Timely Disposition of Criminal Cases in Ethiopia

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Introduction

Timely disposition [85] of criminal cases is a concept close to the hearts of those who have come into conflict with the law[86]. As the old adage goes, justice delayed is justice denied. Timely disposition of cases, alias, the right to a speedy trial, though mainly discussed in light of a person who is accused of committing a crime, equally applies to litigants in civil cases. The main concern behind is litigating stale cases which may adversely affect the rights of parties in a dispute. If a legal case takes too much time to be disposed, one of the parties will be disadvantaged, for witnesses may die or disappear, physical evidences may deteriorate or get damaged partially or totally -and memory may fade. In criminal cases in particular, primarily, it is the accused that is denied the right, for unlike the prosecutor he does not have the freedom as well as the resource to collect evidences that may be submitted to court. The denial of the right to a speedy trial leaves the door open for the prosecution to dictate the length of a trial and will ultimately lead to unwarranted pretrial detention and abuse of prosecutorial power. Moreover it was explained that: [87]

> excessive delays in the administration of justice constitute an important danger, in particular for the respect of the rule of law...Celerity of proceedings responds to the need for legal

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[85] The term "Timely disposition" is no different from the well known term "speedy trial". This writer has, however, opted to use the former term, just for the sake of obviating the usual controversy that the latter refers to a person's right at trial only and does not cover any pretrial processes. It will be made clear hereunder that the right attaches to every process of the criminal justice system, starting from arrest or charging and ends at the end of trial.

[86] American Bar Association, Criminal Justice Standards on Speedy Trial, Sec. 12-1.1 a (2). Available at www.abanet.org. Moreover, the stakeholders of speedy trial or timely resolution of criminal cases are: an accused as well as the public, victims and witnesses. This is not to suggest that civil cases do not need celerity too. The European Convention for Human Rights for one, provides that "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 by an independent and impartial tribunal established by law" – Art.6 Sec.1. The scope of this article is, however, limited to the criminal aspect only.

[87] Venice Commission, Can Excessive Length of Proceedings be Remedied? Science and Technique of Democracy No.44, Council of Europe Publishing, (2007), pp. 15, 16.

> certainty, for both citizens and the state, and to the need to further, and restore as soon as possible, the peaceful coexistence of individuals...Indeed the economic life too suffers from contested situations which remain unsettled for too long. Long lasting disputes disturb such peaceful coexistence; judicial proceedings may not be pursued ad infinitum, not even when this prolongation may eventually lead to substantive justice. Decisions must at some foreseeable point become final.
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> [Delayed justice] risks to affect the confidence which the general public places in the capacity of the State to dispense justice, to decide disputes, and very importantly, to punish crimes as well as to prevent and deter future crimes. This may cause or even incite the recourse by individuals to alternative means of dispute settlement or dispensation of punishment...

Since criminal cases are processed at public expense, any mechanism that can shorten the time required to process a criminal case also saves public spending. It should be noted that both a defendant and the society have interest in the implementation of the right to a speedy trial and that their interests are not conflicting. The defendant's interests are *inter alia*: reduction of anxiety and concern accompanying public accusation; interference with the right to liberty; disruption of employment; subjection to public obloquy; and avoiding undue and oppressive pretrial incarceration. The societal interests include effective prosecution of criminal cases without advantaging the prosecutor; penalizing official abuse of the criminal process and discouraging official lawlessness; preventing an accused who is not incarcerated from committing additional criminal acts while awaiting trial;[88] and reducing cost of pretrial incarceration for defendants who may ultimately be acquitted.[89]

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[88] In the US, approximately three quarters of all defendants are released pending trial and a substantial percentage of crimes are committed by prior offenders. See, Mark L. Steinberg, Dismissal with or without Prejudice under the Speedy Trial Act: A Proposed Interpretation, The Journal of Criminal Law and Criminology, Vol.68, No.1, (1977).pp.10-12.

[89] Brian P. Brooks, A New Speedy Trial Standard for Barker v Wingo: Reviving a Constitutional Remedy in an Age of Statute, The University of Chicago Law Review, Vol. 61, No.2, (Spring 1994), p.587.

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Despite this stark truth, the judicial process in many countries is slow, so much so that cases take years to be disposed to the disadvantage of everyone. One may mention so many reasons for such a slow process, but it suffices to mention just a few of them for the purpose of this article. The major causes of delay are, among others, caseloads at the different agencies of the criminal justice system, i.e. police, prosecution offices, and courts; unavailability of witnesses for whatever reason, flight of suspects with the intention to avoid arrest, pretrial motions and absence of a specific legal requirement that a case should be disposed within a given time as well as remedies when the legally fixed date expires.

The topic under discussion is an issue of universal concern, and a cursory look at the literatures that emanate from different jurisdictions[90] show that many countries have adopted different measures to lessen the effects of delayed justice, if not to do away with it *in toto*. Accordingly, some jurisdictions mandatorily require that there should be specific time limits to process a case at the different agencies and the sanction for failure to observe these limits may be, to dismiss the case with or without prejudice. A closely related solution to delayed justice is statute of limitation which will bring a definite end to such stale cases.

The right to a speedy trial is a constitutional right in Ethiopia. Moreover, subsidiary laws provide for some mechanisms to implement this right, though not to the expected level. Despite this, the right to a speedy trial is honored - in practice - more in the breach than in the observance. This article attempts to examine the state of the right in Ethiopia, compare and contrast the law with the practice and suggest some recommendations that may help ease the problem. With this in mind, the article is divided into three parts. The first part discusses the genesis and historical development of the right in the common law jurisdictions. The second section discusses the measures adopted by different countries with a view to lessen the effects of delayed justice. The third part deals with the position of Ethiopian laws on the right to a speedy trial to be followed by an overview of the practice. The article will end with conclusion and a few recommendations.

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[90] Most of the materials accessible to this writer deal with the laws and practices of the US. Thus, the term 'jurisdictions' refers to, mainly this country. It should, however, be mentioned here, that the Venice Commission's report on the subject, Supra, Note 3, has canvassed all EU members and one can easily glean from the report that European nations have developed mechanisms which are similar to the US laws. www.legislationonine.org, which is a website with rich data on European laws, also evinces the same fact.

1. Origin and development of the right to a speedy trial

In the common law jurisdictions, writers trace the origin of the right to a speedy trial back to the 12th Century: [91]

> The right to a speedy trial is an ancient liberty. During the reign of Henry II (1154-1189), the English Crown promulgated the Assize of Clarendon, a legal code comprised of twenty-two articles, one of which promised speedy justice to all litigants[92]. In 1215 the Magna Charta prohibited the king from delaying justice to any person in the realm.

The pertinent part of the latter reads, *"To no one will we sell, to no one deny or delay the right of justice"*. As a follow up to this development, the English Parliament passed the Habeas Corpus Act in 1679. The Act required that persons accused of treason or a felony be released on bail if not indicted at the next term, unless the King's witness could not be produced, and further provided for complete discharge for those not indicted and tried by the next term.[93] In the US, the first colonial right was set forth in the Virginia Declaration of Rights of 1776, which was also the first colonial bill of rights.[94] The founding fathers intended the Speedy Trial Clause to serve two purposes: first, to prevent defendants from languishing in jail for an indefinite period before trial and ...second, to ensure a defendant's right to a fair trial. This is because the longer the commencement of trial is postponed, it is more likely that witnesses will disappear, memories will fade, and evidence will be lost or destroyed.[95] Thus, the right to a speedy

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[91] Speedy Trial Encyclopedia, at www/lawencyclopedia.com. Accessed on July1, 2009

[92] The English Assize of Clarendon was enacted in 1166. See, Ostfeld, Greg, Speedy Justice and Timeless Delays: The Validity of Open ended "ends of justice" Continuance under the Speedy Trial Act, University_of Chicago Law Review, Vol.64, No.4 (summer, 1977), p.1057

[93] F.D.L. Jr., The Lagging Right to a Speedy Trial, Virginia Law Review, Vol.51, No.8, (Dec.1965), p.1595. It should also be noted that a number of American states, responding to the unfortunate effects of pretrial imprisonment, have patterned their statutes after parts of the English Habeas Corpus Act. .Ibid. at 1594 and 1595.

[94] Ostfeld, Supra, Note 7, at 1057.

[95] Speedy Trial Encyclopedia, Supra, Note 8 at 1594 and 1595.

trial is made a constitutional right under the Sixth Amendment, which states that, "in all criminal cases the accused shall enjoy the right to ...a speedy trial". Although this right is derived from the federal constitution, it has been made applicable to state criminal proceedings through the US Supreme Court's interpretation of the Due Process and Equal Protection of the Fourteenth Amendment [clauses].[96] Despite this clear constitutional guarantee, the US Supreme Court could not come up with a definite time limit within which a delay can be considered permissible or impermissible. What could be determined before 1974 was to make use of the "balancing test" in which the length of the delay is just one factor to be considered when evaluating the merits of a speedy trial claim.

Since the different mechanisms designed by the US Supreme Court's interpretation of the standards could not bring about the desired effects of reducing the backlogs of court cases, and lengthy pretrial delays, Congress enacted the Speedy Trial Act (18 U.S.C.A. Sec.3161 et. seq.) in 1974. This Act requires *inter alia*: that an information or indictment shall be filed within thirty days of a defendant's arrest; a prosecutor who knows an accused is incarcerated at the time of the indictment must take immediate steps to initiate prosecution; if a defendant enters a plea of not guilty, trial must commence within seventy days from the filing of the information or indictment, or seventy days from the accused's first appearance in court, whichever is later[97]. The Act thus, introduced definite time limits within which a criminal case may be dismissed with or without prejudice. Moreover, it provided nine specific exclusions to the time limits. Eight of the exclusions are specifically targeted at common sources of delay such as pretrial motions and joining of new codefendants...while the ninth confers discretion upon judges to grant a continuance when necessary to serve the "ends of justice".[98]

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[96] Id.

