96.

The jurisprudence of the African Commission on the right to speedy trial is not as strong as the Human Right Committee as well as other regional human rights bodies (particularly its European counterpart). Hopefully, the African Commission will come up with detailed comments and criteria of ‘reasonability’ on Art. 7(1)(d) of the charter. But, in doing so, the general difference between the common law and civil law systems of criminal justice, on test of ‘reasonableness’, may present an obstacle to the commission.²⁹² In the civil law jurisprudence, inquisitorial in nature, the criminal process generally takes a longer period than its counterpart common law criminal justice system which is adversarial. Therefore, making balanced standard between these two different, at times contrary, systems would be an assignment that the Commission must address as soon as possible.²⁹³

3.3.3 Inter-American Human Rights System

There are two major human rights instruments under the Inter-American system that regulate the promotion and protection of human rights: The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

Article 25, 3rd paragraph of the American Declaration of the Rights and Duties of Man provides;

Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise to be released. He also has the right to humane treatment during the time he is in custody.

In the determination of the right to be tried without undue delay under the declaration, the Inter-American Commission on Human Rights (IACHR), in *Desmond Mckenzie et al v Jamaica*,²⁹⁴ has adopted jurisprudence of the European Court of Human Rights.²⁹⁵

²⁹² Nsongurua J Udombana, ‘The African Commission on Human and People’s Right and the development of fair trial norms in Africa’, *African Human Rights Law Journal*, 2006, Vol 6, No 2, pp. 299-332, at pp. 318-319.

²⁹³ *Id.*, p. 319.

²⁹⁴ IACtHR, *Desmond Mckenzie et al v Jamaica*, case 12.447, Report No. 61/06, Judgment of 20 July 2006.

²⁹⁵ Obiokoye, *Eradicating delay in administration of justice in African courts*, p. 17.

In another case, Michael Edwards and others v Bahamas, the IACHR held that the failure of the state to try the accused persons without undue delay was a violation of 25 of the Declaration.²⁹⁶

On the other hand, the right has been protected in two provisions of the American Convention on Human Rights (ACHR).

Art. 7(5) of the convention provides:

Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to *trial within a reasonable time* or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial. [emphasis added]

Art. 8(1) of the convention provides:

Every person has the right to a hearing, with due guarantees and *within a reasonable time*, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. [emphasis added]

The right to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings, as provided in Art. 7(5), imposes on the state the duty to give priority to the processing of the criminal trial in the case of persons deprived of their liberty.²⁹⁷ The time limitation is established in the interest of the accused, not in the interest of justice.²⁹⁸

This provision is important because it upholds the presumption of innocence and demands the detainee's release if the trial does not occur within reasonable time.²⁹⁹ Despite the fact that there are reasons to keep an individual detained, if detention goes beyond reasonable time, the detainee must be released.³⁰⁰ In Sanchez v Honduras, the Inter-American Court of Human Rights (IACtHR), one of two

²⁹⁶ Michael Edwards and others v Bahamas, Cases 12.067 (Michael Edwards), 12.068 (Omar Hall) and 12.086 (Brian Schroeter), Report No 48/01, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000), at 603, para. 175.

²⁹⁷ Inter-American Commission on Human Rights, Inter-American Yearbook on Human Rights, Volume 2, Martinus Nijhoff Publishers, The Hague, 1998, p. 1768.

²⁹⁸ Ibid.

²⁹⁹ Thomas M. Antkowiak and Alejandra Gonza, *The American Convention on Human Rights: Essential Rights*, 1st ed., Oxford University Press, Oxford, New York, 2017, p. 166. [Here in after, Antkowiak and Gonza, *American Convention on Human Rights*]

³⁰⁰ Ibid.

adjudicatory bodies³⁰¹ that interprets and monitors compliance with the American Convention, has stated that state authorities must not unduly prolong detention.³⁰²

The IACtHR, like its counterpart ECtHR, has not frequently found a violation of this provision, and the order for release is very rare.³⁰³ With respect to the duration of the detention and the beginning and end of the period to be considered, the court has provided little explicit guidance and prefers to remit to national jurisdiction. In fact, the court sometimes hesitates to rule on this point at all.³⁰⁴ For example, in *Acosta Calderon v Ecuador*³⁰⁵, the court avoided determination of reasonability of pre-trial detention, considering it sufficient to find a violation under Art. 7(3).³⁰⁶

With regard to ‘promptness’, the IACtHR, in *Castillo-Páez v. Peru*, found a violation of Art. 7(5) of the ACHR because the victim had not been “brought before a competent court within 24 hours or otherwise if distance was a factor, nor within fifteen days on suspicion of terrorism, pursuant to Article 7, paragraph 5, of the Convention, and Article 2, paragraph 2(c), of the Constitution of Peru.”³⁰⁷

On the other hand, the Inter American Commission has held that a period of one week to bring a detained person before a judge or other authorized officer is too long, exceeding ‘promptness’ requirement under Art. 7(5).³⁰⁸

As to ‘reasonableness’, the IACtHR, like the Inter-American Commission, also had a look at the jurisprudence of the European Court of Human Rights in determining what constitutes ‘reasonable’ time within the framework of Arts 7(5) and 8(1) of the American Convention.³⁰⁹ For example, in *Suarez Rosero v Ecuador*,³¹⁰ the Inter-American Court has shared the view of the European Court that determination of ‘reasonableness’ of the time should be assessed on case by case basis, particularly

³⁰¹ The other being the Inter-American Commission on Human Rights (IACHR), See Art. 33 of the convention.

³⁰² IACtHR, *Sanchez v Honduras*, ser. C, No. 35, (Nov 12, 1997), para. 74-75.

³⁰³ Antkowiak and Gonza, *American Convention on Human Rights*, p. 166.

³⁰⁴ *Ibid.*

³⁰⁵ IACtHR, *Acosta Calderon v Ecuador*, ser. C, No. 129, 24 June 2003.

³⁰⁶ *Id.*, para. 82.

³⁰⁷ IACtHR, *Castillo-Páez Case v. Peru*, judgment of November 3, 1997, para. 57

³⁰⁸ Inter-American Commission, 7th Report on the Situation on Human Rights in Cuba, 1983 OEA Ser L/V/11 61.doc 29 rev 1, p. 41.

³⁰⁹ Inter-American Commission on Human Rights, *Inter-American Yearbook on Human Rights*, Volume 2, Cambridge University Press, New York, 2017, p. 112.

³¹⁰ IACtHR, *Suarez Rosero v Ecuador*, Judgment, 12 November 1997, Annual Report 1997, p. 283.

considering complexity of the case, procedural activity of the interested party and the conduct of the judicial authorities.³¹¹

Moreover, the Inter-American Court has said that the purpose of the reasonable time requirement is to prevent holding accused persons for an extended period in a state of uncertainty and to ensure a charge is promptly disposed of.³¹² The Court has also considered that the calculation of a reasonable time period begins from first act of the criminal proceedings, such as the arrest of the defendant, and that the proceeding comes to an end when a final and firm judgment is delivered and the jurisdiction thereby ceases.³¹³

In *Sewell v Jamaica*³¹⁴, the inter-America Commission for human Rights has found a violation of s 7(5) and 8(1) of the American Convention since the proceeding took a period of 6 years and 11 months for its completion, i.e. the time between his arrest and a final decision on his appeal.³¹⁵

3.4 National Legal System

Development of the right

The 1931 constitution marked the era of written constitution in the Ethiopian history. Nonetheless, it did not bestow any human rights to Ethiopians because it was interested in concentrating governmental power in the hands of the king rather than promoting human rights and freedoms to citizens.³¹⁶

The 1955 revised constitution,³¹⁷ triggered by complex legal and political conditions both at domestic and international levels, has recognized a handful of rights.³¹⁸

³¹¹ Id, para. 72.

³¹² Id, para. 70.

³¹³ Id, para. 71.

