



**Jimma University School of Law and Governance**

**LLM in Human Rights and Criminal Law Program**

**THE ROLES OF PUBLIC PROSECUTORS IN THE ENFORCEMENT OF THE RIGHT  
TO SPEEDY TRIAL IN ETHIOPIA: THE CASE OF KAMBATA TEMBARO ZONE,  
SOUTHREN NATIONS NATIONALITIES AND PEOPLES REGION**

**A Thesis Submitted to the College of law and Governance Studies of Jimma University in  
Partial Fulfillment of the Requirements of the degree of Master of Laws in Human Rights  
and Criminal Law**

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**Declaration Statement**

I, Tesfaye Tadesse Mamiru, hereby declare that this research is original and has never been presented in any other institution. To the best of my knowledge, I also declare that all materials used have been duly acknowledged.

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## **Abstract**

*As stated under the FDRE and SNNPRS constitutions, accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. Right to speedy trial is also a guarantee for arrested or detained persons and they have right to be brought before a court within 48 hours of arrest and the additional time given for investigation has to be conducted respecting arrested person's right to a speedy trial. Many international and regional human rights instruments guarantee the right to speedy trial. At national level, the FDRE and SNNPR give guarantee to the protection of the right to speedy trial. To avoid the problem of delay and prolonged pre-trial detentions, prosecutors have given with broad roles and mandates in the administration of criminal justice starting from involving in pre-trial crime investigation to post trial proceedings including appeal and execution of sentences. Various international and regional laws and standards such as Guideline on the roles of prosecutors, adopted by United Nations congress on prevention of crime and treatment of offenders require prosecutors to perform all the power and mandates given to them fairly, consistently and expeditiously.*

*The Federal and SNNPR attorney general establishment proclamations also requires prosecution office to involve actively in crime investigation stages to avoid unlawful arrest and prolonged detentions in pre-trial crime investigation stage. The objective of this study is to assess the roles of public prosecutors in enforcement of the right to speedy trial in Kambata Tembaro Zone. The study examines whether prosecutors in study area exercises their roles and mandates effectively and efficiently to ensure the enforcement of the right to speedy trial. To analysis this, researcher has collected data from different stake holders. Accordingly, the findings of the study shows that, prosecutors in study area faces many challenges in their endeavor to enforce the right to speedy trial .They fails to perform broad mandates given to them in the administration of criminal justice effectively and efficiently. Due to this, in study area, arrested or accused persons face unnecessary delay, prolonged detention and unlawful arrest.*

***Key words-public prosecutors, Kambata Tembaro zone, arrested and accused persons, right to speedy trial, enforcement***

## **Acronyms**

|         |  |
|---------|--|
| ACHR:   | American Convention on Human Rights                            |
| ACHPR:  | African Charter on Human and people Rights                     |
| ADR     | Alternative dispute resolution                                 |
| Art.    | Article  |
| B.C     | before Christ  |
| E.C     | Ethiopian calendar   |
| FDRE:   | Federal Democratic Republic of Ethiopia                        |
| ICCPR:  | International Covenant on Civil and Political Rights           |
| ICESCR: | International Covenant on Economic, Social and Cultural Rights |
| Para    | Paragraph  |
| UDHR:   | Universal Declaration of Human Rights                          |
| UN      | United Nations   |
| Vs.     | Versus   |
| SNNPR:  | Southern Nation Nationalities People Regional state            |
| WWII    | Second World war   |

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# CHAPTER ONE: INTRODUCTION

## 1.1 Background of the study

The mode of the Criminal Justice System and the powers of the public prosecutors in the administration of criminal justice differ from jurisdiction to jurisdiction. In some jurisdiction, prosecutors only have prosecution roles, but in others they have roles in investigation in addition to prosecution. To ensure the enforcement of due process rights of criminal suspects or accused persons, countries come up with legal and institutional mechanisms to investigate, prosecute and adjudicate criminal cases. For instance, under Ethiopian criminal justice system, the purpose of criminal law is to ensure order, peace and security of the State, its peoples, and inhabitants for the public good, to deter criminals from committing further crime and make them a lesson to others by imposing proportional punishments.<sup>1</sup>This may be achieved through balancing acts taken to search truth with due process rights of arrested or accused persons.

The right to speedy trial was impliedly or expressly enshrined under many international, regional and domestic human rights instruments. For instance, under UDHR, there is no provision which expressly mentions the right to speedy trial, but article 10 of the declaration states that everyone is entitled in full equality to a fair and public hearing in the determination of any criminal charge against him<sup>2</sup>. Since the declaration states fair hearing rights and right to speedy trial is one component of fair trial rights, it is possible to conclude that the declaration impliedly recognizes the right to speedy trial.

Unlike UDHR, ICCPR clearly states the right to speedy trial under art 9(3), which read as anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to release or trial within a reasonable time.<sup>3</sup> Similarly, art 14(3) (C) of the same convention further stipulates the right of the accused or detained person to be tried without undue delay.

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<sup>1</sup>The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, Negarit Gazeta, No., Year, 9th of May, 2005, art. 1.

<sup>2</sup>Universal Declaration of Human Rights, Adopted and Proclaimed by General Assembly, Resolution 217 A (III) of 10 December 1948, art.10.

<sup>3</sup>International Covenant on Civil and Political Rights, (Adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 9(3)



The right to speedy trial was also recognized under some regional human rights instruments. Accordingly, ECHR under art 5(3) of the convention states that everyone arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release pending trial.<sup>4</sup>AmCHR under art 7(5) states that any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings.<sup>5</sup> Additionally, art 8(1) of the same convention states that every person has the right to hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal. Similarly, Art 7(1) (d) of ACHPR states that every individual shall have the right to have his cause heard and this comprises the right to be tried within a reasonable time by an impartial court or tribunal.<sup>6</sup>

The FDRE constitution states that international instruments ratified by Ethiopia become an integral part of law of land.<sup>7</sup> And it states arrested and accused persons right to speedy trial under art 19(3) and 20(1) respectively. Persons accused have the right to a public trial by an ordinary court of law within a reasonable time after having been charged and arrested persons also has the right to appear before a court within 48 hours of his/her arrest.<sup>8</sup> The right to speedy trial was also stated under art 19(3) and art 20(1) of SNNPR constitution with the same wording with FDRE constitution.<sup>9</sup>

The right to speedy trial is a guarantee for both arrested and accused persons. The above human rights instruments uses phrases which says “trial within a reasonable time”, “trial without undue delay” to indicate the right to speedy trial, and they guarantee right to be tried within a

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<sup>4</sup> European Convention on Human Rights as amended by Protocol No. 11, Adopted by the Members of the Council Of Europe on 4 November 1950 in Rome and came into force on 3 September 1953, art. 6.

<sup>5</sup>American Convention on Human Rights, “Pact of San Jose Costa Rica”, Adopted by the Inter-American Specialized Conference on Human Rights on 22 of November 1969 at San Jose and entered into force on 18 July 1978, Art. 7(5).

<sup>6</sup>The African Charter on Human and Peoples’ Rights, also dubbed as the Banjul Charter or the African Charter, Adopted on 27 June 1981 by the Eighteenth Assembly of Heads of State and Government of the African Union (the then Organization of African Union) at Nairobi, Kenya and entered into force 21 October 1986,art 7(1)(d)

<sup>7</sup>Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proc.No.1/1995, Negarit Gazeta,1st Year, No.1,art.9(4).

<sup>8</sup>Ibid, art 20(1) and 19(3).

<sup>9</sup> Revised Constitution of the Southern Nation, Nationalities and Peoples Regional State Proclamation no.35/2001, art19 (3) and 20(1).

reasonable time or without undue delay both for arrested/detained and accused persons.<sup>10</sup> Time to count reasonableness of the period differs from jurisdiction to jurisdiction. For instance, under the 6th amendment of American constitution, the guarantee of 'speedy trial' attaches only when a formal criminal charge or indictment is made and the criminal prosecution begins.<sup>11</sup> Time elapsed before the commencement of formal charge, including time to conduct investigation or time to prepare the charge can be excluded from calculation of reasonableness of the period. In India, the right to speedy trial extended from pre-trial stages to post-trial proceedings, including investigation as well as trial proceedings, including subsequent proceeding up to execution of the sentence.

In Ethiopian context, the right to speedy trial is a guarantee for both arrested and accused persons in a context of expedited justice. To this end, the FDRE Constitution states that persons arrested have the right to be brought before a court within 48 hours of arrest and in determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to speedy trial.<sup>12</sup> As stated under article 20(1) of the FDRE constitution, accused persons have the right to a public trial by an ordinary court of law within a reasonable time after having been charged. Taking the right to speedy trial as a guarantee for accused persons only by ignoring time elapsed during investigation and other criminal processes before trial results arrested or detained persons to face unreasonable prolonged detentions. It is better to include time elapse before formal charge (prosecution) in calculation of reasonableness of the period to determine whether the right to speedy trial was violated or not.

Human rights committee also states that human rights of suspects must be observed from the moment investigation starts to final disposition of the case.<sup>13</sup> To this end, the right to be tried without undue delay is a guarantee that relates not only to the time by which trial should commence, but also the time by which it should end and requires all stages must take place without undue delay.<sup>14</sup> The guarantee of the right to speedy trial applies not only to the time between formal charging of the accused and the time by which trial should commence, but also

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<sup>10</sup>Olivier, "Research into pre-trial detention in Zambia,"2011, page 1, (Accessed on November 25, 2020).

<sup>11</sup> US vs. Mc Donald (1982) 456 US I (6-8); Barker vs. Wingo, (1972) 407 US 514

<sup>12</sup> FDRE constitution(n7),art 19(3)(4)

<sup>13</sup>What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, New York, (March 2000),p.4.

<sup>14</sup> United Nations Compilation of CCPR,1984,General comment 13,p.124,para 10

requires all stages of criminal proceedings to be carried out without undue delay.<sup>15</sup>From this, it is possible to conclude that the right to speedy trial is a guarantee for both arrested and accused persons and time elapsed before formal charge to conduct investigation shall not be excluded from calculation of the reasonableness of the period.

In order to ensure respect for human rights and fundamental freedoms recognized under covenants, State parties has duty not only to include such right under domestic legislation but also obligation to adopt legislative or other measures to give effect to human rights and fundamental freedoms guaranteed under the conventions.<sup>16</sup>Thus, establishing strong prosecution institution was one among the measures to be taken to ensure the enforcement of human rights and fundamental freedoms. Since the right to speedy trial is a guarantee for both arrested and accused persons, prosecution institution should be given with broad mandates and roles to involve in all stages of criminal proceedings to avoid a problem of undue delay or prolonged detention. Also, the FDRE constitution under art 13(1) imposes duty on prosecution institution as one organ of government to respect and ensure the enforcement of due process rights of arrested and accused persons while taking steps to search the truth.

States uses different approaches to regulate the role of public prosecutors in administration of criminal justice and some gives only prosecution function and others empowers prosecution institutions to involve in all stages of criminal proceedings starting from involving in pre-trial crime investigation.<sup>17</sup>In Ethiopia, to avoid or limit the problem of unreasonable delay or prolonged detentions in which arrested and accused persons may faces awaiting trial or judgment, prosecution institutions under current Attorney General institutional arrangements are given with broad power and mandates.