[97] See generally, Speedy Trial Encyclopedia, and Ostfed, Supra, Notes 8 and 7 respectively.

[98] Osterfed, Supra, Note 7, at P.1037, 1039. The list of exclusions that exempt specific types of delay from the statute's time limit computations [are]: delay resulting from proceedings or examinations to determine the mental competency or physical capacity of the defendant; trial on other charges; interlocutory appeal; pretrial motions; transport of defendant from another district or to and from places of examination or hospitalization; consideration of proposed plea agreement; and unavailability of an essential witness.

The time limits as well as the sanctions have generated a number of issues with which the US courts are still grappling with and there appears to be a wide divergence in interpretation. This is so because in the words of one writer, 'the right is so amorphous, slippery and generally difficult to vindicate, [as a result of which] courts have not applied consistent legal standards in [such] cases'.[99] Notwithstanding the absence of a consensus, the practice evinces that some standards have developed to tackle the issue. The major ones are discussed below, *albeit* very briefly.

2. Major standards against which the right to a speedy trial should be measured and sanctions when legally set time limits are not observed.

2.1. The Barker test[100] – This test requires that courts should balance four factors, namely, the length of the delay, the reason for the delay, [the time] when the defendant asserted his right to speedy trial, and the prejudice suffered by the defendant as a result of the delay. A very brief explanation of each follows.

Length of delay – This issue is solved under the Speedy Trial Act discussed above. The Act has introduced definite time limits. However, it is worth noting that trial cannot be too speedy, for this might violate due process. Both sides must have time to prepare their cases and witnesses must be given time to appear. As one court aptly observed, "surely we are not to go back to the system wherein an offender on Tuesday was tried on Wednesday and hanged on Thursday".[101]

Prejudice – The following are the three schools of thought on the question of who should have the burden of proving the existence of prejudice: 1. it is incumbent upon the accused to make a showing of prejudice; 2. prejudice is presumed and necessarily follows from long delay; and 3. when the delay

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[99] Brooks, Supra Note 5, p.587.

[100] Barker v. Wingo 407 U.S. 514.92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972). Note – These standards are developed in order to measure whether the right of an accused to speedy trial is violated or not.

[101] The ABA standard, Supra Note 2, further provides that "the standards are not intended to emphasize speedy disposition of cases to the detriment of the interests of the parties and the public, including the victim and witnesses, in the fair accurate and timely resolution of cases. In implementing [the] standards ...jurisdictions should seek to insure both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses , review documents, make appropriate motions , and conduct other essential aspects of case preparation. - Sec. 12-1.1 (b).

is substantial, the prosecution must prove that the accused suffered no serious prejudice beyond that resulting from ordinary and inevitable delay. The difficulty with presuming prejudice from long delay is in determining the point in time at which the presumption attaches.

Reason for delay – The main issue here is who the cause of the delay is. The delay may be caused by the accused, the government or courts. If the accused is the cause for the delay as in the case of flight from justice, or when he makes dilatory pleadings and motions, etc., there is no reason why he should benefit from the system. On the other hand, if delay is attributable to the government or courts, such as in cases of deliberate delays seeking tactical advantage or failure to arrange the trial calendar to accommodate an earlier trial and the granting of unreasonably long continuance, then the accused should benefit from the system. These solutions are also discussed in light of a 'motive test' which suggests that, 'relief will be granted first, when the reason for delay factor is found to weigh heavily against the government or second, when the defendant's assertion of the right and actual prejudice both weigh heavily against the government'.[102]

Waiver – is based on the demand doctrine which states that an accused must demand a speedy trial or he impliedly waives the right. But, it is objectionable because it places the burden of procuring a speedy trial upon an accused rather than on the government and it is pointed out that it is unconstitutional.[103]

2.2. Ends of justice continuance – The Act has conspicuously failed to specify whether there is a time limit requirement for ends of justice continuance. This has in turn created confusion among federal courts of appeals, as a result of which, they have interpreted the situation in at least three different ways. These are: the definite duration, the reasonable duration and reasonable relation approaches. The definite duration approach prohibits open ended ends of justice continuance, because every continuance must be specifically limited in duration and justified on the

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[102] See generally, Brooks, Supra Note 5.

[103] See generally, F. D. L. Jr., Supra Note 9, at pp.1587 -1620. This author also argues that "though the right to a speedy trial is commonly granted to a person who has been formally accused, a person who has been released due to delay without prejudice and a person who is about to be accused for the first time, alias a potential defendant, may be prejudiced because of the passage of time and they deserve some protection".

record. The reasonable duration approach permits open ended goals of justice continuance so long as they are reasonable in length and the reasonable relation approach permits open ended ends of justice continuance only so long as they can continue to be justified by reference to rationales. Under the third approach, a court should tie the duration of the continuance only when it is impossible to determine an end date and the rationale for the continuance supports the open ended duration.[104]

2.3. Remedies

It is shown above that specific time limits within which criminal cases should be processed at the different agencies are set under the law. The sanction of failure to observe the legally set time limits is either dismissal with or without prejudice, i. e., a case will be closed or be suspended till a solution can be found to the hindrance or closed forever without any opportunity of reopening. In order to determine whether a case should be closed with or without prejudice, courts are required to take into account the following three factors: the seriousness of the offense, the facts and circumstances of the case which led to the dismissal, and the impact of re-prosecution on the administration of justice.

Seriousness of the offense has to be measured in light of the involvement of threat or use of violence such as in cases of armed robbery or crimes which have massive social implications, such as environmental disasters, though not violent. The rationale behind this position is that the more serious the offense with which the accused is charged, the greater interest society has in permitting government to re-prosecute.

With regard to facts and circumstances which led to the dismissal, the focus should be on the incentive that the dismissal barring re-prosecution would provide for the courts and prosecutors to adhere to time limits in the future. Accordingly, when the reason for delay is by circumstances beyond the control of either the court or prosecutor, cases should not be dismissed with prejudice, for there exists no incentive. On the other hand, when cases are delayed because of the court's or prosecutor's deliberate or negligent misconduct, cases should be dismissed with prejudice, for the sanction can serve as an incentive.[105]

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[104] See, Ostfeld, Supra, Note 7, pp.1037 -1038.

[105] On the issues discussed under the section, see, generally Mark L. Steinberg, Supra Note 4.

As regards the impact of re-prosecution on the administration of justice, courts should use a balancing test that should take into account the degree of prejudice which re-prosecution would impose upon the accused and the facts and circumstances that led to the dismissal of the case. Courts should also examine the seriousness of the offense pending and the severity of the defendant's past criminal record.[106] In sum, courts can dismiss a case with prejudice if the case does not involve threat of force; or violence or if it does not involve massive social implications; or when dismissal serves as a lesson to avoid delays in the future prompted by negligence and the negative impact of re-prosecution on the accused is greater that the benefit to be obtained. In all other cases, the possible sanction can be dismissal without prejudice.

3. The right to a speedy trial in Ethiopia: Law and Practice

3.1. The law

The right to a speedy trial is provided for under different laws. The right is recognized under the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution). This right is also embodied in subsidiary laws such as the Criminal Procedure Code. The following sections will deal with the relevant provisions of these laws.

3.1.1. The FDRE Constitution[107]

The FDRE Constitution provides for a long list of rights of persons arrested or accused of crimes. The provisions of the FDRE Constitution and their elements that have relevance to the subject at hand include Article 17 (the right to liberty which provides that no person may be detained without a charge or conviction); Article 19 (which enumerates the rights of persons arrested, namely, the right to be informed promptly of the reasons for their arrest and any charge against them; *be brought before court within 48 hours of their arrest* [108] [emphasis added]; petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for

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[106] See, Ostfeld, Supra, Note 7, pp.1037 -1038

[107] Proclamation No.1/1995.

[108] Because of its importance to the subject at hand, the Sub Article is excerpted here: 'Persons arrested have the right to be brought before court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before the court, they have the right to be given prompt and specific explanation of the reason for their arrest due to the alleged crime committed.'

the arrest;[109] and be released on bail [110]) and; Article 20 (the rights of persons accused to a public trial by an ordinary court of law *within a reasonable time*, [emphasis added]).[111]

Though the FDRE Constitution recognizes the rights of a person who has come into conflict with the law, i.e. a suspect or an accused, some of its provisions are vague and general, and hence leave room for interpretation. The right to a speedy trial, for instance, is mentioned in passing under Article 19 (4) and the duration is provided in a vague term – i.e., "reasonable time" under Article 20(1). Moreover, the only definite time provided under the FDRE Constitution is the time to be brought to court, which is 48 hours under Article 19 (3). It should also be noted that the right to be released on bond or surety during pretrial detention is a qualified right that can be taken away when the "interest of justice" so requires.

3.1.2. The Criminal Procedure Code

Given the fact that the FDRE Constitution is a general framework, subsidiary laws are expected to give full effect to constitutionally guaranteed rights. The Criminal Procedure Code (hereinafter CPC) is one of the important laws in this aspect. Thus, its relevant provisions will be discussed hereunder.

The right to a speedy trial can be affected by many factors that may be imputed to the police, the prosecution, the court or even the victim.[112] The

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[109] This right is subject to the following limitations: where the interest of justice requires, the court may order an arrested person to remain in custody or, when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that responsible law enforcement authorities carry out the investigation respecting the arrested person's ***right to a speedy trial*** [emphasis added].

[110] This is a qualified right, for the provision provides that, in exceptional circumstances provided by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person.

[111] It may be argued that it is in the nature of constitutions to grant rights in such nature and it is up to the subsidiary laws to put flesh on such general guarantees with all the necessary precision. Nonetheless, whether this is so under Ethiopian laws is discussed in the following sections.