³¹⁴ *Dave Sewell v Jamaica*, case 12.347, Report No. 76/02. IACtHR, Doc. 5 rev. 1, p. 763, 2002.

³¹⁵ Id., para. 144.

³¹⁶ Adem Kassie Abebe, 'Human Rights under the Ethiopian Constitution', *Mizan Law Review*, Spring 2011, Vol. 5 No.1, pp.41-71, at p. 41. [hereinafter Adem Kassie, Human Rights under the Ethiopian Constitution]

³¹⁷ Revised Constitution of the Empire of Ethiopia, Proclamation No. 149 of 1955.

³¹⁸ Adem Kassie, Human Rights under the Ethiopian Constitution, p. 42.

The right to a speedy trial was first recognized in the revised constitution. Article 52 of the constitution provides that “[i]n all criminal prosecutions the accused, duly submitting to the court, shall have the right to a speedy trial...”

Nonetheless, implementation of these rights was highly restricted due to the absolute power of the Emperor, and the absence of an organ empowered to interpret and apply the Constitution.³¹⁹

The development of the right had gone from bad to worse as it could not even get constitutional backing in the 1987 constitution.³²⁰ PDRE (People’s Democratic Republic of Ethiopia) constitution of the Derg, socialist in nature, has not recognized the right to a speedy trial. Article 45 of the PDRE constitution which guarantees rights of accused persons did not say anything about the right to be tried within a reasonable time. Except Art. 44(2) of the constitution which prescribes the time within which arrested persons should be taken to courts,³²¹ the constitution did not guarantee further right to a speedy trial of arrested and accused persons.

The 1995 FDRE constitution, Article 20(1), has clearly recognized the right to a speedy trial of accused persons.

FDRE Constitution

Under international law, the right to a trial within a reasonable time has two sets of standards. The first applies only to people detained before trial. The second set of standards, applies to everyone charged with a criminal offence, whether or not detained.³²²

Article 20(1) which stipulates for the right to a trial within a reasonable time applies only to persons charged with criminal offense because the last phrase “... after having been charged” implies a charge be first instituted against a person in order to trigger application of the right.

³¹⁹ See generally G Krzeczunowicz, ‘Hierarchy of laws’, *Journal of Ethiopian Law*, 1984, vol. 1, No. 1, p. 11 as quoted by Adem Kassie, *ibid*, p. 42.

³²⁰ Constitution of Peoples Democratic Republic of Ethiopia, 1987, *Negarit Gazetta*, Proclamation No. 1, Addis Ababa, 12 September 1987.

³²¹ It states “Any arrested person shall be produced in court within 48 hours.”

³²² Amnesty International, *Fair Trial Manual*, p. 70.

The right must, however, start to operate at an earlier stage of the criminal process if the accused is arrested before summoned with a criminal charge; the first set of standard. This stage covers reasonability of the time between arrest and trial. In other words, this refers to the period of time required to conduct police investigation. The time begins to run as soon as the suspect, who should be brought to court promptly, is first deprived of liberty.³²³ What time is ‘prompt’ is not clear as one cannot objectively determine it.

Various international human rights instruments require arrested persons be brought promptly before court of law. But, they do not prescribe specific time limits to bring arrested persons before a court as these are left to national jurisdictions, but generally a time longer than 48 hours is taken as a violation of the right to be tried within a reasonable period.³²⁴ It also interferes with the right to liberty because an initially lawful detention becomes arbitrary due to protracted period of detention.

The FDRE constitution, like most national constitutions, has put a specific time limit within which the arrested person should be taken to a court, and that is 48 hours.³²⁵ Thus, persons arrested in connection with a criminal offense must be brought before a court within the prescribed time so that the judge must rule on the legality of the arrest and on whether or not the detainee should be released or detained pending trial.

If bail is not allowed, which means the suspect will be detained at least until investigation against him is completed, the FDRE Constitution requires investigations should be carried out within a time strictly required to complete the necessary investigation respecting the arrested person’s right to a speedy trial.³²⁶

Art.19 (4) of the constitution reads:

Where the interests of justice require, the court may order the arrested person to remain in custody or, when request, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall

³²³ HRC, *Evans v Trinidad and Tobago*, Comm. No. 908/2000, UN Doc. CCPR/C/77/ D/908/2000 (2003) para. 6.2.

³²⁴ See for example. HRC Concluding Observations: El Salvador, 2010, UN Doc. CCPR/C/SLV/CO/6, para. 14.

³²⁵ FDRE constitution, Art. 19(3).

³²⁶ FDRE constitution, Art. 19(4).

ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial.

The constitution has stressed on the need to complete police investigation in as fast as possible so that trial will begin soon. This provision aims at safeguarding the right to a speedy trial of an arrested person because speedy trial is all about the time by which trial should commence and end.³²⁷

Criminal Procedure Code of Ethiopia also has indicated for a timely conclusion of police investigation.

Art. 37. -Report of police investigation.

(1) Every police investigation under this Chapter shall be completed without unnecessary delay.

The Criminal Justice Policy has laid down the need for an effective and efficient crime investigation system in the interest of the public and rights of victims and suspects. Diligence in investigation is needed when suspects are under custody.³²⁸ Besides, it prescribes the necessity for establishing a time framework within which police investigation should be completed and a charge be instituted according to the nature, gravity and complexity of crimes.³²⁹

Though both the Constitution and the CPC provide that police investigations should be conducted without delay respecting the right to a speedy trial of arrested persons, except the anti-terrorism and anti-corruption proclamations, no time limit has been provided in the laws yet.

The second set of standard, applies to persons charged with a criminal offence. Once a charge is instituted, Art. 20(1) of the constitution starts to operate: accused persons, thus, have the right to a public trial within a reasonable time.

Interpretation of human rights in the constitution

Article 13(2) of the constitution requires that interpretation of human rights and freedoms contained in chapter three be made in a manner compatible to the

³²⁷ General Comment 32, para 35.

³²⁸ Criminal Justice Policy, Sec. 3.6.

³²⁹ Id, Sec. 3.7.

principles of the UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia. While international covenants refer to both ICCPR and ICESCR of 1966, international instruments can be taken to include regional and sub-regional instruments as well.³³⁰

Through application of this provision, international and regional human rights instruments can be used to clarify the meaning and content of the right to speedy trial. Accordingly, Ethiopia has ratified both ICCPR and the African/Banjul Charter. Hence, these instruments (and jurisprudence of the respective human rights bodies empowered to monitor interpretation of the instruments) can be applied in assessing the scope and content of the right.

The factors used to determine reasonableness of time of proceedings and the remedies available to violation of the right, as applied by the HRC, should be used to assess scope of the right in the constitution.

Coming to laws of the region, Art. 21(1) of the Tigray constitution prescribes that accused persons have the right to a public and speedy trial. Similarly, paragraphs 3 and 4 of Art. 20 of the constitution, dealing with the right to a speedy trial of arrested persons, correspond to same paragraphs of Art. 19 of the federal constitution.

There are no hard laws up to the present time that aim to elaborate and give effect to the right in the region. The right can be elaborated through international instruments which have become integral part of law of the land pursuant to the federal constitution.

³³⁰ Adem Kassie, Human Rights under the Ethiopian Constitution, pp. 46-47.

CHAPTER FOUR

SCOPE OF THE RIGHT TO A SPEEDY TRIAL AND FACTORS THAT AFFECT ITS IMPLEMENTATION IN TIGRAY REGION

4.1 Introduction

The right to a speedy trial is clearly recognized under Art. 21(1) of the Tigray constitution. In addition, it is implied under paragraphs 3 and 4 of Art. 20 of the same constitution. The FDRE constitution and the criminal procedure code are applicable in the regional state. Furthermore, international instruments adopted by Ethiopia which, pursuant to Art. 9(4) of federal constitution, have become integral part of law of the land are applicable in the region. In this regard ICCPR and the African charter are of paramount importance in defining and elaborating the scope of the right to a speedy trial. The criminal justice policy has also nationwide application.