The FDRE Attorney General was established to have one strong law enforcement public prosecution institution which can comprehensively protect public and government interest and to have a prosecution institution that serves with full institutional and professional independence.<sup>18</sup> It has power and duties to causes criminal investigation to be started on cases falling under the

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<sup>15</sup>General comment(n66),article 14:The right to equality before court or tribunal and to a fair trial,U.N.Doc,CCPR/C/GC/32/(2007)section V

<sup>16</sup> See art 1(1) and art 2 of AmCHR,art 2(2) of ICCPR

<sup>17</sup>Gabriel Knaul: Report of the special Rapporteur on the independence of judges and lawyers,2011, at p.5

<sup>18</sup>Federal Attorney General Establishment Proclamation No. 943/2016, promulgated in May of 2016,preamble part paragraph 1 and 2

jurisdiction of federal courts, follow-up report to be submitted on an ongoing criminal investigation, the investigation to be completed appropriately, orders discontinuation or restart of discontinued investigation when it is clearly known that there could be no criminal liability, gives the necessary instruction to police and follow up its execution by police.<sup>19</sup>

It also has power and mandate to ensure that criminal investigation which has been started by the police needs to be notified to it; makes the necessary follow up in the course of investigation; reviews completed investigation files based on evidence and law and gives no case or closing decision where condition provided under the criminal procedure law are met.<sup>20</sup> Not only that, but also it has power to institutes criminal case charges and withdraws charge when found necessary in the interest of the public, resumes withdrew charge; follows the implementation and enforcement of judgments and orders given by courts under criminal case.<sup>21</sup> Furthermore, it has power and mandates to pay visit to persons under custody at police stations and correction facilities, cause unlawful act to be corrected; take measures or cause measures to be taken based on the law against people who are found to have transgressed the law.<sup>22</sup> These roles and mandates were also stated under SNNPR Attorney General Proclamation.<sup>23</sup>

Empowering prosecutors to involve in all stages of criminal proceedings helps to ensure criminal suspects and accused persons to be tried without facing prolonged detentions or unreasonable delays. The UN guideline on the role of prosecutors recommends that the office of prosecutor take active role in the criminal investigation, supervision of the legality of criminal investigation by the police officer to ensure the enforcement of the right to speedy trial.<sup>24</sup> Public prosecutors also required to act on behalf of public interest to ensure rule of law and required to carry out their prosecutorial authority in charge of investigating and prosecuting criminal offenses with independence and impartiality.<sup>25</sup> Additionally, prosecutors were not expected to run for

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<sup>19</sup> Ibid, art 6(3)(a)

<sup>20</sup> Ibid, art 6(3)(b)(c)

<sup>21</sup> Ibid, art 6(3)(f)

<sup>22</sup> Ibid, art 6(8)(c)

<sup>23</sup> South Nations, Nationalities and Peoples' Region State Attorney General Establishment Proclamation No. 177/2018,art 6(5)(a,b,c,e,g,I,k).

<sup>24</sup>Guidelines on the role of prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, guideline 12

<sup>25</sup> International principles on the independence and accountability of judges, lawyers and prosecutors practitioner guide No. 1. 2007 at p. 71.

conviction at all costs, and they must be objective, fair and seek to ensure that the criminal proceedings operate as expeditiously as possible.<sup>26</sup>

Criminal procedure code of Ethiopia also empowers public prosecutors to give necessary orders and instructions to the police and to ensure that the police carry out their duties in accordance with the law, and it has power to close police investigation file or power to order further investigations to be carried out.<sup>27</sup> Additionally, FDRE criminal code for the interest of expedited justice imposes duty on prosecution and judge to invoke lapse of period of limitation to prosecute and to bring criminal charge even the defendant fail to invoke the same.<sup>28</sup> To this end, a prosecutor has a duty to file a case within a statutory time and any case filed after lapse of such period has to be barred in the interest of expedited justice. So the roles they play in investigation, prosecution, supervision of police or detention centers has great effect in the enforcement of the right to speedy trial.

Even broader power was given to public prosecutors in administration of criminal justice; prosecutors face many legal, practical and institutional challenges in their endeavor to enforce the right to speedy trial. This makes arrested and accused persons to face unreasonable prolonged detention or undue delays awaiting trial or judgment. Therefore, the purpose of this research is to critically analyze the roles of public prosecutors in the enforcement of the right to speedy trial and corresponding challenges which public prosecutors were facing in the study area in their endeavor to ensure enforcement of the right to speedy trial. To this end, roles and mandates given to public prosecutors starting from investigation to final disposition of the case in ambit of the right to speedy trial was discussed in detail.

## **1.2 Statement of problem**

The right to speedy trial was recognized under some international, regional and domestic legislation. Almost all states around the world recognized the right to speedy trial in their domestic legislations. FDRE constitutions under art 19(3)4) states that arrested persons to be brought to a court within 48 hours of their arrest and court while granting the additional time for

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<sup>26</sup>Recommendation Rec(2000)19, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000, was prepared by the Committee of Experts on the Role of Public Prosecution in the Criminal Justice System (PC-PR), set up under the aegis of the European Committee on Crime Problems (CDPC), p 8.

<sup>27</sup>Criminal Procedure of Ethiopia, Proclamation No.185 of 1961, Negarit Gazeta, 1961 , art 8(1) (2), art 38, 39, 42

<sup>28</sup>The FDRE Criminal Code, (n1) art 216(1) (2)

investigation shall ensure that responsible law enforcing authorities (police and prosecutors) carry out investigation respecting arrested persons right to speedy trial. The FDRE constitution under art 20(1) states accused to be tried within a reasonable time after having been charged.

International and regional human rights instruments also recognize the right to speedy trial for both arrested/detained and accused persons. For instance, art 9(3) and 14(3) (c) of ICCPR, art 5(3) of UDHR, art 7(5) of AmCHR requires anyone arrested or detained and accused to be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to release or trial within a reasonable time or without undue delay. These convention uses phrase trial within a reasonable time, trial without undue delay to indicate speedy trial right, and they recognize such right to accused and arrested or detained persons.

Since the right to speedy trial was guarantee for arrested and accused persons, empowering public prosecutors to involve in each and every process taken in the administration of criminal justice helps to avoid the problem of prolonged detention or unreasonable delay during investigation and other stages of criminal proceedings. To this end, in order to avoid prolonged detentions during investigation, police required to notify report of commission of crime to prosecutors and prosecutors has power to order police to start investigation forthwith, follow-up ongoing criminal investigation to ensure the completion of crime investigation within a statutory period or within a reasonable time.<sup>29</sup>But, even broader power was given to public prosecutors in the administration of criminal justice; they face many challenges which hinder them from performing their mandates to ensure the operation of criminal justice system as expeditious as possible.

Since power to decide on investigation files was given to public prosecutors, they may decide either further investigation to be conducted, institute charge and gives no case or closing decision where condition provided under the criminal procedure law are met.<sup>30</sup> For the interest of expedited justice, they shall give the decision they think fit as soon as possible or within a statutory period set to accomplish certain tasks. But in practice, they fail to observe the statutory period while deciding on the investigation files. Prosecutors have power to follow up execution

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<sup>29</sup>Federal Attorney Proclamation(n18),art 6(3)(a)

<sup>30</sup> Ibid, art 6(3)(b)(c)

of court orders by police.<sup>31</sup>This helps to avoid the problem of granting unreasonable long and repeated adjournments due to failure of police to execute court orders by providing insufficient reasons. Empowering public prosecutors to make continuous and regular visit to police and detention centers helps to cease unfounded cases from the very beginning.

Even prosecutors` have broad power and mandates in the administration of criminal justice, they face many practical, institutional as well as legal challenges in their endeavor to ensure the enforcement of the right to speedy trial and arrested and accused persons faces a problem of prolonged detention or unreasonable delays awaiting trial or judgment.<sup>32</sup>. For instance, concerning institutional challenges, prosecution institution was subjected to unnecessary internal and external influences and interferences that hinder prosecutors from deciding on investigation files based on law and evidence promptly or within a statutory period. They must carry out their functions in an impartial and objective manner and avoiding political, social, religious, racial, cultural, and sexual or any other kinds of discrimination.<sup>33</sup>

Practically in study area, society fails to cooperate with prosecutors due to loss of confidence on them and society takes prosecutors as political appointees and their service are taken as an extension of political institutions.<sup>34</sup>In addition to internal and external influences and interferences, there is a problem of man power in the research area that limited numbers of prosecutors were assigned in crime division irrespective of high case flow in such division. Prosecutors also lack legal knowledge and skill to decide on investigation files promptly and they lack necessary skill of investigation to direct investigation principally. This results criminal suspects or detained persons to face prolonged detention during investigation.

Legal gaps also contribute to delay. For instance, criminal procedure code under art 59(3) fails to state maximum occasion or frequency to remand the case. This makes police to ask remand for

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<sup>31</sup> Ibid, art 6(3)(f)(E)

<sup>32</sup>Interview conducted with Gexu Abera(vice president of Kambata Tembaro Zone high court),Woldeyesus(head of zone prosecution department),Teketel Dindamo(Head of zone police department),Habtamu Tadesse(president of Kachebira Woreda court),Admasu Tesfaye(president of Shinshicho town court),Dilnesaw Alemu(prosecutor of Kachebira Woreda),Zewude Mekengo(head of Hadero Woreda prosecutors),Belachew(Angacha Woreda prosecutor),Samuel Tadesse(Doyegen Woreda prosecutor) shows that there is a problem of delay in criminal proceedings in Kambata Tembaro zone[This interviews were done via phone during the stage of assessing area of the study]

<sup>33</sup> United Nations Guideline on the roles of prosecutors(24), guideline 13

<sup>34</sup> Interview conducted with Alemayew Defase, president of Kambata Tembaro Zone high court, done at his office on March 21, 2021.

indefinite frequency and judges to grant the additional remand time for any silly reasons provided by police for their failure to complete investigation in due time. Practically in study area, police most of the time commence investigation after making the suspect in custody and this results arrested or detained persons to face unnecessary prolonged detentions. This may result from failure of public prosecutors to follow up whether police was conducting investigation within a time given by courts or not. To this end, police came on each adjournment to ask additional time without doing any further investigation within the additional time given by courts.

Criminal procedure code under art 109(1) requires public prosecutors to file a charge within 15 days of receipt of the file from police, but the code fails to state effects or consequences for failure to respect the period. This makes prosecutors to file the charge at any time unless bared by period of limitation and they become negligent to observe the period. Additionally, the code fails to state a time limit to return the investigation files for further investigation. To this end, public prosecutors most of the time send the file back to police at any time, even in cases in which the suspects were ordered to remain in custody. Draft criminal procedure and evidence law even it requires maximum remand period shall not be more than 4 months at any circumstances, it fails to state clear-cut effects for failure to complete investigation within such period and it also allows the court to remand the accused in custody for an additional 20 days until prosecutor files a charge in court of law.<sup>35</sup>

Practically, proceedings from investigation to final judgment are not fully guided by principles, rules and laws in study area. These results delay in criminal proceedings. Therefore, the researcher emphasized on roles of public prosecutors in the enforcement of right to speedy trial and corresponding challenges affecting their roles. To this end, all the factors in which prosecutors were facing in their endeavor to enforce the right to speedy trial were discussed in deep under chapter four of the thesis.

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<sup>35</sup> Draft criminal procedure and evidence law of Ethiopia, 2012,article 119(1)(3)(4)



### 1.3 Literature Review

Research conducted on issues of right to speedy trial of arrested or accused persons in criminal proceedings are limited in number and scope. In order to find out works of other authors, the researcher has made unreserved search. To the extent of my reading goes, I have come across few literatures. But these literatures didn't specifically address the role of public prosecutors in the enforcement of right to speedy trial in Ethiopian criminal justice administration system in general and research area in particular. To the best of my investigation, I reviewed some related studies as follows.