[112] According to the ABA standards, Supra Note 2, Sec.12-2.2, the speedy trial time limit should commence, without demand by the defendant, from the date of the defendant's first appearance in court after either a charge is filed or citation or summons is issued. It also goes without saying that it ends with final judgment. See, also Venice Commission, Supra Note 3. The moral of this section is to show that an accused's right

premise of this article is that the right to a speedy trial can be affected, negatively as well as positively, depending on the speed with which duty bearers discharge their respective duties. At this junction, it is important to pinpoint the crucial moments when the right under discussion can be affected. For the purpose of this article, it appears proper to investigate the following: time within which a crime has to be reported to the police or the prosecutor; time within which a suspect should be arrested for investigation;[113] time within which investigation should be concluded; time within which a charge should be framed and the time within which a trial should commence and end. Appeal may also be taken as a factor that may influence the implementation of the right under discussion. The following sub-sections explain the above issues in light of the CPC provisions.

A. Time for investigation

Investigation is conducted by the police, either after summoning the suspect or his arrest. Regarding the issue at hand, in the strict sense, there is no legal limit within which an investigation should be finalized. What is actually provided is that "every police investigation ...shall be completed *without unnecessary delay*".[114][Emphasis added]. Though the term "unnecessary delay" is general and amenable to abuse, the law provides for the following reliefs.[115] A suspect who is arrested at a police station has the right to be released on executing a bond, with or without, sureties that he will appear at such place, on such day, at such time as may be fixed by the police, provided that the offence under investigation is not punishable with rigorous imprisonment as a sole or alternative punishment, or where it is doubtful that an offence has been committed or that the summoned or arrested person has committed the offence complained of.[116] If an accused is

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can be affected negatively not necessarily when a trial is delayed but also pretrial processes are delayed.

[113] The right to a speedy trial normally begins when a suspect is arrested. Writers such as F. D.L. Jr., Supra, Note 9, however, argues that the right extends to a potential defendant, i.e., a person who is not arrested or released on bail- See Foot Note 19, above. Though the argument is original, it appears that there is a consensus that the right starts to operate right after arrest but not before that. Thus, discussions pertaining to time to report crimes and time required to arrest a suspect are deliberately left out of this article.

[114] Art.37 (1) of the Criminal Procedure Code.

[115] Note – the following part focuses on the different reliefs that an accused or a suspect has while awaiting the final disposition of a case brought against him. Though the reliefs have nothing to do with the disposal of a case within a given time, the discussion is intended to show the predicament of such persons if not released on bail.

[116] Art.28(1).

not released despite fulfilling these conditions, he can appeal from this decision to any court of law so that he be released on bail.[117]

Even if an accused cannot be released on anyone of the above grounds, an investigation cannot run for an indefinite period. Where for where the police investigation is not completed, the investigating police officer may[118] apply for a remand for a sufficient time to enable the investigation to be completed but no remand shall be granted for more than fourteen days on each occasion.[119] An accused also has the right to be released on bail where the offence with which the accused is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.[120] Bail is not, however allowed where the applicant is of such a nature that it is unlikely that he will comply with the conditions laid down in the bail bond or if set at liberty, he is likely to commit other offences or he is likely to interfere with witnesses or tamper with evidence.[121]

Despite these guarantees, the power given for an investigating police officer to request remand for an unspecified number of times, is a cause for concern. This in theory can lead to an indefinite pretrial detention. As a consequence, if a detention is endorsed by a court order, the arrestee has no remedy except to languish in police prison. Whether an arrestee can appeal from the decision of the court that has authorized the remand is not clear. In the absence of a specific provision to this effect, it may be assumed that this right is not vested in the arrestee.

The law has also failed to provide for a specific time limit to complete an investigation. What is provided is simply that an investigation has to be completed without unnecessary delay. Accordingly, whether the court that has endorsed the remand has also the power to release the arrestee with or without bail - when investigation cannot be completed without

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[117] Arts28/2 and 64.

[118] The term "may" indicates that this is a discretionary duty. Does it mean that an investigating officer can detain a suspect for more than fourteen days without court authorization? Note - Both versions of the code make use of the term "may" than "shall" which is an indicator of a mandatory duty.

[119] Art.59.

[120] Art.63/1.

[121] Art.67.

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unnecessary delay – or close the file with or without prejudice[122], is not clear again, for there is no provision that allows or disallows this authority. What is a necessary or unnecessary delay is too subjective to determine with any degree of certainty.

B. Preliminary Inquiry[123]

One of the potential causes for delay is preliminary inquiry or pretrial motion. Under the Code, preliminary inquiry is required only in cases where an accused is to be charged for homicide in the first degree and aggravated robbery. According Art.80, such an inquiry will be allowed only when formal trial cannot be held immediately. It may be said that such an inquiry should not in principle be adjourned, except under specific conditions provided by law and the grounds for adjournment are the same as those provided for formal trials – discussed below. The major purpose of holding inquiry is to record prosecution witnesses' testimonies. It should be noted that the accused is not given the right to call his own witnesses, nor to cross examine prosecution witnesses. As regards the accused's rights, what is provided is that he can make a statement - if he wishes so - in which case his statements will be reduced to writing and kept in file. If he opts to make no statement, however, he shall be committed *"forthwith"* for trial. An accused has also a right to give a list of witnesses he wishes to call at his

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[122] The current Criminal Procedure Code is a result of many drafts some of which were dumped or discarded for one reason or another. One of the drafts had provided that "where no proceedings are instituted after a reasonable time has been given the police to complete the investigation, the detention shall be deemed to be unlawful and the arrested person shall be released". – Art.48 of the Intermediate Draft. See, Fisher, Z. Stanley, Ethiopian Criminal Procedure, A Source Book, The Faculty of Law of Haile Selassie I University, pp. ix-xii and 148.

[123] According to anonymous knowledgeable individuals with many years of experience either as judges or practicing lawyers, preliminary inquiry is largely thrown into disuse though there is a very recent practice to make use of it. Whatever the case, pretrial inquiry is a legal condition that can be availed when a trial cannot be held immediately and it is not a must that every case should pass through this process. Thus, its disuse is engendered because trials can be held without any help from it. This writer believes that despite this fact, which is not unique to this process alone, it should be given a prominent place in this article, for it is a legal process acknowledged by the relevant law. It also helps to note that according to the latest Draft Craft Criminal Procedure Code, courts that have the authority to hold such a process are given more powers than what are provided under the current law. Accordingly, there is a possibility that all cases involving non - bailable offences will pass through this process and the court can have the authority to release a suspect when no case is made against him and convict him if he admits the charge brought against him. See. Arts.162 -173 of the draft. Thus, though its applicability may be minimal at present, this may not be so in the future.

trial.[124] One may surmise here that the purpose of preliminary inquiry is to facilitate the formal trial but not to replace it. One other important purpose of preliminary inquiry is that, depositions of a witness taken at a preliminary inquiry may be read and put in evidence before the [trial] court where the witness is dead or insane or cannot be found; is so ill as not to be able to attend the trial or is outside the [country]. The deposition of an expert is likewise put in evidence[125]. Given this, and the fact that the procedure does not apply to every accused, its effect on delay may be minimal. Moreover, it appears that an accused cannot raise any pretrial motions, for the scope of preliminary inquiry is so narrow, so much so that such issues fall outside of the court's jurisdiction.

In addition to preliminary inquiry, the Code also provides that any court may record any statement or confession made to it at any time before the opening of a preliminary inquiry or trial. The purpose behind is to send such statements to the court which will conduct the preliminary inquiry or the trail and nothing else.[126] This procedure does not have any effect on delay than the one mentioned above i.e., preliminary inquiry.

C. Time to frame charges

The only article of the CPC that talks about the time required to complete charging is Art.109/1, which provides that "the public prosecutor shall within fifteen days of receipt of the police report or the record of a preliminary inquiry, frame such charge ....".This is one of the important areas where the law has prescribed a specific time limit to expedite the process or put differently, to implement the right to a speedy trial.

Despite this, the law has failed to provide for a sanction when the time limit is not honored. Whether or not a suspect has the right to demand the framing of a charge within the set time limit is also left unanswered. Moreover, as shown above, the victim of a crime is also a stakeholder in the timely disposition of cases. In this regard, one may be tempted to ask whether a victim has the right to demand the framing of charges within the legally set time limit. In relation with this, the law provides that if a case has to be prosecuted by a public prosecutor, as opposed to cases that can be prosecuted privately, the interested person - the injured or his representative, etc. - may petition the Superior Attorney who is given the

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124. See Arts.80 ff
125. Art.144.
126 Art.35.

power to: confirm or reverse, amend, suspend, alter, revoke, or confirm decisions made or measures taken by an attorney subordinate to him and it appears that this is a final decision[127].

The law's failure to provide for sanctions in effect amounts to allowing a prosecutor to sleep over this duty with impunity till a case is barred by limitation. The fact that an interested person cannot appeal to a court of law on such issues, also exacerbates the situation. One may, however, be tempted to raise the issue of judicial review in such instances. Judicial review is a constitutional right, for it is provided under Article 37(1) of the FDRE Constitution, that "everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with a judicial power". It thus remains to be seen whether the right to appeal from the decision of the Superior Attorney can be considered as justiciable or not if this figures as a constitutional issue in the future.

D. Lengths of trial and adjournment

Trial in general is dealt with under Book IV Arts.94 and the following of the Code. This part provides, *inter alia* that: when the charge has been filed...the court shall forthwith fix the date of the trial.[128] Though the term "forthwith" appears to be unambiguous, it is dependent on court calendars as a result of which and in the absence of a given time limit, it may mean a week or weeks or even months. Thus, it may be taken as a cause for concern.