Legal recognition of a right is the first important step to ensure its realization. But, such recognition alone is not sufficient to properly safeguard rights in practice because practical application of rights is quite different from insertion of the right in statutes, be it constitutional or other ordinary laws.³³¹ This chapter analyzes scope of the right and its implementation and the factors that hinder its realization in the national regional state of Tigray.

4.2 Scope and application of the right

As it is stipulated under FDRE constitution and international instruments adopted by Ethiopia, the scope of the right to a speedy trial begins from time of arrest, whenever arrest comes before criminal charge. Otherwise, the right to trial within reasonable time starts to operate from the time when the accused is charged and it ends when the judgement acquitting or convicting the person or persons concerned becomes final. In this regard, the right applies to all accused persons equally

³³¹ Stapleton, *Ensuring A Fair Trial in The International Criminal Court*, p. 547.

irrespective of whether or not the accused is detained pending the trial. However, special diligence must be given when the accused is deprived of his liberty.

Nevertheless, the scope of the right is limited in practice. Delay in the disposal of cases has affected not only the ordinary type of cases but also those which by their very nature, call for early relief.³³²

Though absence of time framework has contributed for non-completion of criminal proceedings, even when there is time limit, it is not respected and properly executed. It has become a default practice not to consider weekend periods in calculating the 48 hours' mark. Interviewed police officers have stated that they do not bring arrested persons to courts during weekends only because courts are closed at these times. Whereas, judges and public prosecutors have stated weekends are rest times and there is no specific law that instructs them to work on weekends in order to decide on legality of the arrest and on bail issues. Both under the FDRE and Tigray constitutions, only a time reasonably needed for transportation is recognized as a reason for not bringing an arrestee to a court before the lapse of 48 hours. The fact that weekend periods are rest times is not a tenable justification to limit implementation of the right.

Police Commission, Justice Bureau and the Supreme Court in the region have applied BPR (Business Processing Reengineering) standards to measure efficiency of their functions. Through these standards, crimes are classified in to simple, medium and serious offences and time and quality indicators are assigned for their investigation, charging and litigation. For example, the time needed to investigate serious crimes shall not exceed 34 days. Public prosecutors should file a charge within 3 days of receiving police report for simple crimes and a maximum of 15 days are allotted for serious crimes. Courts should finalize a trial for simple crimes in 30 days, for medium crimes in 45 and for serious crimes in 60 days and on appeal the cases need to be settled within 21,35 and 45 days respectively.

BPR standards are bench marks that use to measure efficiency in the criminal justice system. These can be important inputs in regulating the time spend at each stage of

³³² Interview with Gidey G/sellasie, judge at Supreme Court of Tigray, May 8, 2017.

the criminal process. Nonetheless, these standards are only aspirations which may help measure performance of judges, prosecutors or investigators. The standards are not legalized. Consequently, they do not possess legal authority to ensure completion of each proceeding within the prescribed time framework.

Even with these standards, the norm among justice organs is to evaluate speed of proceedings only when the case reaches in the domain of an organ. For example, judges measure speed of proceedings from the time a charge is filed until it is finally decided. The time spend during investigations and appeal, if any, are not considered. Same is true for public prosecutors.

4.3 Awareness and claim of the right to a speedy trial

A strong and repeated claim of a right is an implication that the right holder indeed wants the right be properly implemented. With respect to the right to a speedy trial, whenever it is raised, judges may give emphasis to the case. However, silence of an accused/arrested person to claim the right does not mean waiver of the right.³³³

Lawyers' awareness about the right is good as they are professionally trained, experts on their field. However, problems exist with police officers who most of the time disregard rights of suspects even in serious conditions.

Awareness on part of accused/arrested is somehow measured by how often do they claim the right. In this regard, most interviewed judges responded that the awareness and claim of right to a speedy trial is weak when it is compared to other rights such as right to legal counsel. Accused persons do not usually claim, as of right, that their cases be disposed of promptly even when assisted by advocates. When they do, they rather beg judges to see their cases speedily. Most of the time, they tend to ask judges through other modes, such as they have arranged marriage or commemoration.

Asked as to why right holders do not claim the right, there is an outlook to see courts as sacred institutions where rights can only be granted by it, instead of institutions that aim to give effect to rights. Accused/suspect persons fear to ask this right. Even when accused persons are legally represented, advocates are reluctant to claim the

³³³ Earl Pratt and Ivan Morgan v Jamaica, para. 13.4.

right because they are busy with other clients' cases.³³⁴ Sometimes, when the court is to order adjournment, advocates ask for longer time than is proposed by a court, not necessarily because they need sufficient time to prepare for the case, but their agenda is full of others' cases.

4.4 Collaboration between stakeholders

Collaboration in administration of criminal justice can be done when stakeholders work together. It can also be achieved that even when the organs work separately, they should do so in a clear and precise manner so that other institutions would not send the work back for reconsideration or amendment. Quality works avoid the need for revision of the work. Hence, it reduces the time needed to conduct trials. The collected data show that justice stakeholders in the region are not doing enough to work in cooperation.³³⁵

Collaboration during crime investigation and prosecution

Public prosecutor should work together with and guide the police during crime investigation.³³⁶ In this regard, collaboration between police and public prosecutors is weak particularly at zonal level. Interviewed public prosecutors replied that the main reason for lack of cooperation is workload and pressure. In order to resolve this problem in investigation, help and guidance is made through phone when asked by police. In most such cases, they focus on few, serious crimes. As a result, many cases are send back to the police for further investigation, according to Art. 38(c) of the CPC. This leads to consuming additional time for investigation than is necessary. Public prosecutors could have avoided the need for further investigation by working together with police and leading the investigation.

Collaboration during litigation

Courts always find it difficult to have smooth and timely conducted trials as a result of less supportive environment. Stakeholders are not willing to cooperate unless

³³⁴ Interview with T/woyni Belay, president of Axum First Instant Court, April 25, 2017; interview with Ar'aya Zeweli, judge at North West Zone High Court, April 26, 2017; interview with Nigsti Haregot, judge at Central Zone High Court; and interview with Yemane G/her, judge at South East Zone High Court, May 4, 2017.

³³⁵ Interview with Awet Lijalem, judge at Supreme Court of Tigray, May 5, 2017; interview with Nigsti Haregot, judge at Central Zone High Court, April 25, 2017; interview with Sibhat Abebe, judge at Supreme Court of Tigray, May 8, 2017; phone interview with Haylay Gidey, Central Zone public prosecutor, April 27, 2017.

³³⁶ Criminal Procedure Code, Art. 8(2).

they are delivered with court order. Even then, they do not accomplish the necessary task within reasonable time. For example, problem of cooperation in getting evidence under third party. (See discussion under section 4.5.4, below.) Less quality works by prosecution have also called for an amendment of works which have increased the time needed for litigation. (See discussion under section 4.5.2)

4.5 Factors that cause delay in criminal process

As discussed above, absence of legal provisions to define delay and prescribe time-frame for conducting major events in the criminal proceedings as well as lack of cooperation between stakeholders have contributed for an extended period of trials. In addition, the research has identified various delay factors at different stages of the criminal process which are attributable to different actors in the justice system.

4.5.1 Causes of delay in police investigation

Police officers are not interested on due process rights of suspects

Investigative police officers want to complete investigation at any cost to the rights of suspects.³³⁷ That is why police detain arrested persons for more than 48 hours before taking the suspect to court. Police consume prolonged time of investigation. International law requires that detention should be an exception and should last no longer than is necessary in a particular case.³³⁸ In addition, Rule 6 of the United Nations Standard Minimum Rules for Non-Custodial Measures states detention shall be used as a means of last resort in criminal proceedings.

But, the practice in the region is police first arrest suspects then continue to build up the evidence.³³⁹ For the police, the best way to find the truth is to restrict liberty of suspects then conduct the investigation. This has increased the time suspects/accused persons remain incarcerated. Besides, the police, as an institution, lacks the tradition of releasing suspects on bond as per Art. 28 of the CPC.