Research conducted by Fiseha G,<sup>36</sup> deals about respect for human rights in pre-trial crime investigation stage. This research is confined to pre-trial stage only and not discusses the right to speedy trial and roles of prosecutors in conclusive and exhaustive manner and concludes that there is a violation of human rights during crime investigation stages. Another study done by Mengistu W,<sup>37</sup> deals about the delay of justice in Ethiopia and the Genocide trials of Derg officials. This study deals about a single case of Derg officials Genocide case which took lengthy period in Ethiopian history. He focuses on jurisprudence of ICTR and ICTY and not specifically addresses legal and institutional frameworks that govern the roles of public prosecutors in the enforcement of the right to speedy trial of arrested or accused persons in criminal proceedings. The research done by Adisu Gulilat,<sup>38</sup> deals about human rights of detained persons in Ethiopia and the study is delimited to case study of Addis Abeba detention centers and focuses on violations of human rights of detained persons in such detention center without adequately addressing the role of prosecutors in enforcement of human rights of suspected or arrested persons.

The research done by Yirgalem G,<sup>39</sup> deals about the Constraints to a Speedy Trial: The Case of Sidama Zone High Court. In this study, the researcher focuses on constraints that can affect the right to speedy trial in Sidama Zone high court and concludes that the court

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<sup>36</sup> Fiseha G, Respect for human rights in pre-trial crime investigation; the case of Oromiya Special Zone surrounding Finifine, LLM thesis in Human rights, Addis Abeba University School of law, 2015, (Assessed on 1/28/20).

<sup>37</sup> Mengistu Worku, The delay of justice in Ethiopia and Genocide trials of Derg officials, 2008/9, LLM thesis in human rights law, Central European University, 1051 Budapest Nador Utca 9, Hungary, (Accessed on 1/25/20).

<sup>38</sup> Adisu G, Human rights of detained persons in Ethiopia; A case of Addis Abeba, LLM thesis in Human Rights Law, Addis Abeba University, 2012, (Accessed on 1/5/20).

<sup>39</sup> Berega Yirgalem, The Constraints to a Speedy Trial: The Case of Sidama Zone High Court, 2018, Beijing Law Review, 9, 162-184, (Accessed on 1/31/20).

renders judgment speedily for appeal cases. However, with respect to direct suits: the writer concludes that the Sidama Zone High Court is not delivering speedy trial for its clients. In the Republic of South Africa, Chadambuka conducts research on serious offenses and rights to trial within a reasonable time.<sup>40</sup> In this research, an author addresses the seriousness of an offense as criteria to govern whether the trial is conducted within a reasonable time or not. By focusing on seriousness of an offense as a key determinant in enforcing this right, the writer fails to address other determinants in deep and also fails to address impacts of delay on arrested, accused, and victims, on public and in administration of criminal justice system at all.

The last but not least is the research done by Juwaki Y<sup>41</sup>, deals about constitutional right to speedy trial for remand prisoners in Zimbabwe. To this end, he analyzes section 18(2) of Zimbabwe constitution in line with the Bill of rights and concludes that there exists a huge gap between law and practice in Zimbabwe. He emphasizes on right to speedy trial for remand prisoners only. All the above works not specifically and adequately addresses the role of public prosecutors in enforcement of the right to speedy trial in Ethiopia. In this study, I will address legal and institutional frameworks that regulates the role of public prosecutors in enforcement of right to speedy trial in criminal justice system of Ethiopia by giving particular emphasis to Kambata Tembaro Zone Prosecution offices and I will critically examine whether suspects or accused persons right to speedy trial is respected or violated in this study area. To this end, the roles of public prosecutors from investigation to final disposition of the case within the ambit of the right to speedy trial will be discussed in detail manner.

## **1.4 Objectives of the study**

This research has both general and specific objectives which are explained as follows.

### **1.4.1 General objective of the study**

General objective of the study is to discuss and analyze the roles and corresponding challenges in which public prosecutors were facing in their endeavor to enforce the right to speedy trial in Ethiopia, with particular emphasize to the case of Kambata Tembaro Zone, Southern Ethiopia.

### **1.4.2 Specific objectives of the study**

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<sup>40</sup>Chadambuka Zv, Serious Offences and the Right to trial within a reasonable Time, (Doctor of philosophy thesis in University of Birmingham, 2012, (Accessed on, 1/5/20)

<sup>41</sup>Yvonne K.J, Towards Trial of the Forgotten; An enquiry into the Constitutional Right to a Speedy trial for Remand Prisoners in Zimbabwe, (Master thesis, The Hague, Netherlands, 2012, (Accessed on 1/28/20)

- To discuss the roles and mandates of public prosecutors` in the enforcement of the right to speedy trial,
- To analyze major challenges that public prosecutors were facing in their endeavor to enforce the right to speedy trial in Kambata Tembaro Zone,
- To discuss the adequacy of existing legal and institutional frameworks that regulates the roles of public prosecutors in the enforcement of the right to speedy trial,
- To examine measures taken or to be taken by public prosecutors on bodies who contribute for arrested/detained and accused persons to face prolonged detentions and unreasonable delays waiting trial or judgment,
- To examine whether public prosecutors in Kambata Tembaro Zone exercises their roles and mandates effectively to ensure the enforcement of the right to speedy trial,
- To suggest appropriate recommendations to overcome the challenges that prosecutors are facing while enforcing the right to speedy trial,

### **1.5 Research questions**

This research has the following research questions:

#### **Central research question:-**

- ❖ How does public prosecutors in Kambata Tembaro Zone plays their roles and mandates to ensure the enforcement of the right to speedy trial in criminal proceedings?

#### **Specific research questions:-**

- ✓ What are the roles of public prosecutors in the enforcement of the right to speedy trial?
- ✓ Is the existing legal and institutional framework is adequate to enforce the right to speedy trial in Ethiopia?
- ✓ Are public prosecutors effectively exercising their powers and mandate to ensure the enforcement of the right to speedy trial in Kambata Tembaro Zone?
- ✓ What are the major challenges that public prosecutors are facing in their endeavor to enforce the right to speedy trial in Kambata Tembaro Zone?
- ✓ Is the right to speedy trial is effectively enforced in Kambata Tembaro Zone?

### **1.6 Research Methodology**

The study relies on the roles of public prosecutors in the enforcement of the right to speedy trial in Ethiopia with particular emphasis to the case of Kambata Tembaro Zone to resolve legal, institutional and practical factors that causes delay in proceedings. Why the researcher chooses this particular research site is that research in general obviously needs time, energy and resource and empirical research requires more time, energy and finance and research also has to be scope limited. Despite this, however, the fund and time allotted for us to undertake our study is inadequate. These all factors in turn makes inevitable to choose Kambata Tembaro Zone only, although studying all areas of Ethiopia in general and SNNPR zones in particular could have been significant to understand the roles of prosecution office in enforcement of the right to speedy trial in a more comprehensive manner. Accordingly, Kambata Tembaro Zone prosecution office selected, because there is no research done in study site on the roles of prosecutors in enforcement of the right to speedy trial and also my personal observation and experience shows that there is a problem of delay in pre-trial crime investigation and other stages of criminal proceeding in study site. Thus, these conditions forced me to research on Kambata Tembaro Zone, Southern Ethiopia.

Therefore, in order to realize the research objectives, the researcher used qualitative research approach. Moreover, qualitative research approach employs different strategies of inquiry, methods of data collection, analysis and interpretation. The qualitative research approach emphasizes on qualities of entities, process and meanings that are not experimentally examined or measured in terms of quantity, amount, frequency or intensity. The data to conduct this research were obtained from different laws, books, international, regional and domestic human right instruments, legislations, analysis of cases, interviews and questionnaires to understand the facts of the case in relation to the role of public prosecutors in enforcement of right to speedy trial. In this research, socio-legal method will be applied in analyzing the information collected from stakeholders. Concerning citation, OSCOLA 2006' Oxford standard of Citation was employed in this study.

### **1.7 Study design**

In this study, the researcher employed interviews and questionnaires to gain information with regard to the roles of public prosecutors in enforcement of the right to speedy trial during criminal proceedings in Ethiopia. In addition to primary source of data gathering, the researcher

will analyze international and regional human right instruments, domestic legislations, policies, case study, strategies and programs.

## **1.8 Source of Data**

The data to conduct this research was collected by using both primary and secondary source of data.

### **1.8.1. Primary source**

In this study, the researcher used interviews and questionnaires. Each of them is provided as follows.

### **1.8.2. Questionnaires**

Questionnaires are effective methods of data collection method to get honest and impartial responses from respondents.<sup>42</sup>The justification behind using this method is the anonymous nature of the questionnaires that it helps the respondents to give reliable information independently and confidentially and information obtained through this method helps the researcher to deeply understand the role of public prosecutors in enforcement of the right to speedy trial and corresponding challenges that affects prosecutors roles in Kambata Tembaro Zone. To this end, the researcher conducted questionnaires with public prosecutors, judges, arrested or accused persons and police officers by using simple random sampling techniques. The researcher established both closed and open-ended questionnaires to all the respondents.

### **1.8.3. Interview**

Interview is another primary source of data. The justification for using this method is that it helps the researcher to gather information in-depth among different stakeholders about the right to speedy trial and the roles of public prosecutors in the enforcement of the right to speedy trial. It also helps the researcher to get reliable data to check whether public prosecutors in Kambata Tembaro Zone are enforcing the right to speedy trial of criminal suspects or accused persons. To this end, the researcher conducted interview from heads or Attorney General of public prosecutors at Zone and Woreda level, heads of court (presidents), heads of police department and police stations, officials and staff members at Kambata Tembaro Zone justice department, lawyers, defense attorneys, arrested or accused persons. The researcher employed both structured

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<sup>42</sup>Maurtala G, A Critical Analysis of the Techniques of Data Gathering in Legal Research, Journal of Social Science and Humanities, 2015, Vol.1, No.3, P.266-274.

and semi-structured interview questions, because the researcher retained some control over the direction and content to be discussed, yet the participants are free to elaborate or take the interviews in new without missing the point.

#### **1.8.4. Secondary sources**

As to secondary source of data, the researcher used international and regional human right instruments, principles, rules, and guidelines, national legislations including both substantive and procedural laws, books, journal articles, UN Human Right Committee General Recommendation, case laws and other relevant documents.

### **1.9. Sampling Methods**

#### **1.9.1 Sampling Area**

In Kambata Tembaro Zone, there are eight Woredas and four reform administrations towns. Among these, the researcher purposively selects 5 Woreda, one reform town and Zone justice department. These are Angacha Woreda, Hadero Tunto Zuria Woreda, Doyegena Woreda, Kachebira Woreda, Shinshicho town, Kedida Gamela Woreda, and Zone bureau. The researcher selects these areas purposely by taking into account time, resource, distances of the areas and accessibility of information. This study covered the role of public prosecutors in enforcement of the right to speedy trial in the above selected areas. In order to deeply analysis the roles of prosecutors in enforcement of the right to speedy trial in criminal proceedings, the researcher collected data from Zone and selected Woreda public prosecutors, judges, lawyers, police officers, arrested or accused persons.