As far as adjournment of trials is concerned, the relevant part of the CPC evinces that trial can be adjourned either for a definite period or indefinitely.[129] To begin with, it appears that the code envisages that trials

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[127] Office of the General Attorney General of the Transitional Government of Ethiopia Establishment Proclamation No.39/1993, Arts.19 and 20. This proclamation has repealed Arts. 42(1) (d) and (3), 44(2) and 45 of the Criminal Procedure Code among others, which had given these powers to the court. Though this proclamation is repealed by Attorneys Proclamation No.74/1993, the same powers are given to the Superior Attorney under Arts.9 and 10. Thus, courts are deprived of the power to entertain such cases and it is unlikely that an interested person can appeal from the final decision of the Superior Attorney for, no such right is provided in the proclamations citied above. Moreover, these articles talk about the right of an interested person to petition from the decision - not to prosecute - of a subordinate attorney, meaning such a right cannot be availed when an attorney sleeps over his duty to charge within the set time limit, for he has not made any decision yet.

[128] Art. 123.

[129] For the sake of convenience, Art.94 of the code is excerpted below:

should not be discontinued once started. This is so, because, as per Art.94 (l), adjournment is granted "[when a] trial cannot be completed in one day, [and that it should be] adjourned for the following day". The Code further provides that trials can be adjourned under fourteen conditions – including adjournment for the next day mentioned earlier. These conditions are further divided into two, i.e. those that call for adjournment for a week and those that call for an indefinite adjournment. Accordingly, when a trial is adjourned for anyone of the four reasons – listed under Art. 94(2) (a) and (f) – (h) – a trial can be adjourned for a week[130]. In all other cases, a trial can be adjourned for an indefinite period. Moreover, per Art.94 (1), a court may of its own motion or on the application of the prosecution or the defence adjourn any hearing at any stage thereof where the interests of justice so

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-Adjournment. - Conditions

(1) The court of its own motion or on the application of the prosecution or the defence adjourn any hearing at any stage thereof where the interests of justice so require.

(2) An adjournment may not be granted unless:

a. the prosecutor , public or private, or the accused fails for good cause to appear;
b. witnesses for the prosecution or the defence are not present;
c. In a trial other than that of a case committed on preliminary inquiry to the High Court, the prosecution requires time for investigation;
d. further evidence requires to be produced;
e. evidence is produced either by the prosecution or the defence which takes the other side by surprise and the production of which could not have been foreseen;
f. the charge has been altered or added and the prosecution or the accused requires time to reconsider the prosecution or defence;
g. the accused has not been served with a copy of the charge or of the preliminary inquiry or has been served too short a time before the trial to enable him properly to prepare his defence;
h. prior sanction for a prosecution is required before the trial may start;
i. a decision in the trial cannot be given unless other proceedings be first completed;
j. the mental stability of an accused requires to be established by an expert;
k. the court considers that the accused, if a young person, should be placed under observation;
l. the trial cannot be completed in one day and is adjourned to the following day.

[130] Art.94 (3) No adjournment under paragraphs (a) and (f) – (h) inclusive shall be granted for more than one week.

require".[131] This latter condition is similar to what is known as open ended discontinuance. It should be noted here, that in those instances where a trial can be adjourned for a week, the Code fails to provide whether such an adjournment can be allowed for one instance only or that it can be repeated when the need arises. In the absence of a clear guidance, one wonders whether the one week period is in any way different from the other grounds of adjournment whose length is not determined. Put differently, if a trial can be adjourned for a number of times – measured in weeks – it is nothing, but an adjournment for an indefinite period.

It appears that the Code has provided some guidance that can allay the fear that trials can be adjourned indefinitely. It is provided under Art.95 that:

(1) subject to the provisions of Sub-art.(3) of Art.94, the court shall adjourn the hearing for such time only as is sufficient to enable the purpose for which the adjournment is granted to be carried out.

(2) where the purpose for which the adjournment was granted has not been carried out for a reason not attributable to the fault of the prosecution or the defence, a further adjournment of the same or less duration shall be granted.

It helps to note here that the Code has failed in providing a clear solution to delayed justice due to adjournment. This is so, because, the terms employed, such as "such time as is sufficient to enable the purpose" are too vague to be of any use in mitigating the problem of delayed justice. Moreover, though it may be argued that the court has the authority not to grant further adjournment when failure to carry out the purpose for adjournment is attributable to one of the parties, it is not expressly stated in a mandatory manner and one can reach at this conclusion through interpretation only.

By way of conclusion, though it may be said that the Code has attempted to regulate length of trials - albeit indirectly - the solutions provided leave much to be desired. Accordingly, as far as the right to a speedy trial is concerned, the following can be taken as causes for concern:

- Regarding indefinite discontinuance when the interest of justice requires it, the term "interest of justice" is very vague and amenable to different interpretations. Thus, in the absence of a sort of guidance

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[131] It may be presumed that such instances are different from those listed under sub.Art.2.

to this effect, this situation can be abused and be a source of unnecessary litigation.

- Those instances provided under Art.94 (2) that call for indefinite adjournment are many and the mechanisms provided to check repeated adjournment under Art.95 are not satisfactory either.
- Even under situations that call for an adjournment for a week, the law has failed to provide whether these can be repeated or not.
- A relevant impediment is, the denial of the right to appeal form lengthy or repeated adjournments.[132]

E. Other factors that may influence the length of trials

Apart from the above grounds that may call for adjournment, the admission or denial of guilt by an accused, no case motion when the prosecution fails to prove the charge up to the standard and the number of objections that may be put at trial may also influence the length of trial. In this regard, the Code provides that, where the accused admits without reservation every ingredient in the offence charged, the court shall enter a plea of guilty and may *forthwith* convict the accused. It should be noted here that in such a case, the court has the discretion to require the prosecution to call such evidence for the prosecution as it considers necessary and permit the accused to call evidences.[133] Depending on circumstances, if an accused admits guilt and the court does not see the need to call for evidences, it can convict the accused there and then and this can shorten the length of trial. Furthermore, when the case for the prosecution is concluded, the court, if it finds that no case against the accused has been made out shall record an order of acquittal.[134] Such a lucky accused can therefore escape the burden of a lengthy trial. With regard to objections, the code provides that the court shall decide forthwith on the objection where the objection can be disposed of by reference to the law or facts on which the objection is based are not disputed by the prosecutor. Where decision cannot be made forthwith owing to lack of evidence, the court shall order that the necessary evidence

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[132] Art.184 (a) provides that no interlocutory appeal shall lie from a decision of the court granting or refusing an adjournment under Art.94. This in effect means that an interested party has to wait till the end of the trial, to appeal on this issue. Accordingly, the right to a speedy trial can be affected by the denial of the right to appeal on issues pertaining to unjustifiable adjournments.

[133] Art.134.

[134] Art.141.

be submitted *without delay* and the court shall make its decision forthwith upon the necessary evidence having been produced.[135]

F. Judgment and sentencing

There is no specific time limit provided in the Code as to when the court shall give judgment. What is provided in this regard is that after the final address, the court shall give judgment.[136] If the accused is found not guilty he can be acquitted there and then. But if he is found guilty, both the prosecution as well as the accused can call their own witnesses as to character and the court shall pass sentence thereafter. It should be noted here, though depending on circumstances, the court needs time to consider the different claims submitted by the parties in dispute regarding aggravation and mitigation, before fixing the appropriate sentence/s[137], there is no legally fixed time limit for this process. Thus, this is another cause for concern.

G. Appeal

According to Art.187, an appellant is required to give notice of appeal against a judgment within fifteen days of the delivery of the judgment and the memorandum of appeal shall be filed within thirty days of the receipt of the copy of the decision appealed against.[138] The discretion to fix the date of hearing is given to the president of the appellate court and there is no fixed time in such a case. Unlike in the case of first instance courts, the law does not provide for the manner of adjournment. It should be noted that where the court of appeal confirms the conviction but alters the sentence or vice versa, a second appeal shall lie only in respect of the conviction or sentence which has been altered.[139]

By way of conclusion, it may be said that the law cannot provide for any other mechanism regarding admission or denial of guilt, raising defenses, time required to pass a judgment and sentence as well as appeal than what are provided, for such processes are also dependent on the choices to be made by an accused. Thus, as far as dilatory motions can be controlled both

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[135]Art.131.

[136]Art.149(1).

[137] The time required to fix appropriate sentences can be longer when the convicts are many.

[138] As per Art.22 (4) of Federal Courts Proclamation No.25/1996, however, an application for a hearing in cassation shall be made to the Federal Supreme Court within 90 days from the date on which the final decision is rendered.

[139]Art.195(3)

by the court as well as the parties in dispute, these processes cannot be taken as causes for concern.

Notwithstanding the strengths and shortcomings of the operational laws mentioned above, it helps to note that a recently enacted vagrancy law[140] has set ground breaking standards to implement the right to a speedy trial. The law provides *inter alia*, that a vagrant: can be arrested without warrant; should be brought before a court within 48 hours; shall not be released on bail; his investigation - at the police station - should be completed within twenty eight days and reinvestigation should be completed within five days; his charges should be filed within ten days in the absence of which he should be released and the court shall pass judgment within four months – but no remedy is given when these deadlines are not met.[141] This legislation deserves appreciation in its fixed time limits than its contents which are vague and general. It may be hoped that its principles that set out specific time limits and remedies will be emulated in drafting the future criminal procedure code.

It needs to be highlighted, here, that the CPC, though it has provided for specific time limits as a matter of exception than rule, has failed to provide for remedies when these are not observed. This therefore, calls for a serious reconsideration with a view to provide for specific time limits for all acts of the agencies of the criminal justice system as well as remedies when these are not observed. It will thus, be hoped that the future criminal procedure code will emulate the Vagrancy Act and come up with acceptable solutions to the many problems raised in this article.