Unaccountability of police officers

³³⁷ Interview with Mohammed Ibrahim, judge at East Zone High Court, May 1, 2017; interview with Yemane G/her, judge at South East Zone High Court, May 4, 2017; phone interview with Haylay Gidey, Central Zone public prosecutor, April 27, 2017.

³³⁸ Amnesty International, *Fair Trial Manual*, p. 70.

³³⁹ Interview with Yishaq Mengstu-ab, North Western Zone public prosecutor, April 25, 2017; interview with G/hiwot Rezene, Mekelle Zone public prosecutor, May 4, 2017; interview with Mohammed Ibrahim, judge at East Zone High Court, May 1, 2017.

Some police officers are not responsible for their duties. They do not conduct necessary investigation in due time who then come up with a request for remand. Unaccountability of the police can be shown by the following examples.

- Failure to deliver court summons to the accused and/or witnesses
- False report that the accused was served with summons while he was not, or reporting that despite efforts to find the accused, he was unable to do so while he made no effort.³⁴⁰
- This false report goes to the extent of reporting that the accused could not be found even when he was in police station or imprisoned under custody.³⁴¹

These irresponsible police conducts have faced various administrative measures and court punishments as per Art. 448 of the criminal code.

Change of police investigators

In some cases, while investigation is undergoing, an investigator may be changed. Interviewed police officers told the researcher that the main reason for change of an investigator is tactical switch when the first could not find tangible evidence. Other reasons include such as investigators may travel to other places or changed as a result of relation with either the victim or the suspect. The new investigator needs time to familiarize himself with the case. In some cases, in order to apply different investigation technique, the investigator may begin from zero. He may call and examine witnesses who were already been examined.

Delays attributable to victims of crimes

In quite a lot of cases, crime victims lack an interest to pursue the case once the suspect is arrested. They become unwilling to come to police stations for further investigation. In bigger cities where in a large number of people move on, it has become difficult to timely investigate crimes.³⁴² Victims are either unknown or travel to far places, making the investigation difficult particularly when the crime is punishable on accusation.³⁴³

³⁴⁰ Interview with Ar'aya Zeweli, judge at North West Zone High Court, April 26, 2017; interview with T/woyini Belay, president of Axum First Instant Court, April 25, 2017; interview with Yemane G/egziabiher, judge at South East Zone High Court, May 4, 2017.

³⁴¹ Ibid.

³⁴² Interview with Inspector W/haworya Estifanos, Head of crime investigation department of Shire city police office, April 26, 2017; interview with G/hiwot Rezene, Mekelle Zone public prosecutor, May 4, 2017.

³⁴³ Ibid.

Case load and insufficient staff

There are inefficient number of police investigators compared to population and crime rates. Police have numerous functions: law enforcement, security and public safety and public service. Police do not have separate division responsible for delivering court summons to the accused and witnesses. It is made through weekly or monthly programs leaving a room for non-execution of court orders, ultimately to another adjournment.

4.5.2 Causes of delay in prosecution;

Lack of commitment; This can be explained by;

- Waiting to the final (15th) day to frame charges while this could have been done earlier.
- Forgetting files, and to the worse, absence from date of trial
- Failure to properly prepare to litigate. In a certain case the researcher has observed the following. The accused was found guilty, then judges asked the prosecutor for submissions on the sentence. The prosecutor presented two aggravating circumstances; first, crime was committed in conspiracy and second, it was committed at night. But, the charge was instituted against one person for a crime committed at 10:00 in the afternoon. It was a surprise for all attendants, the prosecutor asked an apology.

Amendment of charges;

Prosecution comes up with less quality charges then repeatedly request to amend it pursuant to Art. 119 of the CPC. Sometimes, amendment is ordered by judges. Be the amendment requested by prosecution or ordered by a judge, it is attributable to weakness of prosecutor to draw quality charges, and the effect of this is delay. All interviewed judges have raised this as the main factor of delay associated with prosecution. On the other hand, public prosecutors do not accept this. For example, Ato Tsigie Kindeya and Ato G/hiwot Rezene argue that this opinion is exaggerated and it cannot be taken as a reason for delay because the case can be adjourned only once.³⁴⁴ On the other hand, judges have explained that whenever a charge is amended, the whole criminal proceeding goes back to the beginning where it starts

³⁴⁴ Interview with Tsigie Kindeya, East Zone public prosecutor, May 1, 2017 and interview with G/hiwot Rezene, Mekelle Zone public prosecutor, May 4, 2017.

with plea of the accused. Amendment is possible until the court passes judgement. This can cause witnesses to testify again in which case they lose the will and interest to come to court. This time, it becomes more cumbersome to get testimony of all witnesses at a time. Main reasons for low quality charges include;

- Negligence and poor drafting.³⁴⁵
- Failure to work in collaboration with and guide the police during investigation and failure to properly examine files upon report by the police.³⁴⁶

Practice of charging with serious crime even when circumstances show lesser.

In most cases where accused are found guilty, courts have convicted them with a lesser crime than they were charged with.³⁴⁷ The impact of charging with serious crime is that; first, as practice shows, accused persons are more likely to be denied bail for the crime they are charged with is serious. Secondly, though seriousness of the offence alone is not sufficient ground for delay,³⁴⁸ judges often give more attention to deliberate on the issues, thus taking longer time for their disposal.

In addition, backlog of cases constitutes another cause of delay. The number of cases and the number of public prosecutors are not proportional.

4.5.3 Causes of delay in courts

Unnecessary provision for adjournment;

The CPC has listed down the grounds by which the court may adjourn a hearing at any stage.³⁴⁹ Even for some grounds of adjournment, the code has put some time limits beyond which the court may not grant adjournment.³⁵⁰ But, courts in the region grant adjournments on flimsy grounds constituting a major cause for delay in the proceedings. For example, the practice in all courts shows if an accused person pleads not guilty, the trial is adjourned to another date for the public

³⁴⁵ Interview with Yohannes T/mariam, judge at East Zone High Court, May 1, 2017; interview with T/woyni Belay, president of Axum First Instant Court, April 25, 2017.

³⁴⁶ Ibid.

³⁴⁷ According to Article 113(2) of the Criminal Procedure Code, an accused may be convicted of a crime he was not charged with it where the crime is of lesser gravity than the offence charged.

³⁴⁸ Human Rights Committee, *Boodlal Sooklal v Trinidad and Tobago*, Communication No. 928/2000 (2 February 2000), CCPR/C/ 73/D/928/2000.

³⁴⁹ Criminal Procedure Code, Art. 94(2).

³⁵⁰ Id, Art. 94(3).

prosecutor to open his case and produce evidence. While production of evidence can and should be done at the date of trial fixed for the hearing.

In other cases, there is a practice that when one or more witnesses fail to appear on a date of trial, prosecutors request adjournment and judges grant the same even when the absent witnesses were going to testify on an issue different from that to be proved by the appeared witnesses.³⁵¹ These and other insignificant grounds of adjournment are causing prolonged period of trials.

Unplanned meetings/trainings;

This is one of the main factors that cause delay in courts as it was raised by all judges. When a meeting and/or training is random, all trials that have been fixed to be heard in these days are cancelled then adjourned to another day. In addition, trials following this period need to be rescheduled because judges cannot manage to examine other files in a very short period of time.

Problems attributed to judges;

Some judges have shown serious negligence in handling cases. For example, with regard to period of remand, it should be as short as possible and justifiable. Furthermore, judges should make sure that police carry out the investigation diligently.³⁵² But, interviewed judges have said that due to workloads and tiredness, they do not usually examine and evaluate police investigation files. They grant the requested remand without examining developments in investigation and evaluating the ability and willingness of the investigating police officer.³⁵³

Over-listing of cases is another problem. Ato Ar'aya Zeweli has stated that judges sometimes list more cases for trial than they have the capacity to hear in one day. This has resulted in some cases not reached as scheduled. Furthermore, he stated that non-punctuality on some judges also has contribution for delays.