#### **1.9.2 Sampling Techniques and Sample Size**

In this study concerning interview, the researcher employed purposive sampling technique. Purposive sampling technique is typically used in qualitative research, involving the identification and selection of individuals or group of individuals that are proficient and well-informed with the phenomena under study.<sup>43</sup>The researcher in this technique can purposively select stakeholders from sample areas who can and willing to provide relevant and adequate information. By using purposive sampling technique, the researcher conducted interview from

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<sup>43</sup>Ilker E.Sulaiman,A.Rukyan Comparison of convenience Sampling and Purposive Sampling, American Journal of Theoretical and Applied Statistics,2016,Vol.5,No.1,p.2.

selected key informants from among heads and coordinators of public prosecutors in Zone and Woreda level, heads of police, heads of court, lawyers, arrested or accused persons. Accordingly, the researcher conducted interview with seven (7) heads of public prosecutors including the head of Zone justice department, seven(7) crime division public prosecutor's coordinators,14 arrested or accused persons,7(seven) heads of court,3(three) lawyers,6(six) heads of police and 4(four) investigative police officers are going to be interviewed. Totally, the researcher conducted interview with 48 persons by considering that they gave reliable evidence with interview than questionnaires.

Concerning questionnaires, the researcher employed simple random sampling techniques to select public prosecutors, arrested or accused persons, judges, police officers from Zone and selected Woreda. The justification to use simple random sampling technique to select respondent from public prosecutors, judges, police officers, arrested and accused persons is that these respondents forms homogeneous population to this specific study. In Simple random sampling techniques, each unit of the population has equal chance of inclusion in the sample.<sup>44</sup> Accordingly, the researcher conducted questionnaires with 14 public prosecutors, 7 judges, 10 arrested/accused persons, 7 police members which are selected by using simple random sampling techniques. In general, the researcher employed questionnaires with a total of 38 respondents.

### **1.9.3. Description of the Study Area**

Kambata Tembaro zone is one of the 14 zones and 4 special Woreda in Southern Nation, Nationalities and Peoples Regional States (SNNPR) of Ethiopia. It covers the total area of 1523.06 sq.km. It has eight Woreda and four reform town administrations. The capital city of Kambata Tembaro zone, Durame was located 352 Kilometers far away from Addis Ababa and 105 kilometers far away from the capital city of Southern Nations Nationalities and Peoples Region, Hawassa. The total population of the zone is estimated to be 972138 <sup>45</sup> with a density of

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<sup>44</sup> Singh A. and Masuku.M, Sampling Techniques and Determination of Sample Size in Applied Statistics Research Overview, International Journal of Economics, Commerce and Management, 2014, Vol. II, Issue 11, p.4.

<sup>45</sup> People and Housing Census Report of Federal Democratic Republic of Ethiopia central statics Agency, 2016

212 inhabitants per square kilo meter by the year 2007.<sup>46</sup>Kambata Tembaro Zone is one among densely populated Zones in SNNPR state.

#### **1.9.4. Data collection Procedure**

To obtain reliable data, the researcher personally collected all the data to be used in the research. The data collecting instruments are initially prepared in English language and then translated to Amharic (working language in the study area) and Kambatigna (local language) to make it easier for participants to easily understand and respond to questions.

#### **1.9.5. Methods of data analysis**

The researcher used different techniques and methods of analyzing and interpreting data collected by interviews and questionnaires. Secondary sources of data like domestic laws, international and regional human right instruments, policies, reports and literatures will be examined and analyzed together with data collected from primary sources to critically examine the role of public prosecutors in enforcement of right to speedy trial of arrested or accused persons in criminal justice system of Ethiopia and to assess whether prosecutors in Kambata Tembaro Zone exercises their roles effectively to avoid undue delays in criminal proceedings.

#### **1.10 Significance of the study**

In Ethiopia, criminal proceedings starting from investigation to final disposition of the case was subjected to unreasonable delays due to legal, institutional and practical challenges. Legislative or policymaking bodies can use this research as an input to amend laws, policies and guidelines that results in delay in proceedings. This research has far-reaching importance for police, public prosecutors and judges who are usually at the front of criminal proceedings to identify their weakness on enforcing the right to speedy trial of suspects or arrested persons and to dispose their cases without undue delays. It gives recommendations on the challenges identified to the concerned bodies to take legislative and other relevant measures to avoid undue delays in criminal justice system of Ethiopia. This research will also serve as input for other researchers to conduct further researches to address the matters not covered in this study.

#### **1.11 Scope of the research and area**

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<sup>46</sup> Kambata Tembaro Development Association(KTDA) integrated practical stories and challenges,2009



From among fair trial rights, this study focuses only on speedy trial right. Thus, the main objective of the research is limited to the role of public prosecutors in enforcement of the right to speedy trial in criminal justice administration system of Ethiopia by delimiting study area only to Kambata Tembaro Zone and it does not study the situation elsewhere in other parts of Ethiopia. Legal and institutional frameworks that govern the right to speedy trial and the role of public prosecutors in enforcement of such right will be discussed in detail and data obtained from stakeholders of some selected Woreda of Kambata Tembaro Zone was analyzed to examine whether the right to speedy trial is respected or violated in Kambata Tembaro Zone. The roles of other organs and institutions may be addressed only to clarify the roles of public of prosecutors.

On the other hand, Kambata Tembaro Zone is selected because it is one of densely populated area where there is a high flow of criminal cases. In Kambata Tembaro Zone, there are 8 Woredas and 4 reform towns. To make the research manageable concerning time and resources, the researcher selected five Woredas, one reform town and Zone bureau. These are Angacha Woreda, Hadero Tunto Zuria Woreda, Doyegen Woreda, Kachebira Woreda, Shinshicho town, Kedida Gamela Woreda, and Zone department. These areas were selected purposively by taking into account limited time, resource and distances of such areas.

### **1.12 Limitation of the study**

There are certain possible expected challenges that the researcher may face while conducting research. One among such challenge is the problem of confidentiality and fear of superior or politics to give information impartially and financial constraints and poor culture of documentation of events. The last but not the least challenge is happening of Covid-19 Virus causes difficulty in collections of data.

### **1.13 Ethical considerations**

During data collection and interpretation, the researcher made due care to comply with all ethical considerations of the research. Accordingly, the researcher first secured a letter from Jimma University School of law and Governance. The researcher before going to conduct interviews or questionnaires, he has taken due care to get permission of concerned stakeholders and properly preserve and utilize the data only to conduct his research without using the information or data obtained from such bodies for other purposes. The researcher cited the names of stakeholder in

the research with their consent. Further, in the interpretation of data, the researcher provided an accurate account of the information without any bias.

#### **1.14. Organization of the study**

The study organized in to five chapters with having different titles and subtitles. Chapter one comprises background of study, statement of problem, research questions, general and specific objectives of the study, literature review, research methodology, significance of the study, scope of the research and area, ethical considerations, organization and limitation of the study. Chapter two deal about the conceptual and theoretical foundations of the right to speedy trial. Chapter three discusses the roles of public prosecutors in the enforcement of the right to speedy trial. Chapter four deals about critical analysis of the role of public prosecutors in the enforcement of right to speedy trial in Ethiopia: The Case of Kambata Tembaro Zone, Southern Ethiopia. In this chapter, legal, institutional and practical problems can be scrutinized with information obtained from stakeholders to analyzed whether prosecutors in Kambata Tembaro Zone plays their roles effectively to ensure the enforcement of the right to speedy trial and also to analyze whether such right is enforced or violated in study area. Finally, chapter five contains concluding remarks and recommendations.

## **CHAPTER TWO**

# **THE CONCEPTUAL AND THEORETICAL FRAMEWORK OF THE RIGHT TO SPEEDY TRIAL**

### **Introduction**

This chapter discusses definition of the right to speedy trial, historical development of the right to speedy trial, conceptual framework of the right to speedy trial, importance of the right to speedy trial and factors used to assess whether there is delay in proceedings or not. Fair trial right was designed to protect individuals from unlawful and arbitrary deprivation of other basic rights and fundamental freedoms. The right to speedy trial is one among fair trial rights that serves as a procedural means to safeguard arrested and accused persons from facing unreasonable delay or prolonged detentions awaiting trial or judgment. The right to speedy trial was recognized under many national, regional and international human rights instruments as a guarantee for arrested and accused persons.

### **2.1. Definition and conceptual framework of the right to speedy trial**

There is no single universally accepted definition for the term right to speedy trial. Merriam-Webster dictionary defines speedy trial as a trial conducted according to prevailing rules and procedure that takes place without unreasonable or undue delay or within a statutory period.<sup>47</sup> Similarly, Black's Law dictionary defines speedy trial as a trial that the prosecution, with reasonable diligence, begins promptly and conducts expeditiously.<sup>48</sup> It refers to the procedure in which a public prosecutor is expected to commence and dispose of a criminal case as promptly and as expeditiously as possible by playing reasonable diligence. It also defined as one "free from vexatious, capricious, and oppressive delays manufactured by the ministers of justice and it is a right of criminal suspects or accused persons which are imprisoned and admitted to bail."<sup>49</sup>

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<sup>47</sup> Speedy Trial, Merriam-Webster Online Dictionary, Incorporated, 2017, Unpaginated, Available@ <https://www.Merriam-Webster.com>, Accessed on April 22, 2020

<sup>48</sup> Brian A. Garner (Editor-in-Chief), Black's Law Dictionary, 8th Ed., West, a Thompson Business Co., St. Paul MN.2004.p.1436

<sup>49</sup> Justice Overdue: Speedy Trial for the Potential Defendant Reviewed work(s), Stanford Law Review, Vol. 5, No. 1, Stanford Law Review, p. 95, Available at <http://www.jstor.org/stable/1225967>, Accessed: April 22,2020.

The right to trial within a reasonable time and without undue delay is considered as one of the fundamental procedural rights of a person detained or accused of the commission of a crime.<sup>50</sup> But detentions awaiting trial is not an internationally accepted default practice.<sup>51</sup> In fact, international standards suggest that there are a variety of conditions that have to be met before someone can be legally detained before trial.<sup>52</sup> Unless necessary for the purpose of investigation, police has to conduct investigation before arresting the suspect in order to avoid problem of prolonged detentions. To this end, international human rights norms recognize the need for pre-trial detention provided it is applied fairly, rationally and sparingly to avoid overcrowding of detention or prison centers.<sup>53</sup>

Arrested and accused persons have the right to be tried without suffering unreasonable delay and the term reasonable delay is to mean that delay caused by exercising due diligence and without fault, but factors out of control of justice actors, and it has neither acted negligently nor unreasonably.<sup>54</sup> States also have a duty to recognize the right to speedy trial for criminal suspects or accused persons who are awaiting trial. However, international norms and standards on criminal justice do not provide effective guidance on efforts to improve practices in pre-trial detention.<sup>55</sup> It may be a delay in processing cases through the system which keeps pre-trial detainees behind bars for lengthy periods of time.<sup>56</sup> Delay in proceedings may be the consequence of legal and practical problems which do not consider adequately the need to define priorities in clearing backlogs of cases.<sup>57</sup>

United Nations Human Rights Committee asserts that, the right to be tried without undue delay relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal; and all stages must

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<sup>50</sup>Farrell, "The Right to a Speedy trial before International Criminal Tribunals.",2005, page 3

<sup>51</sup>Leslie.R, Bail and Detention Wits Justice Project, available at:[http://www.canoncollins.org.uk/robynleslie\\_bail\\_remand\\_detention](http://www.canoncollins.org.uk/robynleslie_bail_remand_detention)(accessed on 2June,2020)

<sup>52</sup> Ibid

<sup>53</sup>Schonteich,M,Pre-trial detention and human rights in Africa,2013 page 104, available at:[www.hspress.ac.za/download](http://www.hspress.ac.za/download)(accessed on March 24, 2020).