3.1.3. The Criminal Code[142]

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[140] Vagrancy Control Proclamation No.384/2004. Note – A recently enacted Anti Terrorism law also provides *inter alia*: that if the investigation is not completed, the investigating police officer may request the court for sufficient period to complete the investigation and that each period given to remand the suspect for investigation shall be a minimum of 28 days; provided, however, that the total time shall not exceed a period of four months – Art.20 (2&3) of The Anti Terrorism Proclamation No.652/2009.

[141] Ibid, Arts.6 – 9

[142] This writer believes that statute of limitation has a strong relevance with the subject at hand, i.e., timely disposition of criminal cases.Though periods of statutory limitation are by any standard long, they provide for a definite end to litigating stale cases as a result of which both prosecutors and judges are required by law to observe that the cases that they handle are not barred by limitation. It should also be noted that the rationale behind period of limitation is the same as speedy trial, for in both cases the focus is on bringing an end the litigation of stale cases.

Criminal period of limitation is provided under Art.216 and the following of the Criminal Code. Art.216 (1) states that, "unless and otherwise provided by law, in all criminal cases the prosecution and the criminal action shall be barred and may no longer be instituted or brought upon the expiration of the legal period of time. The sub article also states that...as soon as the limitation period has elapsed, neither a conviction nor penalties or measures may be pronounced. Sub 2 also states that "even where, the defendant fails to raise the barring of the charge by a period of limitation the Court or the Prosecutor shall, at any time, consider the barring of the charge by limitation.

According to Art. 217,[143] the maximum period of limitation is twenty five years for crimes punishable with death or rigorous imprisonment for life; while the minimum is three years for crimes punishable with simple imprisonment not exceeding one year. Arts.220 &221, these limitation periods can be suspended or interrupted for different reasons. The Code also provides that "whatever the circumstances may be the prosecution and the criminal action shall be barred in all cases where the period equal to double the ordinary period of limitation provided by law has elapsed.[144] This is absolute period of limitation.[145]

As far as timely disposition of criminal cases is concerned, the relevant provisions of the Criminal Code that deal with statute of limitation are apparently causes for concern. Periods of limitation are relatively long and those interested in initiating a criminal process do have sufficient time to put them in motion. Despite this, the law provides that this period can be suspended or interrupted. Per Art.220 of the Criminal Code, a criminal case can be suspended "where a charge has been instituted and the case is undergoing a judicial proceeding or where the decision in the criminal case cannot be given until other proceedings have been completed". The same article further provides that "...upon the removal of the bar, the period of limitation shall revive and continue its course".

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[143] As per Art.28 of the Constitution, however, crimes against humanity cannot be barred by limitation. Moreover, per Art.24 of the Anti-Terrorism Proclamation, "criminal liability of persons who commit terrorism crimes as stipulated in [the] Proclamation shall not be barred by limitations".

[144] Art.222.

[145] Just like actions, penalties and measures can be barred by limitation, suspended or interrupted – See Arts. 223ff. These articles are left out deliberately for they apply on a criminal who has been sentenced but could not undergo through punishment for one reason or another and it is assumed that its relevance to the subject at hand is minimal.

In practice, the instances that call for the cessation of suspension and revival of the limitation period may not be many. Accordingly, a period of limitation that has began to run can be suspended when an instance that calls for retrial eventuates, and these may be flight of the defendant, absence of witnesses and the like. In all other cases a defendant is either convicted or acquitted and the revival of the limitation period cannot arise as an issue. These causes can be divided into two. These are causes attributable to the defendant and the agencies of the criminal justice system. In light of this division, it may be appropriate to suspend the limitation from running if the cause is attributable to the defendant. On the other hand, if the cause is attributable to the agencies, one wonders whether it will be wise to suspend the limitation. It is shown above that the different tasks required to process a criminal case are not given specific time limits and even those tasks that are required to be done within specific time limits lack sanctions. In light of this, an accused can be harassed by the discontinuance of the limitation that has run in his favor. If the agencies create situations that call for retrial and this can be done repeatedly, for the law has set no limit for this, a period of limitation can in theory be suspended a number of times to the disadvantage of an accused unless the court dismisses the case with prejudice. This can, therefore, be a cause for concern.

Nevertheless, it helps to note that the current Criminal Code has amended the former equivalent of Art.220, i.e., Art.229. The latter reads in part as follows: 'Limitation shall be temporarily suspended as long as there subsists, in law or fact, a bar other than one due to the volition of the offender to the institution or continuation of the prosecution.' The current Code has, however provided for the effects of causes attributable to the suspect as follows: 'Similarly, any act of the criminal voluntarily done to hinder the institution or continuation of the prosecution shall not prevent the limitation period from running - 220 /2...par.2'

According to the above quoted provision an act done by the suspect to hinder the criminal process cannot prevent the limitation period from running, i.e., it continues to run - in his favor. Is this really the intention behind? It will be interesting to note here that the explanation given in this regard, by the drafters of the current Code is that "[the phrases quoted above] have made the provision confusing [and it is decided] to put them

under sub article (2)"[146]. Can't it be argued that the current position is more confusing than the former? It is quite apparent that this provision needs amendment before it starts to cause legal problems.

The provisions that deal with interruption are less complicated than the above. The relevant article, i.e., Art 221, provides that:

> The limitation period shall be interrupted by any order, act or decision for purposes of search, summons, prosecution or investigation in relation to the crime or criminals and that upon each interruption the whole period of limitation shall begin to run afresh.

The major difference between suspension and interruption of period of limitation is temporal. A period of limitation is suspended if a case is pending at trial, while interruption starts to have effect even before a charge is pressed. In the latter case, any order, act – physical act according to the Amharic version – such as search or decision can interrupt a period of limitation. Whether this difference should give rise to different treatments, such as the revival of the limitation period in favor or against a suspect and an accused is a matter of opinion. Be this as it may, one may wonder why a cause attributable to the suspect or the agencies is not taken as a factor in this situation. As the law stands at present, it does not matter whether the cause for interruption emanates from the act of a suspect or one of the agencies. In theory, if an investigating officer takes out a warrant of arrest and could not arrest the suspect, for whatever reason, even one attributable to his own negligence, the period of limitation shall be interrupted. Moreover, there is no reason why the same investigator cannot acquire another warrant of arrest if the need arises. Is this a wise solution? Wouldn't it be preferable to allow interruption due to reasons attributable to the suspect and disallow it if the cause is attributable to the agencies?[147] Without such a separate treatment this provision is again susceptible to abuse and needs reconsideration.

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[146] The Drafting Committee of the Criminal Code, Expose des motifs, of the Criminal Code (unpublished – 2004) – explanation for the amendment of Art.229 – No page number. The document is written in Amharic, and contents are translated by this writer.

[147] Note – In other jurisdictions, reasons attributable to the agencies are causes that allow a defendant to benefit from Speedy Trial provisions while those attributable to himself are prejudicial to him - See Sec. 2.1 under reason for delay, above.

The fact that periods of limitation can be repeatedly suspended or interrupted is not lost on the part of the law maker, for the Code provides under Art.222 that:

> Whatever the circumstances may be, the prosecution and the criminal action shall be barred in all cases when a period equal to double of the period of limitation provided by law [for offences prosecutable without complaint] has elapsed, or in cases where a special period applies [upon complaint offences] when such a period has been exceeded by half.

This provision is self explanatory and bars cases that are too old. Accordingly, whether a case is suspended or interrupted for whatsoever reason, it cannot be treated beyond the time provided above. This is known as 'absolute limitation'. Given the above problematic situations, the extension of the period of limitation for so long a time may be unjustified. However, the fact that a criminal case can be stopped within a given time clearly set by law, is a relief to those who can be affected by it. With this in mind, a criminal case whose absolute period of limitation has expired, should be stopped at whatever stage it may be, i.e., under investigation, prosecution or while on trial[148].

3.2. The Practice

The different shortcomings of the Ethiopian criminal justice system are captured well in at least three authoritative publications. One of these publications covers the entire agencies of the criminal justice system of the country and the other two cover federal matters. The most pertinent parts of the publications are discussed hereunder.

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[148] Those provisions of the criminal code that deal with period of limitation are more extensive than their counterparts in the Civil Code. A cursory look at the two parts evinces that the latter has quite a few provisions that deal with the point and these are devoid of any confusing statements. Moreover, it can be seen that 'suspension' is unknown to the Civil Code. Interruption is allowed for reasons attributable to the defendant or when a case is lodged at court – See Art.1851. Should the criminal code emulate this and limit its scope to interruption only? Given the fact that causes for suspension and interruption are not that much important to make a distinction between the two – see the discussion above in this section – it is submitted that suspension should be deleted from the code for tit serves no important purpose.

3.2.1. The study conducted by the Ministry of Capacity Building

In a publication entitled "Comprehensive Justice System Reform Program, Baseline Study Report"[149], the team of experts that did the research managed to show the different shortcomings that have afflicted the system. Some of the glaring findings are discussed below.

A. On pretrial detention

The CPC is silent about the place where the pre trial custody should take place i.e., in police stations or in remand prisons. In the daily practice, however, a suspect remains in police custody as long as the police investigation is not completed. This can take months[150].