³⁵¹ Interview with Yemane G/egziabiher, judge at South East Zone High Court, May 4, 2017; interview with Mohammed Ibrahim, judge at East Zone High Court, May 1, 2017; interview with Yohannes T/mariam, judge at East Zone High Court, May 1, 2017.

³⁵² FDRE Constitution, Art. 19(4).

³⁵³ Interview with T/woyni Belay, president of Axum First Instant Court, April 25, 2017; interview with Sibhat Abebe, judge at Supreme Court of Tigray, May 8, 2017; interview with Yohannes T/mariam, judge at East Zone High Court, May 1, 2017.

Lack of technological equipment;

Courts in the region are far from applying technological inputs. In this respect, the Supreme Court and High courts have begun tape-recording and transcription of testimonies given during trial. This has upgraded case and data management to database system and it has done good job in reducing the time taken to record testimonies in handwriting. In addition, records are reliable and easily accessible. However, tape-recording and transcription of testimonies has sometimes backfired the problem of delay.

Technology is nothing unless guided and controlled by trained employees. In most of the courts there is shortage of qualified staff members. Sometimes, tape-recordings are interrupted due to absence or shortage of employees as a result of which cases are adjourned. Furthermore, due to shortage of transcribers, testimonial recordings are not being timely transcribed to be readily available for the next date of trial. This has resulted in cases being repeatedly adjourned.

In all first instance courts and most high courts, proceedings including witness testimony are made through hand writings causing delay. In this regard, the Human Rights Committee has held that written proceedings being used to undertake criminal proceedings cannot be used as a defense to justify delays.³⁵⁴

Backlog of cases;

Like police and prosecution, courts are affected by backlog of cases. Accumulated cases constitute another reason for delayed trials because courts have overflowing files but not proportional number of judges and other staff. They do not have enough and well equipped courtrooms either. In most courts, all judges share same office.

4.5.4 Other causes of delay**Problem related to assigning of legal counsel;**

Accused persons have the right to legal counsel at state expense if they cannot pay for it and miscarriage of justice would result.³⁵⁵ In courts of the region, in most cases legal counsel is not assigned sooner when the accused cannot pay. In addition to the accused's inability to pay, administrative obstacles not attributable to the

³⁵⁴ Human Rights Committee, *N. Fillastre v. Bolivia*, Communication No. 336/1988, in UN doc. GAOR, A/47/40, (Views adopted on 5 November 1991), p. 306, para. 6.5.

³⁵⁵ FDRE constitution, Art. 20(5).

accused have contributed to delay. If government is to provide counsel, accused persons are required to produce evidence showing/proving their inability (economic status). Prove of such is made at social courts which, like regular courts, are affected by caseloads, not to mention (non-professional) judges work twice a week. This has made the condition harder for the accused to produce evidence in short period of time. It is even worse when the accused are denied bail because someone else has to make it done for them.³⁵⁶

Sometimes courts let the litigation proceed without the accused being represented by a counsel even when it is likely that miscarriage of justice would happen. Retrial, in such cases, has delayed the whole proceedings. In public prosecutor v Tsegay Alemu,³⁵⁷ the accused was charged with an attempted ordinary homicide on 10/03/2005 EC. In the whole criminal process, the accused was not represented by an advocate and sentenced to 10 years of rigorous imprisonment. The case was taken to the Supreme Court on appeal. The appellate court remanded the case for retrial stating constitutional right of the accused was violated and it had led to miscarriage of justice. The case was called for retrial on 14/09/07, after more than two and a half years of the first trial.

Data gathered from the regional Supreme Court shows that there are only four (4) public defenders available in the region; two in the supreme court and two in all high courts. First instant courts are totally devoid of this service. This number is very low; almost none. Courts are trying to minimize this problem through assigning cases to private advocates who are under duty to provide *pro bono* service and assigning legal counsel in collaboration with universities providing free legal aid services to the poor.

Problem in securing attendance of witnesses and production of evidence under third party;

Non-attendance of witnesses at the scheduled trial is the most determinant factor in prolonging period of trials. The trial cannot continue if all witnesses either for

³⁵⁶ Interview with Gidey G/sellasie, judge at Supreme Court of Tigray, May 8, 2017; interview with Yemane G/egziabiher, judge at South East Zone High Court, May 4, 2017 and interview with Yohannes T/mariam, judge at East Zone High Court, May 1, 2017.

³⁵⁷ Public prosecutor v Tsegay Alemu, North West High Court, May-tsebri bench, file no 01682/2004. [Unpublished]

prosecution or the defense cannot appear at the date of trial and a number of factors are responsible of such non-appearance. Problem in summoning witnesses is the major factor followed by non-observance of summons (when they are delivered with) by them. Courts do not issue summons unless the public prosecutor or the accused ask for. It is when witnesses fail to appear at the day of trial that the court issues summons. In addition, the police, most of the time, is not able to timely deliver summons for each witness. This has increased the number of adjournments for trials than is necessary.

Third parties, most of them governmental and non-governmental institutions, under whom there are crucial documentary or real evidences are not easily cooperative. Some of them, despite willingness, are unable to timely produce evidence for different reasons. It usually takes long time to acquire evidence from them. While some of these problems are nationwide, some are not. W/ro Nigsti Haregot has stated that insufficiency of autopsy, DNA diagnosis, forensic examination and mental state examination (MSE) centers are problems confronted throughout the country.³⁵⁸ In such cases courts have to wait for a period of three to six months, sometimes for more time, to get the result.³⁵⁹

Besides, even for normal cases delays are common. Police officers have identified delay in producing evidences under third party as the main factor that obstructs completion of investigation in reasonable time. In public prosecutor v Tesfay H/mariam case,³⁶⁰ a sixteen years old youngster was raped and medical evidence, an essential evidence, was needed and the victim was taken to hospital for examination. However, the result could not be obtained on due time as it was sent back after six months. This delay has unjustifiably prolonged the time needed to conduct the trial. In addition, the public prosecutor has stated that such delay had jeopardized the prosecution as a result of which the accused was acquitted because the correct result could only have been attained within 10-14 days of the crime.

³⁵⁸ Interview with Nigsti Haregot, judge at Central Zone High Court, April 25, 2017; interview with Sibhat Abebe, judge at Supreme Court of Tigray, May 8, 2017; interview with Gidey G/sellasie, judge at Supreme Court of Tigray, May 8, 2017; interview with Ar'aya Zeweli, judge at North West Zone High Court, April 26, 2017

³⁵⁹ Ibid.

³⁶⁰ Public prosecutor v Tesfay H/mariam, Eastern Zone High Court Adigrat bench, file no. 20099. [Unpublished]

Weak working environment;

In most courts (including high courts), justice offices and police stations work with limited facilities. Furthermore, these actors perform their tasks in rented buildings. Judges, public prosecutors and police officers within an organ share the same office, inadequately equipped with no computers, internet connection. This has hardened the efforts to conduct works within a time reasonably needed for the specific task.

4.6 Remedies available for delay in criminal proceedings

International law provides the remedy for violation of speedy trial right is release. When detention becomes arbitrary as a result of delay, article 9(3) of ICCPR stipulated release of the detainee. The human right committee has stated when the accused is found guilty after prolonged trial, he shall be entitled to compensation or an early release.³⁶¹ These remedies are not however available under the national legal system. There is no legal framework that give compensation to victims of wrongful conviction let alone victims of delay, having comparatively less serious effect and harder to ascertain its violation due to its subjective determination.

Nevertheless, courts are allowed to take measures at different stages of the process which can have benefit on speedy disposal of cases. These include the following: Whenever a duly summoned accused or witness fails to appear, judges order bench warrant.