<sup>54</sup>Amoo, S K (2010) The Jurisprudence of the Rights to a trial within a reasonable time in Namibia and Zambia,Volume,2,Issue2,Journal/10-2/NLJ\_section 3,p 10 (accessed on March 24,2020)

<sup>55</sup> Supranote( n18),p.98

<sup>56</sup>Protecting Life and Dignity in Places of Detention,ICRC,Bullein No.91/2010,3 February 2010,

<sup>57</sup>Hans-Jörg, Prison overcrowding, finding effective Solutions and Strategies and best practices against overcrowding in correctional facilities,2012, page 30, (accessed on 10 April 2020)

take place without undue delay.<sup>58</sup> In General comment no. 13, human right committee also states that the right to be tried without unreasonable delay is a guarantee that relates not only the time by which trial should commence, but also the time by which it should end and judgment be rendered; all stages must takes place without delay including the review of conviction and sentence.<sup>59</sup>To this end, time taken to conduct investigation has to be considered while calculating reasonableness of the period and prosecutors has duty to ensure expedited justice to arrested, detained and also to accused persons. But most of the time delay is taken as defense tactic by public prosecutors where the prosecution has a weak case.<sup>60</sup>And there are no clearly provided remedies under international human rights instruments for the violation of the right to speedy trial, but United States jurisprudence provides withdrawal of an indictment as an effective remedy.

## **2.2. Historical Development of the right to speedy trial**

The term fair trial is a legal concept used to describe the procedural rules of a court and the treatment of criminal suspected or accused persons.<sup>61</sup> It defined as trial by a neutral and fair court, conducted to accord each party the due process rights required by applicable law; and of a criminal trial, that the accused's right to trial without delay will be respected.<sup>62</sup>Fair trial rights contains a bundle of rights under it and right to be tried without undue delay is one among fair trial rights. It connotes the protection of arrested or accused person's right during criminal proceedings.

Speedy trial is one of the early recognized right in the world which goes back to the first well noted document of individual rights, the Magna Carta of 1215 in which king John of England agreed to protect speedy trial rights of the Barons through protection against delaying of justice to all Barons in his Empire. But there is another view that indicates that the right to speedy trial was actually recognized even before Magna Carta under Assize of Clarendon which is a legal

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<sup>58</sup> United Nations Human Rights Committee General Comment No. 32, Article 14: Right to equality before Courts and Tribunals and to a Fair Trial, Geneva, July 27, 2007, Paragraph 35, P. 11

<sup>59</sup>United Nation compilation(n14),para 10,p.124

<sup>60</sup> Communication no.639/1995,W.Lawson Richards and T.Walker v.Jamaica(Views adopted on 28 July 1997),in UN doc.GAOR,A/52/40(Vol II,para,8.2.p.189

<sup>61</sup> Wise G,What is fair trial?, available on `[http://www.wisegeek.com/what\\_is\\_a\\_fair\\_trial.htm](http://www.wisegeek.com/what_is_a_fair_trial.htm),accessed on April 2,2020

<sup>62</sup>Webster's New World Law Dictionary (2010) page 20, available at:<http://www.yourdictionary.com/fairtrial> (accessed on June 2,2020)

code that comprises 22 articles and recognizes the right to speedy justice to all litigants during the reign of Henry II (1154-1189).<sup>63</sup> The right to speedy trial in American history dates long before the drafting of their constitution and most of British colonies in America had their due process protection in their own constitution and entitled to all the rights and liberties confirmed by Magna Carta to all subjects of Great Britain.<sup>64</sup>

After reviewing the brief history and emergence of speedy trial protection in the world, the focus will be on the source and purpose of protection in American legal system. According to American legal system, speedy trial right can be invoked from six different sources. The first source is the six amendments, the second protection is found in the application of due process clause of Fifth Amendment, third protection is provided under in different state constitutions, fourthly under federal and state statutes promulgated for the protection of speedy trial, the fifth is provided by means of rules of the court and the last source is found in the common law. Today unlike Magna Carta, the right to speedy trial is provided to all without any discrimination and it stated under many domestic, regional and international human rights instruments.

### **2.3. The importance of speedy trial during criminal proceedings**

The ultimate goal of the right to speedy trial is providing justice to arrested, accused, crime victims and to general public promptly in all process that were taken to ascertain the innocence or guilty of criminal suspects. While searching for truth, there should be a balance between the two conflicting interest called crime control measures taken to punish guilty and due process measures taken to protect fair trial rights of the suspect or accused including the right to speedy trial. To this end, public prosecutors were expected to commence and dispose of a criminal case as promptly and as expeditiously as possible by playing reasonable diligence to avoid unnecessary delays in all stages of criminal proceedings.

Due to historical and legal facts in different legal system, the purpose of the right to speedy trial might be diverse. Some scholars argue that the purposes of the speedy trial guarantee are as twofold. The first one is that it protects defendant's constitutional right to receive speedy justice

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<sup>63</sup> Rhonda W., Procudural due process, A reference guide to the United States Constitution, published by greenwood publishing group, 2004, p.1-2.

<sup>64</sup> Dj.Galligan, Due process and Fair procedures, A study of administrative procedures, Clarendon press, oxford, p.188

and the second one is to serve public interest in bringing prompt criminal proceedings.<sup>65</sup> It serves as a guarantee to protect defendant from undue delay and from undue or oppressive incarceration prior to trial, to minimize anxiety, public accusation and to limit possibility of hampering the ability to defend and also the ability to prove commission of the crime due to disappearance of witnesses or the fading of memories, to protect defendant from long incarceration without conviction and serves public interest by sending those who found guilty to jail promptly.<sup>66</sup> It also helps to keep a person who has not yet been convicted from serving lengthy jail time, to lessen the publicity of the impending trial, and delay in a trial results in a state of continued accusation and is thus anathema to the presumption of innocence.<sup>67</sup>

The right to speedy trial helps accused or arrested persons from incurring unnecessary financial loss and to compensate crime victims promptly.<sup>68</sup> Prolonged pre-trial detention forces the accused or arrested persons to plead guilty to avoid or limit unfavorable conditions of prison or detention centers.<sup>69</sup> It also benefits society in general by sending criminal to jail promptly when they found guilty.<sup>70</sup> Prompt sending of those who found guilty of a crime to jail helps to get public confidence in criminal justice system. Prosecutors have a duty to prove the commission of a crime beyond reasonable doubt.<sup>71</sup> Delay may result the prosecution to loss evidence which is necessary to prove the commission of crime to the required degree of proof and such loss of evidence can result in drop out of the charge and creates chance for criminals to escape conviction.<sup>72</sup> It also causes backlog of cases that result in prison overcrowding and expose defendants who are not bailed to dirty and below standard prison or detention conditions.<sup>73</sup>

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<sup>65</sup>Tinsely, J.E, Prejudice resulting from unreasonable delays in trial, J.D, American Jurisprudence proof of facts, second database updated July 2008, p.46

<sup>66</sup> Ibid

<sup>67</sup> Chadambuka, Z. *Serious Offences And The Right To Trial Within A Reasonable Time*, 2013, 1 Essex Human Rights Review Vol. 9 No. 1, page 3

<sup>68</sup> ABA Project on Minimum Standards for Criminal Justice: Standards Relating to Speedy Trial, Institute of Judicial Administration, 1967

<sup>69</sup> Ibid

<sup>70</sup> Stephen F. Chepiga, Speedy Trials: Recent Developments Concerning a Vital Right, The Fordham Urban Law Journal, Volume 4, Issue 2, Berkeley Electronic Press, 1975, P.352

<sup>71</sup> Neeraj Tiwari, Fair Trial vis-à-vis Criminal Justice Administration: A critical Study of Indian Criminal Justice System, Journal of Law and Conflict Resolution, Vol. 2(4), April 2010, Available at <http://www.academicjournals.org/JLCR,p.70>

<sup>72</sup> Ibid

<sup>73</sup> Ibid

The risk of the delay affects both prosecutor and defendant, but affects defendant worse than prosecutor, because, it is defendant's right under determination before the court of the law that the right to speedy trial safeguards accused's interest from long trial.<sup>74</sup> A person can be considered as an accused when he/she is suspected of criminal activity, when an indictment is filed against him/her or when the person is actually arrested after being charged.<sup>75</sup> Accused faces unreasonable delays and such delays in criminal proceedings can be committed either intentionally or by negligence of justice actors and also by arrested or accused persons.<sup>76</sup> Every person facing a criminal charge shall have the right to be tried without undue delays and government prosecutor may not delay trial of criminal suspect arbitrarily, indefinitely and has duty to perform their roles with reasonable diligence, promptly and expeditiously.<sup>77</sup>

#### **2.4. Factors used to assess delay in criminal proceedings**

In principle, unreasonable delay occur when the time taken for a criminal matter to be resolved is over and takes more time than necessary to resolve the cases. According to the United States Lawyers Committee for Human Rights, with regard to delay in a trial, the time limit begins to run when a suspect or an accused person is informed that the authorities are taking specific steps to prosecute him/her.<sup>78</sup> What to mean reasonable time is not clearly defined, and its reasonableness can be assessed in the light of the particular circumstances of the case, particularly complexity of the case, conduct of applicant and competent authorities.<sup>79</sup>

States uses different approaches to determine whether there is delay or not, but two most commonly used approaches to govern the issue of delay in criminal processes are setting statutory period by legislative body to commence and dispose the case and the second is approach is by letting power to determine whether there is delay or not to the discretion of courts.<sup>80</sup> Concerning the first approach, delay is said to occur when there is no conformity with the statutory period provided by law and certain periods of necessary delay should be excluded

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<sup>74</sup> Herman,S,N,The right to speedy and public trial ;A reference guide to the United Nations Greenwood publishing,p.45

<sup>75</sup>United Nations compilation(n14),p.89

<sup>76</sup> Ibid

<sup>77</sup> International Criminal Tribunal in Rwanda and International Criminal Tribunals in former Yugoslavia art 20(4)(c) and art 21(4)(c) respectively

<sup>78</sup> United Nations Lawyers Committee for human rights,2016,p 4

<sup>79</sup> European Court of human right,Kemmanche v. France,judgement of 27 November 1991,series A,No.218.p.27

<sup>80</sup> Jason Payne, Criminal Trial Delays in Australia: Trial Listing Outcomes, Research and Public Policy Series No. 74, Australian Institute of Criminology, 2007, p. 7.



in computing the time for trial and it helps to avoid adverse effects of delay and makes justice actors to commence criminal proceedings within such statutory period.

Concerning the second approach, in default of statutory period, delay can be assessed by courts on a case by case basis by taking different factors like the length of the delay, the reason for the delay, whether the defendant demanded-or-waived-his right to speedy trial, and the prejudice to the defendant as a result of the delay.<sup>81</sup> This stand is clearly reflected in the US Supreme Court's decision in *Barker v Wingo* case which is taken as a reference point in many other legal systems. In this approach, it is left for the discretion of the court to determine whether there is violation of the right to speedy trial or not by taking above stated and other related factors.