B. On length of time required to frame charges

The fifteen days legal requirement is not observed in reality and there is no sanction for failure to comply. Hence, the prosecutors take too much time to discharge this obligation. The picture painted in this study regarding the issue under discussion is shocking, to say the least. One of the reasons for delay identified in the study is "delayed summons" and the data show the following:

A striking example of the backlogs caused by delayed summons is the situation in the Addis Ababa Administration[151]. The number of pending cases that have *never been looked* [emphasis added] at by a prosecutor in the High Court Prosecution Office or at one of the 8 branches during the last five years - most probably from the date of publication, i.e. 2005 -was recently estimated at 140,000. The details of this backlog are as follows:

1991 EC – 1998 [1999 GC] – 27,790 cases,
1992 EC [1999-2000 GC] – 28,629 cases,
1993 EC [2000 – 2001GC] – 27,649 cases,
1994 EC [2001 -2002 GC] – 27,177 cases, and
1995 EC [2002 – 2003GC] – 29,442 cases.[152]

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[149] Ministry of Capacity Building, Justice Reform Program Office, Comprehensive Justice System Reform Program, Baseline Study Report, (March, 2005).

[150] Ibid, p.194.

[151] Note – Here, it appears that the figures represent the number of cases at the Addis Ababa High Court in its first instance capacity, for it deals with charging. Thus, cases processed in their appellate capacity are not included.

[152] Ibid, PP. 185-187.

The study further mentions that in the last few months - most probably from the date of publication - about 70,000 cases of the backlogged 140,000 cases have been discontinued because of expired limitation periods. The backlog appears to subsist and grow than show any sign of decrease. According to their survey, in the Paulos Branch, the PPS is able to handle about 3,500 files a year while it receives 6,000 to 10,000 from the police leading to at least a backlog of 2,500 cases every year.

C. On files that are sent back by the prosecutors to the police for further investigation

According to information obtained from Addis Ababa Office regarding Addis Ababa and the eight branches, 63,424 investigation files were received from the police in 2002. A total of 5,219 files were sent back to the police for re-investigation in that same year. The daily practice regarding prosecutors' requests for police re-investigation differ from one PPS office to another. There is a lack of appropriate guidelines that are understandable for and used by all prosecutors.

In the Addis Ababa branch office[153] 1,223 files were sent back to the police while 4509 were received (app.30%).

- In the Yeka branch office 1,500 files were sent back to the police while 4,991 were received (app.30%).
- In the Akaki branch office 386 files were sent back to the police while 3,213 were received (app.12%).
- In the Paulos branch office 58 files were sent back to the police while 6,004 were received (only 1%).[154]

Though the police are not immune from this problem of backlogged cases, one can imagine the extra burden thrown on them because of the return of such a number of files for reinvestigation. The situation is described as follows: 'The response of the police currently occurs only after a delay. We heard that on occasion it takes more than 5 years before the police complete the re-investigation and send the case back to the prosecutor. The prosecutor will then send the file to the court'.[155]

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[153] No date or year is given though it may be presumed that it is close to the publication of the research.

[154] Ibid, P.184.

[155] Ibid, P.100.

D. On the number of remand prisoners

When the study was conducted, there were 4,400 prisoners in the prison of Addis Ababa of which 2,800 were remand prisoners. The researchers opine that the cases of such prisoners are given priority over others, but despite this, many are in prison not because the crimes that they are alleged to have committed are not bailable, but because they are poor and cannot afford to set bail[156].

E. On the power of a prosecutor to refuse to institute proceedings[157]

The following observation explains the issue mandate of prosecutors to refuse to institute proceedings and its effect on backlog of cases: [158]

> When a case is discontinued, the public prosecutor must report on the decision and seek confirmation not only with superior but also with the Minister of Justice or the Head of Justice Bureau. As so much effort and so many layers are involved in dismissing a case, prosecutors often find it easier and more efficient to wait until the case reaches limitation rather than reporting to their superiors on their decision. This is a "smart trick" that a prosecutor uses to solve his or her problem dealing with an individual case s/he wants to discontinue. But seen from the system, this habit has aggravated the

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[156] Ibid, P.187.

[157] The relevant provisions of the CPC read as follows:

41. Doubtful cases.

Where it is not clear whether proceedings should be instituted, the public prosecutor shall refer the matter for instructions to the Advocate General.

42. Cases where proceedings shall not be instituted

1. No proceedings shall be instituted where:
   a. the public prosecutor is of opinion that there is not sufficient evidence to justify a conviction; or
   b. there is no possibility of finding the accused and the case is one which may not be tried in his absence; or
   c. the prosecution is barred by limitation or the offence is made the subject of pardon or amnesty; or
   d. the public prosecutor is instructed not to institute proceedings in the public interest by the Minister by order under his hand.
2. On no other grounds may the public prosecutor refuse to institute proceedings.
3. The public prosecutor shall institute proceedings in cases affecting the Government when so instructed by the Minister.

[158] Ministry of Capacity Building, Supra Note 65, p.185. This sarcastic expression, i.e., "smart trick" is further buttressed by the title of the section which reads as "better limitation than discontinuance of a case".

backlog problem that weighs heavily on the administration of the PPS.

F. Major reasons for such shortcomings

According to the study, the major causes for such shortcomings are *inter alia*: shortage of manpower, lack of interest among professionals to join the institutions and lack of clear guidelines that govern the relationship between the police and the office of the prosecution[159].

3.2.2. A study conducted by the former vice-president of the Federal Supreme Court

In November 2006, the former vice-president of the Federal Supreme Court, Ato Menbere Tsehai Tadesse, published a book entitled 'Features of Ethiopian Law and Justice'. [160] The book deals with so many issues that pertain to the legal system of the country. The author has identified critical gaps between the law and the practice and suggested his views. One of the issues raised and discussed in the book is the right to a speedy trial. Figures collected by the author show that criminal cases take more time to be disposed, than civil and labor cases. In the author's view, this mainly stems from the contradiction between the legally provided procedure of entertaining cases and the age old customary practice. The book also reveals that the backlog of court cases –in particular criminal cases - is one of the major factors that have impeded the exercise of the right to a speedy trial. Since the data speak volumes, this writer has opted to present the most pertinent parts as they are found in the book. Here follows the data:

A. On the age of files at trial

File	1 month	1-2 months	2-6 months	6 months-1year	1-3 years	3-6 years	Over 6 years	Total
Civil	308 (6.9%)	250 (5.6%)	1123 (25.2%)	801 (18%)	1370 (30%)	512 (11.5%)	94 (2.1%)	4459 (28%)
Criminal	164 (1.5%)	125 (1.14%)	1344 (12.4%)	2159 (19.9%)	4227 (38.9%)	2051 (18.9%)	801 (7.4%)	10872 (68%)
Labour	78 (13.7%)	93 (16.3%)	185 (32.5%)	123 (21.6%)	88 (15.5%)	1 (0.2%)	1 (0.2%)	569 (4%)
Total	550 (3.5%)	468 (2.9%)	2625 (16.7%)	3083 (19.4%)	5683 (35.8%)	2546 (16.1%)	896 (5.6%)	15900 (100%)

[159] Ibid, pp. 179-199.

[160] Menbere Tsehai Tadesse, Features of Ethiopian Law and Justice, November, 2006. This is a book written in Amharic and contents are translated by this writer. The author of the book was until quite recently, the Vice President of the Federal Supreme Court.

No date is given, though it may be assumed that it is close to the date of publication of the book, i.e., 2006.[161]

B. On court congestion

Flies	Brought forward	New	Total	Comp - leted	Transfe- rred	Screen- ing	Cong- estion
Civil	4600	3644	8244	3625	4665	99.5	2.27
Criminal	6633	4575	11238	2091	9114	45.7	5.36
Labor	891	1417	2308	1289	1018	90.97	1.79
Total	12124	9636	21790	7005	14797	72.7	3.11

Activity report of the High Court in the year 1995(EC) 2002-2003 GC[162]

C. On conviction rate

The book provides the following on conviction rate: [163]

> [according to a study conducted in courts] out of the cases that were submitted to courts, and disposed by them, it is on 33.1% of the files that accused were found guilty [conviction rate].....Of total cases processed by CJS agencies [reported to authorities]. It was only 47.6% that reached to the level of judgment and this includes those acquitted by courts. 52.4% of these files were dropped at different stages of the process.

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[161] Ibid, p.90.

For the sake of comparison, the length of criminal trials in some European countries are presented below:

-Estonia – First Instance Courts – 100 days and Second Instance Courts – 41 days.

-Finland – District Courts – 2 months and 27 days and Supreme Court – 5 to 9 months.

-Hungary – number of files processed - Local Courts – 0-3 months – 12974; 3-6 months -8782; 6-12 months -10692; 1-2 years -10093; 2-3 years -3180 and over 3 years -1936. County Courts as appeal courts – 0-3 months -3168; 3-6 months -1345; 6-12 months - 463;1-2 years -90 – 2-3 years -2 and over 3 years -0. County Courts as first instance – 0-3 months -292; 3-6 months – 244; 6-12 months – 316; 1-2 years -256; 2-3 years – 80 and over 3 years -38. Appellate Courts – 0-3 months -155; 3-6 months -89; 6-12 months – 36; 1-2 years -8.

-Ireland – Court of Criminal Appeal – Sentence appeals – 6-8 months; Conviction cases- 7-9 months; High Court – Bail applications – date immediately available; Central Criminal Court -6 months; Special Criminal Court – 4 months; Circuit court -7 months and District Court – 11/2 months.

Most other countries report that criminal trials usually take months. See, Venice Commission, Supra Note 3, at pp.147, 150, 171-172, 190-191, respectively.

[162] Ibid. P.91. The data appear to refer to the High Court of Addis Ababa. It should be noted here, that criminal cases represent the majority of cases handled by courts and they are the major source of delays compared to the other cases.

[163] Ibid, pp.87 & 88.

34.9% of these files were closed either due to the death or disappearance of suspects or unavailability of witnesses.

3.2.3. Statistics compiled by the Ministry of Justice

The Federal Ministry of Justice publishes criminal statistics on annual basis.[164] The data compiled show that so many files are closed during investigation and so many others are transferred to the next year due to court congestion. The rate of conviction, is not that much attractive either. Between 1994 and 2003 the conviction rate was: 15.4, 11.19, 12.1, 11, 9.3, 10.12, 9.19 and 4.60 percent respectively. The data for the following three years do not evince a better rate of conviction.