- Judges punish those who fail to comply with court orders, particularly police officers, pursuant to Art. 448 of the criminal code.³⁶² This has achieved encouraging results in deterring similar police conducts.
- When several defendants are charged together, some of them (those who expect conviction) may intentionally cause delay to the disadvantage of their co-defendants or to force them do something to get them out of the situation. In these circumstances, courts take the intentional delay to bring witnesses as waiver of the right by that defendant then proceed to the next stage of the criminal process, the right to defense being passed by.

³⁶¹ Human Rights Committee, *Boodlal Sooklal v Trinidad and Tobago*, para. 6.

³⁶² The Criminal Code of the Federal Democratic Republic of Ethiopia, 2004, *Federal Negarit Gazzeta*, Proc. No. 414/2004, year 10th.

As to the application of international human rights law, all interviewed judges have responded that there is no custom of applying international laws directly to cases in the absence of clear national laws to that effect.

In foreign jurisdictions, stay of proceedings is the most commonly applicable remedy for undue delay (see discussions on section 2.4).

4.7 Impact of delay

Different impacts of delay on the accused, administration of justice and victims of crime is summarized below.

A. Impacts of delay on arrested/accused persons

Loss of liberty; accused persons are imprisoned for unjustifiably long period of time than is necessary to dispose of their cases. Even before charged, arrested persons are arrested for long time. For example, Marcos Assefa and his brother Merhawi Assefa, suspected for the murder of their friend who was found dead in swimming pool in what apparently seemed an accident, were arrested for seven months during police investigation (Axum City police investigation file no. 188/2009). The police have completed the investigation after seven months only to find out it was an accident. The brothers were finally released; they have never been charged.

It happens quite often that accused persons who have been detained pending the trial are acquitted. Even when found guilty, it happens that they already have served the punishment by the time sentences is made. For example, in public prosecutor v Goitom Meressa,³⁶³ the accused, suspected with an attempted ordinary homicide, was arrested on 20/11/2007 EC. The court allowed him a bail for birr 20,000, but since he could not afford the said amount, he remained under custody. He was charged on 19/01/2008 (after two months of arrest), and the trial lasted for about nine months. It was finally decided on 10/10/2008, which found the accused guilty on Art. 556/2/a (common willful injury) and sentenced him four months of simple imprisonment. By the time sentence was made, the accused had already been arrested for eleven months.

³⁶³ Public prosecutor v Goitom Meressa, South East Zone High Court, file no. 07851. [Unpublished]

Economic and psychological pressure;

For the period incapacitated in detention, arrested persons lose the income they could have had. If they are employees, they may as well lose the job when they get away. Even when bail is granted, sometimes the amount to be secured are found to be too expensive which affect the financial status of the suspect and family. For example, in public prosecutor v Haftu G/gergs,³⁶⁴ the suspect was charged with human smuggling. He was granted bail for 100,000 birr. Since he could not find more than 40,000 birr in cash, he had his cousin's house mortgaged for 60,000 birr. The accused was acquitted after the trial had lasted for a year. He stated that he had been through financial difficulty during this time.³⁶⁵

In addition to loss of physical liberty, delayed trials put accused persons in to mental disability because long term incarceration causes the deterioration of an inmate's personality and mental, emotional and physical well-being.³⁶⁶ Ato Sibhat Abebe, a judge at Supreme court has described this situation as "psychological torture".³⁶⁷ Furthermore, he stated that despite prohibition of inhumane treatment and torture, we cannot stop such type of torture which may sometimes result from lawful acts. He has experienced that at some point of time during the trials, some accused wish an early conviction than remaining in state of uncertainty.³⁶⁸

In Marcos Assefa and his brother investigation case,³⁶⁹ the brothers stated they have suffered economic and psychological pressure in addition to loss of liberty. While Marcos had closed his business, Merhawi was, a grade 10 student, was forced to withdraw from school.³⁷⁰

Jeopardy to the defense;

Accused persons, particularly those detained pending the trial, have limited capacity to preserve their evidences. Witnesses' interest to come and testify in courts reduces

³⁶⁴ Public prosecutor v Haftu G/gergs, East Zone High Court Adigrat bench, file no. 20380. [Unpublished]

³⁶⁵ Phone interview with Haftu G/gergs, an accused of human smuggling, May 8, 2017.

³⁶⁶ Edward Zamble & Frank Porporino, *Coping, behaviour and adaptation in prison inmates*, New York: Springer-Verlag, 1988, p. 9.

³⁶⁷ Interview with Sibhat Abebe, judge at Supreme Court of Tigray, May 8, 2017.

³⁶⁸ Ibid.

³⁶⁹ Axum City police, investigation file no. 188/2009.

³⁷⁰ Interview with Marcos Assefa, arrested for seven months during police investigation, April 18, 2017, interview with Merhawi Assefa, arrested for seven months during police investigation, April 18, 2017.

through time unless they are ordered by court. For example, in public prosecutor v Tewelde Aregawi,³⁷¹ witnesses for the defense were called six months after the defendant was charged. The accused has stated “by that time [the day witnesses were called], three out of five witnesses have disappeared as they went to Libya on their route to Europe.”³⁷²

B. Impacts of delay in the administration of criminal justice

Delay weakens prosecution;

The administration of criminal justice system would be effective when just results are reached. But, equally important is that these results should be reached expeditiously, without delay. Delay causes disappearance of witnesses or decrease their ability to correctly remember the facts³⁷³ which leads to variations among witnesses’ testimony and sometimes variation occurs between testimony given on preliminary inquiry and in court. In many cases, this has led to the prosecution being easily attacked by the defense.

Delay causes loss of public confidence;

Speedy justice is also essential in order to gain the confidence of the public in criminal justice system.³⁷⁴ People will have confidence on the justice system only if the system is able to provide accessible and fair justice to all speedily.

One of the frustrating reasons people complain about is delay and they associate it with corruption. Whenever a case is unduly delayed people tend to think that there is a reason behind; that is because the police, judges or public prosecutors want to get something out of it. Delays have irritated the public more than anything else and its result is declining confidence on the justice system.

Delay results in decline of interest in staff;

Interviewed judges and public prosecutors have noted that they, like the public, are emotional to delays. Delays have affected their emotions and interest in their job. In this respect, Ato Tsigie kindeya, eastern zone public prosecutor has responded

³⁷¹ Public prosecutor v Tewelde Aregawi, Adi-dearo First Instant Court, file no. 05321.

³⁷² Interview with Tewelde Aregawi, an accused whose witnesses have disappeared due to delay, May 18, 2017.

³⁷³ Caplis, *The Speedy Trial Guarantee*, P. 84.

³⁷⁴ Anmol, *Anmol, Right to Speedy Justice in India*.

that “... nothing hurts more than hearing and watching the one who you are serving for day and night [public] annoyed and complaining because of delay... and this has resulted in dissatisfaction of staff with their jobs”.³⁷⁵

C. Impacts of delay on family, victims and witnesses

Victims and witnesses can play a vital role in the criminal trial process if they are given the enough place. But, with lapse of time in the process, lose the will and interest to come and testify in the court or even they vanish before trial because of the huge economic and other impacts of delay which results due to uncountable adjournments. Sometimes, victims, witnesses and families of both the accused and the victim may come from far places which exposes them to transport and other expenses. In addition, when the accused who is a bread-winner for his family is denied bail, the whole family falls under crises for such period.

4.8 Evaluation of selected cases that show delay

Case one: public prosecutor v Tsegay G/Mariam and H/miruts Welu.³⁷⁶

They were arrested on 26/01/2008, suspected of an aggravated robbery committed a day before the arrest. After a week, on 03/02/2008, they were taken to Tselemti woreda court where preliminary hearing was conducted. The accused were denied bail because the court was of the opinion that they would likely abscond.

It took the police about nine months to complete investigation, they were charged on 8/10/2008 (NW PP file no. 420/08). It has also taken another nine months to dispose of the case by the high court. The case was adjourned nineteen (19) times.