Length of the delay can be determined based on individual facts and circumstances of the case by considering complexity of the case, conduct of the accused and authorities and such time shall run from the time when the accused is informed that the authorities are taking specific steps to prosecute him/her to final judgment.<sup>82</sup> The delay can be found at the trial or even the appeals stage, in addition to the investigation stage. At the trial phase, a delay due to ineffective organization of the trial may also constitute a violation of the right to speedy trial.

The other is by considering the source and reason of the delay. Delay caused by accused can't constitute violation of the right to speedy trial and delays caused by prosecutor without good cause or intentionally constitute violation of the right to speedy trial.<sup>83</sup> The failure of the prosecutor to bring the prosecution timely including its evidence and witnesses on its behalf should be one of the reasons for the delay and defendant to secure relief on a speedy trial claim.<sup>84</sup> Reasonable delay caused by factors outside the control of justice actors has to be deducted from the calculation of unnecessary delay in disposition of criminal cases.

Renunciation of the right to speedy trial by the defendant is also other factor used by court to determine the violation of the right to speedy trial. The waiver of such right can't be inferred from silence of the accused and the renunciation should be an intentional relinquishment or

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<sup>81</sup> What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, New York, March 2000, p.16

<sup>82</sup> Zvikomborero Chadambuka, Serious Offences and the Right to Trial within a Reasonable Time, *Essex Human Rights Review* Vol. 9, No. 1, June 2012, P. 2

<sup>83</sup> H. Richard Uviller, *Barker v. Wingo: Speedy Trial Gets a Fast Shuffle*, *Columbia Law Review*, Vol. 72, No. 8, Columbia Law Review Association Inc., December 1972, p. 1392, Available at <http://www.jstor.org/stable/1121490>

<sup>84</sup> *Ibid*

abandonment of known rights or privileges which the accused waives after he/she were informed of such rights by courts and other concerned justice actors.<sup>85</sup> The last barker or balancing test is prejudice caused to the right or interests of defendant by the delay like prolonged pre-trial detention, anxiety and loss of evidences to defense.<sup>86</sup> Reasonable and good cause delays can't constitute the violation of the right to speedy trial and prosecutor has to provide strong justification or reasons for the delay.<sup>87</sup>In absence of statutory period, above and other related factors should be taken in to consideration to determine whether there is unreasonable delay in criminal proceedings.

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<sup>85</sup>Jimmie E. Tinsley, Prejudice Resulting from Unreasonable Delay in Trial, J.D. American Jurisprudence Proof of Facts, 2nd Ed., Database Last Updated July 2008.

<sup>86</sup> *ibid*

<sup>87</sup> *Ibid*

## **CHAPTER THREE**

### **THE ROLES OF PUBLIC PROSECUTORS IN THE ENFORCEMENT OF THE RIGHT TO SPEEDY TRIAL IN ETHIOPIA**

#### **Introduction**

Even the mode of criminal justice system and roles of the prosecutors differ from jurisdiction to jurisdiction, prosecutors play a fundamental role in the administration of criminal justice. In some jurisdictions, prosecutors do not enjoy statutory authority to guide and supervise police investigation and in others jurisdictions, they were empowered to involve in the case right from the preliminary level. Irrespective of the model of criminal justice, prosecutors have to discharge their duties assiduously and they have the duty to ensure that criminal proceedings were operated as expeditiously as possible.

All the countries have their own legal framework for prosecutors` role under their domestic legislation. To this end, Ethiopian criminal justice system empowers public prosecutors to involve actively in all processes taken to punish those who found guilty. Thus, empowering public prosecutors to involve in all stages of criminal proceedings helps to avoid or limit arrested and accused persons from facing unreasonable delays and prolonged detentions awaiting trial and judgment. In this chapter, such roles and mandates given to public prosecutors to ensure the enforcement of the right to speedy trial or to avoid prolonged detentions will discuss deeply.

#### **3.1. Roles during pre-trial crime investigation stage**

Since mode of criminal justice system and power of prosecutors differ from jurisdiction to jurisdiction, in some countries, prosecutors do not enjoy the statutory authority to involve in investigation of crimes and they dealt with the case only after investigation is completed.<sup>88</sup>Unlike this, public prosecutors in Ethiopia have great roles in investigation of crimes. Prosecutors shall perform an active role in criminal proceeding, including institution of prosecution and, where authorized by law or local practice in the investigation of crime, supervision over the legality of

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<sup>88</sup>In China and Pakistan, for instance, public prosecutors has no power to involve in investigation of crime and prosecutors came across investigation files after completion of investigation and power to conduct investigation was left to investigative police only.

the investigation.<sup>89</sup>Public prosecutors involvement in crime investigation helps to render expedited justice and to avoid unnecessary prolonged detention awaiting trial.

Prosecutors shall perform an active role in criminal proceedings ranging from participating in pre-trial investigation stage by exercising authority over the police objectively, impartially, professionally and supervise the legality of investigation to ensure respect for human right and fundamental freedoms.<sup>90</sup> In Ethiopian criminal justice system, investigative police and prosecutors were required to conduct investigation in collaboration with each other and it is a power of prosecutors to direct and follow-up investigation.<sup>91</sup>

Criminal procedure code of Ethiopia states that conducting crime investigation is a power and duty of police and requires police to start investigation whenever they know or suspect that an offense has been committed.<sup>92</sup> Unlike Criminal procedure code of 1961, draft criminal procedure and evidence law imposes duty on police to inform or notify forthwith to prosecution office the report of the commission of the crime made to its institution and commence investigation immediately after receipt of order of investigation from prosecutors and prosecutors shall give order of investigation forthwith.<sup>93</sup>Prosecutors also have power to direct and follow-up investigation principally and to conducts investigation by themselves when necessary.<sup>94</sup>

In Current Attorney General institutional arrangements, prosecutors are given with broader roles during crime investigation. The Federal Attorney General has power and duties to cause criminal investigation to be started, follow-up report to be submitted on an ongoing criminal investigation, the investigation to be completed appropriately, gives the necessary instruction to police, makes the necessary follow up in the course of investigation.<sup>95</sup> But in SNNPR State, prosecutors were required to involve in investigation of tough and complex crime.<sup>96</sup>Thus, giving mandates to prosecutors to involve in investigation helps to avoid arrested/detained and accused

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<sup>89</sup>Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat(United Nations publication, Sales No.E.91.IV.2), chapter I, section C. guideline 11.

<sup>90</sup>International Association of prosecutors, paragraph 4.2,section(a,b)

<sup>91</sup> FDRE criminal justice policy, prepared by Minster of justice on Yekatit 25/2003,section 3.5(a),page 10

<sup>92</sup>Criminal procedure code(n27),art 22(1)

<sup>93</sup> Draft criminal procedure and evidence law of 2012, art 63(2)(e),66(2)

<sup>94</sup> Ibid, art 62(1),art 20(1)

<sup>95</sup> Federal Attorney General Proclamation(n18), art 6(3)(a)(b)

<sup>96</sup> South Nation Nationalities Attorney General proclamation(n23) ,art 6(5)(a,b)

persons from facing unreasonable delays and it helps to avoid receipt of unclear and unfounded investigation files from police and reduces unnecessary back and forth sending of files between police and prosecutors for further investigation.

### **3.2. Power to decide on investigation reports or files**

Upon receipt of investigation files from police, it is power of public prosecutors to decide on police investigation files or reports.<sup>97</sup> To this end, police were required to forward to the public prosecutor a report setting forth, as soon as investigation is completed and on receiving the report, the public prosecutor may decide either to prosecute, order further investigations to be conducted or refuse to institute proceedings or to close the investigation files, to decide the case to be resolved by ADR mechanisms.<sup>98</sup> In the following sections, the researcher will discuss what the decisions are and when or at what conditions the public prosecutors can pass such decisions on the investigation reports.

#### **3.2.1. Role in prosecution or institution of criminal charge**

The public prosecutor has roles to exercise both during and after the completion of the investigation. Once investigation is completed, the police investigation report is forwarded to the public prosecutor to decide on it and prosecutors institute charge only on meritorious case by leaving out the non-meritorious ones. Prosecutors at Federal as well as regional level have power to institute criminal case charge by representing Federal and regional government.<sup>99</sup> For the interest of public, prosecutor has power to withdraw charge when found necessary in the interest of the public even there are sufficient evidences to prosecute, and resumes withdrew charge with consultation of the Prime Minister.<sup>100</sup>

Ethiopian prosecution is compulsory prosecution, thus prosecutor has duty to institute proceedings whenever he/she is of opinion that there are sufficient grounds for prosecuting the accused and prosecutor has duty to prosecute or may not refuse to institute the proceeding except

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<sup>97</sup>Power to decide on investigation files was given to public prosecutors, See art 38, 39, 40 and 42 of criminal procedure code of Ethiopia, art 17(1) cum art 154(1) of Draft criminal procedure and evidence law, See art 6(3)(c,e) of FDRE Attorney General establishment proclamation and art 6(5)(d,e,g) of SNNPR Attorney General establishment proclamation..

<sup>98</sup> See Criminal procedure code, art 37(2) cum art 38(a-d) ,art 154(3) of draft criminal procedure and evidence law

<sup>99</sup> See art 6(3) (e) and art 6(5)(g) of FDRE Attorney General establishment proclamation and SNNPR State Attorney General establishment proclamation.

<sup>100</sup> Ibid

on grounds stated under art 42(1)(a-d) of criminal procedure code.<sup>101</sup> As part of the suspect's right to speedy trial, the public prosecutor shall within 15 days of the receipt of the police report frame such charge as he/she thinks fit, having regard to the police investigation or preliminary inquiry, and shall file it in the court having jurisdiction.<sup>102</sup> This law fails to state consequences for the failure to respect the statutory period and this result prosecutors become negligent to respect the period by providing to insufficient reasons and courts also fail to enforce the law on the ground that the law is "silent" as to what the consequences of such failure. This makes suspect who were ordered to remain in custody to face problem of prolonged detention in such unhealthy prison or police stations.

To fill this legal lacuna, draft criminal procedure and evidence law requires prosecutors to file charge within 20 days of its decision to prosecute and if prosecutor fails to institute the charge on such period and provides enough reason for its failure to institute, court give additional 10 days, but if again fail to institute without sufficient reason, the court can order release of suspect.<sup>103</sup> The law should provide clear-cut effects for failure of public prosecutor to institute charge within a statutory period.

### **3.2.2. Mandate to close police investigation files**

Prosecutors cannot institute the charge on every investigation files brought to them and not all case or files submitted to prosecution institution goes to trial. They have authority to decide the fate of those cases. Public prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.<sup>104</sup> They should scrutinize the lawfulness of police investigations at the latest when deciding whether a prosecution should commence.<sup>105</sup> Prosecuting and bringing every investigation file to court can cause case congestion and results delays in proceedings.

Public prosecutors have power and duties to review completed investigation files based on evidence and law and gives no case or close the investigation files where condition provided under the criminal procedure law were not fulfilled or when it is clearly known that there could

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<sup>101</sup> Criminal procedure code(n27), art 40(1),art 42(1)(a-d) and art 42(2)

<sup>102</sup> Ibid, art 109(1)

<sup>103</sup> Draft criminal procedure and evidence law(98), art 204(1)

<sup>104</sup>United Nations guideline on role of prosecutors, guideline(n24),guideline 14

<sup>105</sup>Recommendation Rec(2000)19(n26),),principle 11

be no criminal liability.<sup>106</sup> They should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.<sup>107</sup> In the institution of criminal proceedings, prosecutors will proceed only when a case is well-founded and will not continue with a prosecution in the absence of such evidence.<sup>108</sup> In case in which suspects were in custody, prosecutors should give priority to decide on their cases and order immediate release of the suspect upon closing such unfounded file.