The overall data are indicative of wasted time and resource in all agencies. One may surmise here that the major culprit in all these situations is workload, for the greater the workload the less efficient the outcome. It will not be that much difficult to conclude that suspects will suffer as a result of such an inefficient system and potential defendants will escape justice, unless the system is overhauled and improved.

3.3. An overview of the practice

Almost all the data presented above show that the right to a speedy trial is neglected. The authors tell us that the major culprits are congestion and backlogs[165]. Apart from the legal *lacunae*, the capacity of the different agencies to handle the cases has apparently influenced the implementation of the right to a speedy trial. This calls for a radical overhaul of the system.

Apart from what are presented in figures above, there appears to be a practice that needs mentioning here. This is the case of prolonged adjournments. With regard to adjournment of trials, it is quite a recent memory in this country that cases use to be adjourned for a year. Thus, this

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[164] The Federal Ministry of Justice, Criminal Statistics Reports, for the years 1994 - 2006, in file with the writer. It may be argued that rate of conviction may not necessarily have any relationship with the right to a speedy trial. This writer, however, argues that any impediment in the timely resolution of cases will have a domino effect as a result of which the agencies will be occupied in entertaining cases that will ultimately be dismissed by courts. The growing number of such cases in turn creates unnecessary burden on the agencies as a result of which cases will not be processed with celerity. Thus, postponement of cases will become the order of the day and justice will naturally be delayed.

[165] The other causes are inter alia: the gap between the law and the practice, mentality of cooperation vs. isolation, and lack of accountability and resources. See, Ministry of Capacity Building, Supra, Note 65, pp.61-64.

lacuna of a fixed period to commence trial as well as repeated adjournments has undoubtedly contributed to the violation of the constitutionally guaranteed right to a speedy trial[166]. It will be interesting to note here that, the Addis Ababa Office of the Ministry of Justice requested the withdrawal of 1281 criminal cases due to mainly: failure on the part of the prosecution to submit evidences, flight of the accused, and absence of witnesses.[167] This incident is symptomatic of the courts' inability to close files with or without prejudice unless such demands are made by the prosecution. Trials have definitely been adjourned for a number of times in these cases but the incident required the intervention of the prosecution to demand dismissal without prejudice, but not a court ruling to the same effect.

3.4. Recent developments

The Ethiopian government has recently launched a serious campaign to reform the administration of the criminal justice system of the country. This is evidenced by the issuance of different documents / instruments to the same effect, such as, a draft Criminal Law Policy, a draft Criminal Procedure Law, a final Business Process Reengineering document and a Sentencing Guideline document.[168] All the documents except for the BPR document apply nationally, i.e., on federal as well as regional matters. Given this reality, it will be proper to give the highlights of the documents though in a very brief manner. Accordingly, relevant parts of the documents, except for the Sentencing Guideline, - which has no relevance to the subject at hand.

It should be noted at the outset that all the three documents envisage the incorporation of plea bargain, alternative dispute resolution mechanisms in criminal matters and diversion of some cases from the formal mainstream criminal process. These are given recognition in order to reduce the workload of the different agencies and this is a commendable trend. Despite this, it remains to be seen whether these mechanisms will really

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[166] Though the cases of the thousands of defendants accused of genocide perpetrated a decade and a half ago is a unique case, because of the complexity of the case and the number of defendants, the case took close to seventeen years to be disposed. The delay has caused public uproar so much so that public authorities were forced to say in public that "enough is enough" and the trial should come to an end as soon as possible.

[167] Letter written to The Federal High Court on Ginbot 9, 1996, Ref. No. 7-1412/2-38/96. Copy, in file with the writer.

[168] All the documents are written in Amharic as a result of which contents are translated by the writer.

achieve their intended purpose without prejudicing the rights of an accused.

3.4.1. The Criminal Law Policy of the Federal Republic of Ethiopia[169]

The Criminal Law Policy provides *inter alia*, that:

- Investigation shall be carried upon the direction or supervision of the Prosecution Office, and it should be completed within a time set in the directives to be issued according to the law and that the investigation of cases that involve suspects that are under pretrial detention shall be given priority. It also authorizes the investigating body to release a suspect on bail if it is of the of the opinion that he will appear at court whenever required to do so and the crime for which he is accused is punishable by simple imprisonment;
- Charges should be framed within the time set and failure to do so shall result in the release of the suspect on bail;
- The law will expressly provide for the time required to investigate, charge and entertain cases at courts – trials –, depending on the seriousness of the offence, the sophistication of investigation or amount of evidence required to be gathered;
- The prosecution, while deciding on a case, should take note of the fact that the case involves a public interest and that priority should be given to such cases;
- The prosecution shall have the authority to set free, or reduce the liability of those suspects who submit evidence against others with whom they were involved in the commission of a crime – criminal participants – and that this applies to crimes such as those committed by organized, armed criminals, or crimes committed by several persons and sophisticated crimes;
- The relevant authorities should hasten the investigation of those suspects who are under pretrial detention for they are denied bail and there should be a system of diversion of cases from the formal system;

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[169] Prepared by the Federal Ministry of Justice on April 21, 2009. To the best knowledge of this writer, the draft policy is still pending at the Council of Ministers awaiting final approval.

- The law will give recognition to alternative dispute resolution mechanisms more particularly in those cases that involve young offenders, first time offenders and those who have committed crimes that are punishable with simple imprisonment.[170]

The document also states that the Ethiopian criminal justice system is burdened with an increasing number of cases and that justice is delayed due to this, as a result of which, suspects are languishing in pretrial detention centers. It, thus, aims at doing away with these shortcomings and establishing a system that truly makes the exercise of the right to speedy trail a reality than a hollow right.[171] It also apparently aims at ameliorating the situation of those who may suffer as a result of delayed justice. The time limit provided for the completion of investigation, powers given to the prosecutor to release suspects on bail, framing of charges within a set time limit are important cases in point. These changes naturally call for the amendment of the relevant laws and it is hoped that this will be done after the endorsement of the document by the pertinent bodies. By way of conclusion, it may be said that though the document envisages a highly promising system, it, however, remains to be seen whether these promises will be translated into concrete legal rights.

3.4.2. The Draft Criminal Procedure Code

The draft states that one of its objectives is preventing long term incarceration of suspects.[172] In the same vein, it provides that, criminal cases should be heard within a reasonably short period of time, and an accused shall have the right to appeal from the decision or rulings of courts in the course of litigation.[173] This appears to be a new trend, for it allows interlocutory appeal which is denied under the current law.

Though it is not that much novel, the draft requires that suspects should be brought to court within 48 hours after arrest, and that remand shall be given for 29 days in cases involving terrorism and from one day up to 14 days in other cases.[174] The draft appears to give a solution to unnecessarily

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[170] See sections 3.4 and 3.6, 3.17.2.1, 3.7, 3.17.3, 3.8-3.13, 3.15, 3.17.1and 4.6, respectively for each paragraph.

[171] Sec.4.2.

[172] Art.3(1).

[173] Arts.8, 31(1) and (16).

[174] Arts.139 -141.

extended remands by providing that the court can release a suspect on bail or order his committal to a temporary place of arrest if it is of the opinion that the investigation is completed and remand is unnecessary.[175]

Furthermore, it provides for some time limits. These are:[176]

- Decisions on petitions for bail should be given within 48 hours and decisions on appeals from such decisions should be given within 8 days;
- After the completion of investigation, charges should be framed within 30 days in cases of serious crimes, 15 days in cases of medium crimes and lesser crime.

As regards sanctions for failure to observe these time limits, the draft code has allocated a provision but the draft article contains no elements. This shows that there is no consensus among the drafters on this particular point. If this is to be left out from the final enactment, the time limits will remain to be valueless. It will be interesting to note in this regard that the draft provides for the dismissal of a case / closure of the file or release of an accused if the prosecution fails to submit a charge in case when this is required in cases of addition or alteration of charges.[177] One may, therefore, be forced to question why the same solution should not apply to new charges.

The draft has also attempted to regulate adjournment of trials. It provides that, the court may adjourn the trial if it feels that this should be so and that an adjournment shall not be for more than five days.[178] The draft code has not introduced any new relief to the problems that may arise due to long and repeated trial adjournments, for it does not provide for sanctions for failure to meet the requirement.

Probably one of the innovations introduced by the draft code is the recognition given to the so called "real time dispatch" procedure wherein cases are heard soon after a suspect is brought to trial. This procedure is practiced in some courts established after the implementation of the BPR – discussed below. The draft provides that cases that involve flagrant offense but do not involve intricate evidences and those that may involve

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[175] Art.141(2).
[176] 180(2), 194 and 248.
[177] Art.253(4).
[178] Art.456.

complicated evidences but, are admitted by the suspect, can be processed through this procedure.[179]

The Criminal Procedure Code has been under revision for more than ten years and it will be difficult to say with any degree of certainty that the final draft will be enacted as a law any time soon in the future. Though the draft has introduced new trends, such as plea bargain, alternative dispute resolution mechanisms and the like, it should again go beyond these and give solutions to the problems that may arise in relation with the exercise of the right to speedy trial. The absence of sanctions to meet the time limits set by the draft is a case in point and it is submitted that this should be considered by the law maker when the draft is submitted for final enactment.

3.4.3. The Federal Business Process Reengineering Document

Business Process Reengineering, (hereinafter BPR), is in vogue at present. Almost every civil service institution is implementing this program. The BPR document contains over 150 pages and touches on different aspects of the federal criminal justice system. This writer will focus on the most relevant parts to the issue at hand.