- Once, to hear plea of accused;
- Two times, to appoint defense counsel;
- Eight times, to produce prosecution witnesses;
- Two times, to determine whether or not a case against the accused exists;
- Four times, to produce defense witnesses;
- Twice, for judgement.

³⁷⁵ Interview with Tsigie Kindeya, East Zone public prosecutor, May 1, 2017.

³⁷⁶ Public prosecutor v Tsegay G/Mariam and H/miruts Welu, North West High Court Shire bench, file no. 05443. [Unpublished]

Finally, they were acquitted on 14/07/2009 after being arrested for around one year and a half (1 year, 5 months and 23 days). When this case evaluated in the criteria set out by international law.

Complexity of the case;

Complexity subjective which is determined through consideration of various factors such as;

- Volume of evidence. Five witnesses for prosecution (3 eye witnesses and 2 circumstantial) and four witnesses for the defense.
- Issues; the case issue of fact only, ascertaining whether or not the accused have committed the crime. No legal issue has been raised
- Foreign element; no foreign element exists on the case

Conduct of authorities

If authorities negligently fail to advance proceedings at any stage, or if proceedings take unjustifiably long time to complete specific measures, the time will be deemed unreasonable.³⁷⁷ In this particular case, delays were attributable to authorities failed to conduct their duties properly particularly during investigation and litigation. Investigation and trial have been unnecessarily adjourned.

Conduct of the accused

According to the circumstances of the case, the accused did nothing to delay the trial. Trial was adjourned two times to assign defense counsel because they could not pay. This cannot be taken as a cause of delay because first, it is under the state's duty to appoint advocate when the accused cannot pay, and secondly, the accused cannot be blamed for delay as a result of exercising his rights in good faith.³⁷⁸ As to calling and hearing of witnesses, police have failed two times to deliver court summon to all witnesses. Once, two of the five witnesses could not come who then appeared on the next trial.

³⁷⁷ Amnesty International, *Fair Trial Manual*, p. 146.

³⁷⁸ HRC, *Taright et al v Algeria*, Communication No. 1085/2002, UN Doc. CCPR/C/86/D/1085/2002 (31 March, 2006) paras. 8.4 and 8.5.

The circumstances of the case show none of the factors that cause the delay were attributable to the accused. In fact, they are attributable to authorities in conducting investigation and prosecution as well as the litigation.

Case two: public prosecutor v Hayelom Yashent and Nabyom Toshome,³⁷⁹ abuse of power; the crime was allegedly committed on 1999.

Police began investigation in 2001, by arresting the suspect, Hayelom Yashent. The suspect was released a month later; investigation was undergoing for some time though. Police have paused investigation for unspecified reason. After having been deactivated for four years, in December 2005, police arrested Hayelom again together with another suspect, Nabyom Toshome. Both suspects were detained for over seven months and on August 17, 2005, prosecutor charged both on Art. 407(1)b of the Criminal Code, abuse of power. The accused were released on bail and the trial, after having continued for a year, had been halted on May 2006 because public prosecutor had withdrawn the charge stating key witnesses have disappeared. One year later, on July 21, 2007 prosecutor reopened the charge. Since then, it had taken a year and a half for its final disposal when, by the end of January 2009, the court acquitted the accused based on Art 141 of the CPC because no case against him has been made.

From the time authorities came to know about the case and began investigation, back in 2001, the whole criminal process has taken a period of eight years; a presumptively prejudicial delay. In a series of interrupted periods, it took the police over a year to complete investigation. The process had been deactivated for a period of four years during investigation, for unknown reason. In two occasions, interrupted for over a year time, the case had consumed a period of two and a half years in the court.

The case was adjourned twenty-one (21) times;

- Twice, to hear plea of the accused. On the first date of trial, police did not deliver summon to the second defendant.

³⁷⁹ Public prosecutor v Hayelom Yashent and Nabyom Toshome, North West high court Sheraro bench, file no. 11235. [Unpublished]

- Once, to appoint defense counsel
- Fourteen times, to produce evidence for prosecution which included production of documentary evidence and calling of witnesses.
- Four times, for judgement; judges could not examine the case in due time.

Though special diligence to dispose of a case is needed when the accused is under detention, the right to a speedy trial, as stipulated in the FDRE constitution and international law, applies to all accused persons irrespective of restriction on liberty.

- **Complexity**; corruption cases consume longer time for investigation and litigation because they are relatively complex than others. However, the time lapsed in investigation and trial does not justify the delay
- **Conduct of authorities**; the case has been adjourned many times due to the fault of police, prosecution and the court. Above all, investigation had been deactivated for unjustifiably long period of time without explanation.
- **Conduct of the accused**; the file shows the court did not order adjournment due to an intentional or other acts of delay attributable to the accused. In fact, defense was never called as the accused were acquitted earlier.

The circumstances and facts of the case show unjustifiable delay in the criminal proceedings which has violated speedy trial right of the accused.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This thesis has tried primarily to explore the scope of the right to a speedy trial and the factors that affect its implementation in the regional state of Tigray. To this effect, the researcher has discussed the development and importance of the right as well as various international, regional and national laws that guarantee the right.

The purpose of administration of justice is to identify and protect the innocent from the guilt, to bring the later to court of law and administer the necessary punishment. In doing so, the whole criminal process should function with a maximum efficiency so that trials would be conducted within reasonable time. A criminal trial which does not ensure the right to speedy trial cannot be regarded as a fair trial.

When we see the scope and implementation of the right to a speedy trial in the region, it is under attack through delays that occur at different stages of the criminal process. Legal gaps and various defective practices have contributed for delay in conducting timely trials. Absence of legal provisions that prescribe within which period each stage of criminal process should be completed is the major cause that results in failure to conduct expeditious trials. There are no time frames for conducting police investigation and court litigation. This has made justice organs and their staff reluctant in conducting proceedings in due time. The criminal policy of Ethiopia has come up with the notion to prescribe time frameworks for investigation, prosecution and litigation according to the nature and gravity of crimes. Yet, no specific law has been enacted to this effect.

Awareness and claim of the right on part on the arrested/accused is very low. They do not ask their right to a speedy trial is being violated because of delays in the proceedings. Although the awareness on advocates is fair enough, they do not dare to ask courts for the proper implementation of this right as they do for other rights.

For an effective administration of criminal justice system, collaboration between justice and other organs necessary. However, justice organs in the region are not

working in collaboration with each other. The system could not be effective and justice could not be delivered within a reasonable time either when stakeholders fail to work together.

There are various practical problems that cause delay in criminal proceedings. These can be categorized as delays in investigation, prosecution and litigation as well as delays attributable to other factors. The most serious of the factors that cause delay in the criminal process is production of evidence under third party and non-attendance of witnesses during trials. However, the problem itself is most often associated with failure of courts or law enforcement organs to properly summon witnesses. Unaccountability and disregard to the due process rights of the accused are major causes of delay attached to the police. Lack of commitment and drawing less quality charges which leads to amendment are prosecutions' major causes of delay. Coming to courts, unplanned meetings and trainings of judges have caused disorder in the normal flow of cases handled by them. Judges are forced to fix for re-scheduled date of trials. In addition, judges granting adjournments on flimsy grounds together with backlog of cases and weak working environment have prolonged period of trials.

The remedies available to delays in criminal process are not strong enough to ensure proper implementation of the right. In courts of the region, the custom of applying international human rights law to local cases in order to fill legal lacunas through interpretation is very weak. In fact, it would be difficult to grant remedy because courts have first to ascertain existence of delay which is difficult to determine in the absence of time framework or other widely acceptable criteria.

Delay in criminal proceedings has severely affected accused persons. Besides, the impacts extend to crime victims, family of the accused and the victim, witnesses as well as the administration on criminal justice. Above all, justice not delivered in due time is considered not less than denial.