Criminal procedure code of 1961 empowers public prosecutors not to institute charge when there is no sufficient evidence to justify a conviction or there is no possibility of finding the accused or the case is one which may not be tried in his absence or when the prosecution is barred by limitation or when the public prosecutor is instructed not to institute proceedings in the public interest by the Minister by order under his hand.<sup>109</sup> Draft criminal procedure and evidence law also empowers prosecutors to close investigation files when there is no sufficient evidence and for the interest of public even there are sufficient evidences.<sup>110</sup> FDRE Crime policy of Ethiopia also imposes duty on public prosecutors to check availability of sufficient evidences before going to prosecute or to institute charge.<sup>111</sup>

### **3.2.3. Mandate to order police to carry out further investigation**

Public prosecutor upon receiving police investigation report may order further investigations to be carried out.<sup>112</sup> When prosecutors after examining police investigation reports finds that there are certain facts are not supported by evidence or that there are certain items of evidence which should be gathered, they can order investigating police officer to carry out further investigation by specifying points in which further investigation was required to be carried out.

Criminal procedure code of Ethiopia fails to state the time limit to re-send the file back to police for further investigation. To fill this legal lacuna, draft criminal procedure and evidence law requires prosecutors to send the file back to police for further investigation by specifying points in which further investigation was required to be carried out within 5,7,and 10 working days

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<sup>106</sup> See art 6(3)(c) and art 6(5)(e) of FDRE and SNNPR Attorney General establishment proclamation respectively

<sup>107</sup> Supranote(n108),Principle 27

<sup>108</sup> International Association of prosecutors, section(d)

<sup>109</sup> Criminal procedure code(n27),art 42(1)(a-d)

<sup>110</sup> Draft criminal procedure and evidence law(n98),art 154(3)(c))7)

<sup>111</sup> FDRE criminal policy(n94), section 3.10,paragraph 2,page 13

<sup>112</sup> Criminal procedure code(n27), art 38(c)

from receipt for simple, medium and serious crimes respectively.<sup>113</sup>The draft itself which was prepared to fill gaps of existing criminal procedure code fails to state clear-cut effects for failure to respect the period and such may result prosecutors to re-send the file for further investigation after passage of long time even on the cases in which suspects were ordered to remain in custody.

### **3.3. Power to visit police stations and detention centers**

Public prosecutions in addition to involving in investigation and prosecution, they have power and duties to visit police or detention centers. FDRE Attorney General Establishment proclamation imposes duties on public prosecutors to pay visit to persons under custody at police stations and correction facilities, cause unlawful act to be corrected; take measures or cause measures to be taken based on the law against people who are found to have transgressed the law.<sup>114</sup> SNNPR State Attorney General establishment proclamation also empowers public prosecutors to pays visit to suspected and inmates under custody at police stations and prisons.<sup>115</sup>Thus, public prosecutors regular visit to police stations helps to avoid criminal suspects from facing prolonged detentions or unlawful arrests by ordering police to immediately release those persons who detained or arrested illegal and to cease unfounded cases from the very beginning.

### **3.4. Supervising or following up execution of prosecutor`s or court`s orders by police**

In the performance of their duties, public prosecutors should in particular carry out their functions fairly, impartially and objectively and seek to ensure that the criminal justice system operates as expeditiously as possible.<sup>116</sup> To this end, public prosecutors may in discharge of their duties give necessary orders and instructions to police and ensure that the police carry out their duties in accordance with law.<sup>117</sup> They have power to give order and instruction to police at any stages of criminal proceedings and follow up or monitor whether police executes or complies

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<sup>113</sup>Draft criminal procedure and evidence law(n98),art 154(3)(a)cum art 154(4) of draft

<sup>114</sup> Federal Attorney General proclamation(n18),art 6(8)(c)

<sup>115</sup> South Nations Attorney General proclamation(n23), art 6(5)(i)

<sup>116</sup> Recommendation19(2000)(n26),principle 24(a,c).page 8

<sup>117</sup> Criminal procedure code(27),art 8(2)



with its instructions and orders.<sup>118</sup> Prosecutors should give lawful and clear orders, and giving vague or unclear orders may contribute to delay of the case.

Police has power and duty to execute legal orders given by prosecutors in course of investigation and other stages of criminal proceedings, duty to bring criminal charge and summon to accused and to prosecution witnesses as per court order or as per summon prepared by courts and also duty to execute orders given by court.<sup>119</sup> To this end, prosecutors in Ethiopia were given with mandate to supervise and follow up whether police executes such orders given by courts in any stages of criminal proceedings.<sup>120</sup> Prosecutorial supervision or follow up over conducts of police helps to avoid granting unnecessary long and repeated adjournments for the failure of police to execute courts orders by providing any insufficient grounds. To avoid this problem, prosecutors were given with mandate to follow up the implementation and enforcement of courts orders by police.<sup>121</sup>

In conclusion, empowering public prosecutors to involve actively in all the above roles and functions helps to avoid or limit the problem of undue delays and prolonged detentions in which arrested/detained and accused persons may face in every stage of criminal proceedings. To this end, in the following chapter, legal, practical and institutional challenges in which public prosecutors were facing in their endeavor to enforce the right to speedy trial and that may results delay in proceedings will discussed and analyzed clearly.

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<sup>118</sup>FDRE Criminal policy(95) ,section 3.5(c),page 10

<sup>119</sup> Draft criminal procedure and evidence code(n98),art 19(2)(3)(10

<sup>120</sup>Ibid, art 20(2)(8)

<sup>121</sup>See Art 5(3)(f)of FAG procl ,art 6(5)(k) of South proclamation

## **CHAPTER FOUR**

# **CRITICAL ANALYSIS OF THE CHALLENGES AFFECTING THE ROLES OF PUBLIC PROSECUTORS IN THE ENFORCEMENT OF RIGHT TO SPEEDY TRIAL IN ETHIOPIA WITH PARTICULAR EMPHASIS TO THE CASE OF KAMBATA TEMBARO ZONE, SOUTHERN ETHIOPIA**

### **Introduction**

In the previous chapter, roles and mandates of public prosecutors which help ensure arrested/detained and accused from facing prolonged detentions or undue delays have been discussed. Prosecutors were given with broad power in administration of criminal justice. They have roles in investigation in addition to prosecution and empowering them to involve actively in investigation helps to avoid problem of unnecessary prolonged detention or arrest during crime investigation stage. And also empowering prosecutors to supervise and follow up the execution of lawful orders given by court and prosecution institution itself at any stages of criminal proceedings helps to guarantee expeditious justice. Thus, enforcement of the right to speedy trial should commence from pre-trial crime investigation.

In this chapter, the researcher will critically examine whether prosecutors in Kambata Tembaro Zone exercises roles and mandates given to them effectively to ensure the enforcement of the right to speedy trial. To this end, legal, practical and institutional factors that results delay in proceeding and which affects prosecutors from exercising their roles effectively to ensure expeditious justice will be analyzed in detail. To this end, the above points will substantiate with data collected from stakeholders and review of court cases. And finally the researcher will argue whether prosecutors in Kambata Tembaro Zone play their mandates effectively and efficiently to enforce the right to speedy trial.

#### **4.1.1. Critical analysis of legal, practical and institutional factors that affects the roles of public prosecutors in enforcement of the right to speedy trial**

Prosecutors play crucial roles in enforcement of the right to speedy trial. Even though broad power was given to prosecutors in the administration of criminal justice, prosecutors may face different challenges in their endeavor to enforce the right to speedy trial that can results in delay

in criminal proceedings.<sup>122</sup>United Nations Human rights Committee held that the obligation of state parties to the convention is not only requires the inclusion of the right in the laws, but also requires practical enforcement of the rights by establishing independent institutions capable of rendering justice without unnecessary delays.<sup>123</sup>Roles and mandates given to prosecutors in administration of criminal justice can be prejudicially affected by many factors including factors associated with prosecution institution itself. Institutional factors involve the challenges that depend on the way investigation, prosecution and adjudication organs will function. Legal challenges include gaps of the laws and practical factors are taken as those challenges that are under the control of the justice actors like corruption, inability, inefficiency of prosecutors. These factors will be discussed in the following sections in detail as follows.

#### **4.2. Poor participation of prosecutors during crime investigation and supervision of police**

Even though the professional functions of prosecutors vary in different legal systems, the basic functions of prosecutors are summarized in UN Guideline which states that “Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and in the investigation of crime, supervision over the legality of the investigations, supervision of the execution of court orders.<sup>124</sup>. They have mandate to order police to start investigation, follow up or ensure whether investigation was conducted in accordance with law, visit police or detention centers, gives the necessary advice and instruction to police in course of investigation and investigate serious and complex case in collaboration with police and directs investigation principally.<sup>125</sup>

FDRE and SNNPR State Attorney General establishment proclamation imposes duty on any member of police to respect and execute final and legal decision of the prosecutor and states criminal responsibility on member of police who resists and fails to execute final and legal decision of the prosecution.<sup>126</sup>Since it is a power of prosecutors to direct investigation principally, they can give some orders to be executed by police and they have mandate to follow

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<sup>122</sup>Interview conducted with Gexu Abera, Vice president of Kambata Tembaro Zone high court, done at his office on December 4, 2020

<sup>123</sup>Lawyers committee on human rights, what is fair trial,200,para 12

<sup>124</sup>United Nations Guideline on roles of prosecutors,(n24),Guideline 11

<sup>125</sup> See art 6(3)(a)(b),art 6(8) of FDRE Attorney General establishment proclamation, art 6(5)(a,b,d,I,k) of SNNPR Attorney General establishment proclamation, art 8(2) of 1961 criminal procedure code, art 20(1,7,8),art 75(1)(3) and art 154(2) of the draft

<sup>126</sup> Federal Attorney general establishment proclamation(n18),art 23(3),South Attorney procl(n23),art 20(2)

up or supervise whether police executes the orders given by judges and prosecutors at any stage of criminal proceedings.

It is duty of police to arrest suspected or accused persons, to serve criminal charge and summon to accused and prosecution witnesses.<sup>127</sup>In study area, police fail to execute court orders as per summon prepared by courts or as per courts order due to lenient prosecutorial follow up and supervision and seeks adjournments repeatedly by providing unsatisfactory reasons for their failure to execute the orders.<sup>128</sup> For instance, in a case of Temesgen Alemayehu (2 persons) vs. prosecutor<sup>129</sup>, court adjourns the case for four consecutive adjournments to wait appearance of prosecution witnesses due to failure of police to serve summon. Judges also adjourns the case by citing any silly grounds and work load is their usual ground to adjourn the case.<sup>130</sup>In case of Dereje Simion vs. Prosecutor<sup>131</sup>, judge adjourns hearing of the prosecution witnesses for 6 times by giving more than 15 days in each adjournment by citing work load as a reason.