The document begins by showing the current state of the performance of the agencies of the criminal justice system in general. It shows that the quality of service is too bureaucratic, costly, and sub standard in general. It promises to change this feature and deliver a fast justice that meets the expectations of all stakeholders.[180]

The document states that, in a study conducted on cases that were entertained in 1999 and 2000 EC, or 2007 and 2008 GC, the conviction rate was found to be, 33% and the quality of service of all processes starting from investigation up to decision was found to be 44.59%. It envisages to raise this percentage to 90%.[181]

As regards time required to process a case starting from investigation up to final decision, the average time was find by the study to be four years and one month. The document envisages to radically reducing this time. It proposes to complete the investigation and litigation of:

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[179] Art.466.

[180] Sec.1 , Introduction.

[181] Sec.10(a).

-serious and complicated cases that used to take 180 days - within 45 days;
- medium cases that used to take 180 days - within 30 days; and
- less serious cases that used to take 30 days - within 3 days.

It aims at improving conviction rate and quality of investigation and litigation to reach up to 95 %.[182]

One of the major innovations of the document is to establish a team of investigators and prosecutors so that all members will work together throughout the process and decide on issues that arise therein. It is expected that this new process will do away with the shuffling of files between prosecutors and investigators for reinvestigation. The document also aims at limiting the time required for remand as follows: [183]

- Simple cases – no need for remand;
- Serious cases – up to 45 days; and
- Complicated cases – up to 90 days.

Regarding the repeated adjournment of cases, the document states that there should be a manual that sets the limit within which a file should be completed and the number of acceptable adjournments.[184] As regards period of limitation, the document proposes that the time should run in favor of an accused even if a case is pending at trial.[185] This is a really groundbreaking position, for none of the other documents has attempted to deal with the issue. This also proves that the position of the criminal code on the issue has created this problem and the dismissal of a case even before the maturity of the absolute period of limitation is a panacea to this ever nagging issue. This position, is, therefore, very commendable.

The document further provides that: the prosecutor should be authorized to pass a final decision on cases that he handles – probably to do away with the requirements that need approval from a superior; number of remands and adjournments should be limited by the law and that an investigating officer should be given the authority to release a suspect on bail provided that the offence of which one is accused is bailable.[186]

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[182] Sec.11.
[183] Sec.12(2) and (6).
[184] Sec.12(17).
[185] Secs.13 and 14.
[186] Secs.13 (47), 52, 54 and 134.

One may rightly be puzzled as to whether or not the reforms proposed in the document are compatible with the laws currently in force. The facts that investigation should be completed within a limited time; remand is to be limited to specific periods only; adjournments should be limited in time; statute of limitation should run in favor an accused if he is standing trial and that a prosecutor is to be given the power to pass a final decision without consultation with a superior and that he can release a suspect on bail, are all new situations that cannot be performed under the current operational laws. These, situations naturally call for the amendment of the relevant provisions of the laws. If the relevant laws and their provisions can be amended so as to adjust to the newly proposed reform, it will be hoped that they will advance the exercise of the right to a speedy trial.

It is worth mentioning here that, under the FDRE Constitution,[187] it is the federal government alone that is given the power to enact criminal laws. Thus, the implementation of the newly introduced changes demands the amendment of the Federal Criminal Code. As far as the practice is concerned, media reports abound that after the implementation of the highly touted BPR program, legal cases are disposed within minutes or hours – mostly in cases of flagrant offences – or much shorter periods than the previous practice. According to the Federal BPR document, in Tigray Region, the time required to process simple criminal cases was 719 days and is now reduced to 5 days. Similarly, medium cases are processed within 17 days and cases that demand technical evidences are processed within 32 days. Moreover, 360 upon complaint offences were disposed within a day. Furthermore the conviction rate in the Southern Nations, Nationalities and Peoples Region has gone up to 98% and in Oromia Region, simple and serious criminal cases are disposed within 5 hours up to 6 days. The conviction rate in the same region has risen to 96%.[188]

The achievements of the BPR process are just too good to be true. Though the effort to shorten the time to process criminal cases is by any standard commendable, it needs further studies to gauge whether the process has actually benefited suspects and accused individuals. We are in a country wherein the right to defense counsel is almost non-existent in practice.

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[187] Art.55(5) of the Constitution provides that "[the House of Peoples' Representatives – the federal legislature] shall enact a penal code . The States may, however, enact penal laws on matters that are not specifically covered by Federal legislation."

[188] The Federal BPR document – Secs.8.2 (a, b, and c).

Thus, one may be tempted to raise the issue of a rushed justice. As the saying goes, justice rushed is justice ruined. So, has the system managed to reduce time required to process criminal cases at the cost of this right? We expect the government to come up with another extensive research outcome similar to the Base Line Study discussed above and evaluate the effectiveness of the process in light of all the legal rights enshrined in the relevant laws including the Constitution[189]. Till then, given the fact that the process is new and needs time to take root and bring about a really profound change in the system, it will be very premature to say anything about it at this stage.

Conclusion

According to one report, the prison population in July 2003 was about 65,000 which was well below the prison population of many African countries.[190] The prison population in 2003/4 and 2004/5 was close to 80,000.[191] The data for the subsequent years up to 2009 do not show a significant change either. Given the increase in population, the above ratio still stands good. Despite such a low level of criminal activities the different agencies of the criminal justice system could not handle criminal cases with the necessary speed that is required of them.

The purpose of this article is not to name and shame any of the agencies, for their predicament is understandable to all. If we put aside deliberate abuses, which are the exception than the rule m of the shortcomings are

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[189] The only available source in this regard, i.e., the Federal Supreme Court's Report, published in Chilot News Bulletin, shows that most of the criminal cases are disposed within a short period of time. This source cannot be taken as an indicator of the speed within which such cases are disposed at other courts, for the Supreme Court by and large entertains cases on appeal, put differently, it does not serve as a first instance court, except for exceptional crimes. Thus, given the fact that the appellate court is not necessarily required to repeat the whole process and can dismiss a case without any need to call the parties and the Court of Cassation entertains cases that involve questions of law only, it may be presumed that such cases do not take that much time to be disposed compared to first instance courts. Thus, a research with a similar scope and themes as that of the Base Line Study discussed above is required to show that the intended resulted have been indeed achieved.

[190] Ministry of Capacity Building, Supra, Note 65, p.197

[191] See Central Statistics Agency, Law and Order data base, number of prisoners found in regional and central prisons, at www.csa.gov.et. This data do not include those that are on remand. Note also that the data on other subsequent years till 2009 do not evince a radical change. The data shows that the figures registered for the years 2005/6, 2006/7, 2007/8 and 2008/9 were, 72,211, 80,246, 85,664 and 86,366 respectively.

systemic. They can be rectified through proper legislation and infusion of resources. Thus, listing all the shortcomings of the system (diagnosis) and suggesting all possible remedies (prescription) is outside of the scope of this paper. This is so, because a detailed work has been done by other bodies – more particularly, the baseline study done by the Ministry of Capacity Building - and this writer cannot forward any different silver bullet solution. It also appears that the BPR Program under implementation is a response to the findings of these researches. It is, therefore hoped that both the program and the laws to be enacted in the future will be informed by the different solutions forwarded by the authors of the researches.

Notwithstanding the above remarks, this writer makes the following suggestions:

- The country should adopt a pragmatic criminal law policy that should seriously take into account the implementation of the constitutionally guaranteed right to a speedy trial.[192]
- The different laws that contain provisions pertaining to the right to a speedy trial should be amended in such a way that each transaction in the different agencies should be performed within definite time limits.
- The laws should also provide sanctions for failure to observe time limits.
- The case of those arrested and accused but not bailed out for one reason or another, should be given priority over those who are released on bail.[193]
- In deciding adjournments, more particularly in the case of open ended / ends of justice continuance, the law should take into account the standards adopted in other jurisdictions to decide on adjournment or continuance – discussed under Section Two.[194]

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[192] The current criminal law policy is a draft but not a final document. Thus, it will be helpful to adopt it with all the necessary changes required to implement the right to speedy trial.

[193] It is here suggested that the Speedy Trial Standards of the American Bar Association, Supra Note 2, can be availed to adopt the future Ethiopian legislation on the subject.

[194] The ends of justice continuance under Arts.19/4 of the Constitution and 94 and 95/2 of the CPC discussed above in particular, can benefit from the American experience. These articles as discussed in the pertinent section, allow for indefinite adjournments – directly or indirectly. The American experience, however, tells that such problems can be mitigated if reasonable standards are adopted.

- The contents of the Criminal Code of Ethiopia on period of limitation should be reconsidered and amended so as to remove ambiguities and further the exercise of the right to speedy trial.
- The European experience shows that preventive remedies such as interlocutory appeal, entrusting investigation to a court or another body in cases of delayed investigation, and compensatory remedies such as pecuniary and non pecuniary reparation, reduction or mitigation of sentence, a mere declaration of guilt [on the part of the agency responsible for the delay] and a disciplinary action against a dilatory judge, are put in place to deal with the issue of delayed justice. It is submitted that the experience of European countries should serve as a source of inspiration in adopting a future policy.[195]

If there is good will and a real determination to mold the face of the Ethiopian criminal justice system in a good shape, the way out of the predicaments is simple though it may take time. It is hoped that the concerned authorities will heed the different recommendations mentioned here as well as other sources and make good the deficit suffered so far. Moreover, the future Criminal Procedure Code should address the different issues contained herein and come up with practical solutions that can do away with the legal and practical deficiencies of the Ethiopian Criminal Justice System. This law is expected to shape the legal landscape for a long time to come. Accordingly, it is hoped that it will not end up repeating the same shortcomings of the existing laws.

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[195] Venice Commission, Supra Note 3, pp.32, 33; 44 – 46 and 59 -62.