Loss of liberty stood severe among the consequences of delay in criminal process when the accused is not granted bail. Before the final decision of a court, accused persons are detained for a long period of time. Detention in such cases may even exceed the time the accused would have sentenced had he been found guilty as

charged. In the course of criminal proceedings, these accused persons are not yet convicted. They are presumed innocent and each step in the process must be conducted in reasonable time with the aim to ensure their right to a speedy trial.

The criminal justice system cannot be effective if it does not work efficiently. Delay has made the criminal justice ineffective primarily through deterioration of evidence and disappearance of witnesses. These delays have also eroded trust of the people in the criminal justice system.

Human rights law has granted accused persons the right to have their cases be expeditiously heard in the criminal process pursuant to the right to a speedy trial, otherwise known as the right to trial within reasonable time. Society cannot claim the speedy trial right, as a human rights despite the fact that it has an indispensable interest in the speedy disposal of cases and efficient administration of criminal justice. Nevertheless, such interest of the society should be used as a catalyst to realize the right to a speedy trial of accused persons.

5.2 Recommendations

Based on the above mentioned findings, the writer of the paper recommends the following measures can rectify the problems that encounter implementation of the right in criminal justice proceedings in National Regional State of Tigray.

- ❖ Laws that define delay and prescribe a set of time limits for carrying out the major events in criminal proceedings, mainly police investigation and court proceedings should be enacted.
- ❖ Permanent stay of proceedings with the effect of a bar for future prosecution on the same offence should be granted taking the extent of delay, nature of the crime and other circumstances of a case in to account.
- ❖ Plea bargain should be introduced at least for minor crimes. Suspects who fully and freely admit commission of the crime avoid the need to go to trial. This will reduce caseload in courts to a great extent.
- ❖ Compensation should be given to victims of undue delay. Individuals, whose fundamental rights granted by a constitution or other laws are violated, have the right to an effective remedy. Ethiopia has the duty under Art. 2(3) of ICCPR to

provide an effective remedy to victims of violation of human rights which includes persons whose right to a speedy trial has been violated. Although amount of compensation due to victims may be little, it can still make the government and its organs more responsible and it would also increase a strong claim by accused persons of their right to speedy trial.

- ❖ Strict rules and procedures that limit the number as well as duration of each adjournment should be enacted. These will reduce delay by avoiding grant of adjournments on flimsy grounds.
- ❖ Meetings and trainings of a calendar year should be carefully designed, scheduled and made known in advance; so that judges and public prosecutors would arrange their programs accordingly.
- ❖ Justice organs should be strengthened with all necessary human resource and logistics. In particular, the state must ensure that there are adequate number of courts to cope up with the work load and timely appointment of judges and public prosecutors. This shall include establishment of additional woreda courts in biggest cities of the region. In addition, collaboration between these justice organs and other actors which have the interest to work on the area of human rights should also be strengthened.
- ❖ In order to avoid delay that occurs as a result of absence of legal counsel, the state needs to increase the number of public defenders in the region and equipped them with all the necessary resources. Public defenders should be available at all levels of courts to provide the service whenever needed.
- ❖ A modern computerized court case management system should be applied through all courts of the region. This will provide meaningful supplementary benefits of more efficient data entry and recovery.
- ❖ Continuous capacity building trainings should be provided to all staff of criminal justice organs, in particular police officers, on impacts of violation of human rights in general and the right to a speedy trial in particular.

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6. Public prosecutor v Tsegay G/Mariam and H/miruts Welu, North West High Court Shire bench, file no. 05443. [Unpublished]
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b. USA

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c. India

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VI. Interviews

List of interviewed judges

1. Interview with Ar'aya Zeweli, judge at North West Zone High Court, April 26, 2017.
2. Interview with Awet Lijalem, judge at Supreme Court of Tigray, May 5, 2017.
3. Interview with Gidey G/sellasia, judge at Supreme Court of Tigray, May 8, 2017.
4. Interview with Mohammed Ibrahim, judge at East Zone High Court, May 1, 2017.
5. Interview with Nigsti Haregot, judge at Central Zone High Court, April 25, 2017.
6. Interview with Sibhat Abebe, judge at Supreme Court of Tigray, May 8, 2017.
7. Interview with T/woyni Belay, president of Axum First Instant Court, April 25, 2017.
8. Interview with Yemane G/her, judge at South East Zone High Court, May 4, 2017.
9. Interview with Yohannes T/mariam, judge at East Zone High Court, May 1, 2017.
10. Phone interview with Kedir Bushra, judge at West Zone High Court, May 4, 2017.

List of interviewed public prosecutors

1. Interview with Amha Asgedom, head, justice office, Mekelle zone, hadinet sub-city, April 29, 2017
2. Interview with G/hiwot Rezene, Mekelle Zone public prosecutor, May 4, 2017.
3. Interview with Hagos Teklu, Axum City public prosecutor, April 24, 2017.
4. Interview with Tsigie Kindeya, East Zone public prosecutor, May 1, 2017.
5. Interview with Yisaq Mengst-ab, North West Zone public prosecutor, April 25, 2017.
6. Phone interview with Haylay Gidey, Central Zone public prosecutor, April 27, 2017.

7. Phone interview with Yemane Kiros, public prosecutor at Enticho woreda justice office, May 5, 2017.

List of interviewed police officers

1. Interview with Constable Higus Birhane, police investigator at Axum City Police office, April 25, 2017.
2. Interview with Inspector Tadele Shifera, chief of police, May-hanse police station, April 17, 2017.
3. Interview with Constable Tsehay Awash, police investigator at Adi-grat City Police office, May 7, 2017.
4. Interview with Inspector W/haworya Estifanos, Head of crime investigation department of Shire city police office, April 26, 2017.

List of interviewed advocates

1. Interview with Abrham Alema, attorney and counselor at law, at any level of court, April 17, 2017.
2. Interview with Haylay Gidey, attorney and counselor at law, at any level of court, April 17, 2017.
3. Interview with Negasi Birhane, attorney and counselor at law, at any level of court, May 7, 2017.

List of interviewed victims of delay

1. Interview with Marcos Assefa, arrested for seven months during police investigation, April 18, 2017.
2. Interview with Merhawi Assefa, arrested for seven months during police investigation, April 18, 2017.
3. Interview with Tewelde Aregawi, an accused whose witnesses have disappeared due to delay, May 18, 2017.
4. Phone interview with Haftu G/gergs, an accused of human smuggling, May 8, 2017.
5. Phone interview with Dejen Desalegn, arrested for six days before he was taken to court, May 21, 2017.
6. Phone interview with Eyasu Ataklti, arrested for three days before he was taken to court, May 14, 2017.

ANNEX

A. Interview questions to Judges

1. What is the scope and content of the right to a speedy trial?
2. How often do accused persons (or their advocates) claim the right?
3. What factors do you consider in adjourning cases?
4. What are the main factors that contribute to delay of proceedings?
5. How do you control delay in the process?
6. What remedies do you provide in situations of undue delay of proceedings?
7. What are the impacts of delay in criminal proceedings?

B. Interview questions to Prosecutors

1. What is the scope and content of the right to a speedy trial?
2. How capable is the prosecution to expeditiously perform its functions?
3. How often do you work in collaboration with police during investigation?
4. What are the main factors that contribute to delay in prosecution?
5. What are the impacts of delay of proceedings in the administration of the criminal justice system?

C. Interview questions to Police Investigators

1. How do you understand and implement Art. 19 (3) of the constitution?
2. How capable and ethic the police is to properly and expeditiously conduct crime investigations?
3. How do you evaluate public prosecutors' involvement and contribution during crime investigations?
4. What are the main factors of delay during investigation?

D. Interview questions to Advocates

1. What is the scope and content of the right to a speedy trial?
2. How often do you claim the right?
3. What are the main factors of to delay during the criminal process?
4. What are the impacts of delay of proceedings?

E. Interview questions to Victims

1. Have you ever raised your right to a speedy trial and asked the court to expeditiously dispose of your case? If not, why?
2. What are the impacts of delay of proceedings on you?