In research site, police most of the time fails to comply with legal decisions of the prosecutors and sometimes even refuse to execute.<sup>132</sup>Concerning orders like order to start investigation, discontinue or re-start discontinued investigation, police prefer to execute the order of their immediate boss than the lawful and final order of prosecutors.<sup>133</sup> Additionally, even the law imposes criminal responsibility on any member of police who resists and fails to execute final and legal decision of the prosecutor, prosecutors fail to take legal action on such police due to fear of attack by the police members.<sup>134</sup>

Concerning prosecutorial involvement in investigation of crimes, FDRE Attorney General Proclamation empowers prosecutors to involve actively in investigation, but SNNPR Attorney general Establishment proclamation requires prosecutors to involve in investigation of tough and

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<sup>127</sup> Draft criminal procedure and evidence law(n98),art 19(4),art 222(4)

<sup>128</sup> Interview conducted with Misigana Desta, judge of Shinshicho Town first instance court, done at his office on November 3, 2020

<sup>129</sup> Temesgen Alemayehu(2 persons) vs, Shinshicho town administration prosecutor, criminal case file 02061, unpublished

<sup>130</sup> Interview conducted with Samuel Tadesse, prosecutor of Doyegenena Woreda public prosecutor's office, done at his office on October 21, 2020

<sup>131</sup> Dereje Simion vs. Hadero Tunto Zuria Woreda Court prosecutor criminal case file 08876, unpublished

<sup>132</sup> Interview conducted with Belachew, head of Angacha Woreda prosecution office, done at his office on October 3, 2020

<sup>133</sup> Ibid

<sup>134</sup> Ibid

complex crimes only.<sup>135</sup> Giving mandate to public prosecutors to involve actively in investigation helps to ensure criminal suspects or arrested person from facing unlawful prolonged arrests prior trial and it helps to ensure whether the investigation was conducted in manner conforming arrested persons right to speedy trial as indicated under art 19(4) of FDRE constitution.

In study area, participation of prosecutors during pre-trial crime investigation was very poor due to problems associated with police and prosecution institution itself.<sup>136</sup> Concerning the problem associated with police institutions, police most of the time didn't notify the commission of a crime as well as commencement of the investigation thereof to prosecution institution and later may send incomplete, unclear or deficient investigation report to prosecution institution.<sup>137</sup> Police also conduct and send investigation files on purely civil matters and this results case congestion in prosecution office and affects power of prosecutors to decide on the files promptly or without delay and makes prosecutors to waste their time to decide on them.<sup>138</sup> The other is lack of commitment or determination on side of prosecutors to involve actively in pre-trial crime investigation.<sup>139</sup>

This poor participation of prosecutors in crime investigation can result prosecutors to receive unfounded or incomplete investigation report which may results in unnecessary sending of the files back and forth for further investigation.<sup>140</sup> This back and forward sending of the file between police and prosecution for further investigation can cause suspects or arrested persons to face unreasonable arrest.<sup>141</sup> Prosecutor's active participation in investigation of crime and making regular visit to police stations helps to avoid unnecessary prolonged detention and to cease unfounded case from the very beginning.<sup>142</sup>

#### **4.3. Failure of Prosecutor's to give decision on investigation files in due time**

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<sup>135</sup> See art 6(3) (a, b) of Federal Attorney General proclamation, see also art 6(5)(a,b) of South Attorney General establishment proclamation.

<sup>136</sup> Interview conducted with Habtamu Tadesse, president of Kachebira Woreda court, done at his office on October 13, 2020

<sup>137</sup> Ibid

<sup>138</sup> Interview conducted with Tesfahun Abera, prosecutor in Kambata Tembaro Zone prosecution department, done at his office on December 4, 2020

<sup>139</sup> Ibid

<sup>140</sup> Ibid

<sup>141</sup> Interview conducted with Melese, Prosecutor of Angacha prosecution office, done at his office on October 3, 2020

<sup>142</sup> Interview conducted with Woldeyesus Abeba, head of Kambata Tembaro Zone high public prosecutors department, done through phone on October 10, 2020

It is a power of prosecution office to decide on investigation files.<sup>143</sup> To this end, investigative police officer shall forward a report to public prosecutor as soon as the completion of the investigation and prosecutor may decide either further investigation or preliminary inquiry to be conducted closes unfounded cases, institute criminal charge or decide the case to be resolved by ADR mechanisms.<sup>144</sup> Criminal procedure code of Ethiopia fails to state time limit to close unfounded files or to send investigations files back to police for further investigation. For the interest of expedited justice, prosecutors were required to decide on investigation files or report as soon as possible after receipt from police.

Criminal procedure code of 1961 requires prosecutors to file a charge in a court having jurisdiction within fifteen days of the receipt of the police report or the record of a preliminary inquiry.<sup>145</sup> But it fails to state effects or consequences for the failure to institute a charge within 15 days of the receipt and it also fails to indicate whether such period includes consecutive days or working days only. Due to this, prosecutors may file the charge at any time they think fit and become negligent to observe the statutory period provided by law. For instance, in a case of Alemayehu Tadesse vs. Prosecutor,<sup>146</sup> prosecutor institutes a charge in a court after passage of 2 months and 24 days from the receipt of investigation file from the police. Practically in study area, time to institute a charge is counted from the day in which coordinator of prosecutors directs the file to the prosecutor and coordinators of prosecutors also fails to direct the file immediately from receipt.<sup>147</sup>

Criminal procedure code also fails to state when public prosecutors can send the file back to police for further investigation or when to pass the decision not to institute charge on the investigation files (close unfounded files). Due to this, prosecutors most of the times send the file back for further investigation after passage of long time, even in cases in which suspects were ordered to remain in custody.<sup>148</sup> This result arrested persons especially those criminal suspects

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<sup>143</sup> Draft criminal procedure(n98),art 17(1)

<sup>144</sup>See, art 37(2) ,art 38,42(2) of criminal procedure code, Art 6(3)(c,e) of FDRE Attorney General Establishment proclamation, Art 6(5)(d,e,g) of SNNPR Attorney General procl, art 172(1)(2) cum 173 of draft criminal procedure and evidence law

<sup>145</sup> Criminal procedure code(27),art 109(1)

<sup>146</sup> A person suspected for commission of theft of motor cycle and prosecution office receives the police investigation file on 2/4/2010 and prosecutor institutes a charge on 26/6/2010,after passage of 2 months and 24 days

<sup>147</sup> Interview conducted with Amanuel, investigative police officer, done at his office on November 7, 2020

<sup>148</sup>Interview conducted with Zewude Simion, Attorney and consultant at law, done at his office on December 17, 2020

who were ordered to remain in custody to face prolonged detention. For instance, in case of In case of Alemu Yohanes vs. Hadero Tunto Zuria Woreda police<sup>149</sup>,prosecutor sent the investigation file for further investigation after 28 days of receipt of the file and police re-sent back the case after a passage of 2 months and 25 days.

Prosecutor again sent the file by indicating points on which further investigation to be carried out after 9 days and again police sent back the file after 1 month and 13 days. Additionally, even they return the file on time; they fail to indicate points in which further investigation to be carried out and also return the file by giving unclear orders which can results in unnecessary sending of the file back and forth between police and public prosecutor.<sup>150</sup> To fill this gap, draft criminal procedure and evidence law requires prosecutors to decide on investigation files whether to prosecute or to close or to return for further investigation within 5, 7 and 10 working days of receipt of the file for simple, medium and grave crimes respectively.<sup>151</sup>But it fails to state clear cut effects for failure of prosecutor to respect the period.

#### **4.4. Problem associated with remand**

Persons arrested have the right to be brought before a court within 48 hours of the arrest or so soon as local circumstances or communication permits.<sup>152</sup> Where the interest of justice requires, the court may order the arrested person to remain in custody for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial.<sup>153</sup>In our cases, it is a duty of police and prosecution (law enforcing authorities who has mandate to conduct investigation) to conduct investigation in manner conforming arrested persons right to speedy trial.

The court remands the suspect for purpose of investigation, but no remand shall be granted for more than 14 days on each occasion.<sup>154</sup> The problem here is that criminal procedure code fails to state for how many occasions or frequency remand should be granted and also fails to state effects or consequences for the failure to complete investigation within a remand period given by

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<sup>149</sup> Alemu Yohanes vs. Hadero Tunto Zuria Woreda police, a person suspected for commission of rape, police investigation file number 3245/11,

<sup>150</sup>Interview with Sajin Amanuel Kebede(n 153)

<sup>151</sup> Draft criminal procedure(n98),art 154(3)

<sup>152</sup> See Art 19(3) of FDRE Constitution and art 19(3)(4) of SNNPR constitution

<sup>153</sup> Ibid

<sup>154</sup>Criminal procedure code(n27),art 29(1) and 59(2)(3)

court. This makes police to ask remand for indefinite frequency and they came on each adjournment to ask additional remand time without doing any further investigation within remand period granted by court. This may also result from lose supervision of prosecution over the activities of police to ensure whether the police was conducting the investigation in a manner conforming arrested persons right to speedy trial and such remanded suspect subjected to face prolonged detention awaiting trial.<sup>155</sup> To fill this legal lacuna, draft criminal procedure and evidence law states total remand period shall not be more than 4 months at any circumstances, but fail to provide clear cut effects for failure to respect the period.<sup>156</sup>

#### **4.5. Improper using of working hours**

Prosecution as one organ of the government has duty to respect regular working hours to perform their roles and mandates effectively and efficiently. The working days and hours of government institutions shall be applicable to working days and hours of prosecutors and any prosecutor has duty to report his late arrival, early departure or his absence from work to his immediate boss.<sup>157</sup> SNNPR prosecutor's regulation states that regular absence from work without good cause or without obtaining leave was a serious disciplinary offense and non-observance of office hours was taken as minor disciplinary offense.<sup>158</sup> In study area, prosecutors most of the time arrive late and depart early by violating regular working hours and they may appear to court even after the judge has given order on the files for their non-appearance.<sup>159</sup> In a case of Melese Birhanu vs. Prosecutor, judge closes the files for the non-appearance of the prosecutor even the prosecutors provides the reason for his late arrival, but high court orders the judge to open and entertain the case.

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<sup>155</sup> Interview conducted with Mihretu Ashebo, Advocate and consultant at law, done at his office on October 6, 2020

<sup>156</sup> When the investigation has not yet completed within additional remand period provided by law, the court may release suspect by bail and investigation continues, court order the police to pass or bring the file to prosecution office, prosecutor decide on the file within 5 working days of receipt of the file from police for simple crimes, 7 working days for medium and 10 working days for grave crimes and the suspect will acquire the right which innocent persons will have when prosecutor fail to decide within such period. Here the draft fails to indicate what will be the fate of the investigation file not decided with such period and what if the crime was non-bailable. See art 119(3) art 120(4), art 154(4) and 120(3) of draft criminal procedure code.

<sup>157</sup> South Nations prosecutors regulation no.170/2011, art 24(1)(2)

<sup>158</sup> Ibid, art 73(1)(h), art 73(2)(a)

<sup>159</sup> Interview conducted with w/ro Mulunesh, judge of Angacha Woreda court, done at her office on November 8, 2020.



The other factor that can affect effective use of regular working hours is handling meeting on working hours.<sup>160</sup> It is the general problem of our country and prosecutors as one wing of the government were not free from this problem. Prosecutors most of the time handle meeting on regular working hours and days on extra issues which are not related with their roles and mandates like politics.<sup>161</sup> This may cause case congestion in prosecution office and affects the prosecutors from passing relevant decision on investigation files promptly or within statutory period provided by law and causes delay in proceedings.<sup>162</sup>

#### **4.6. Insufficient number of prosecutors (understaffing)**

In order to ensure the effective and efficient implementation of obligation under the convention, member states has obligation to adopt such legislative or other measures as may be necessary to enforce rights recognized in the present Covenant.<sup>163</sup> These measures may include establishing a strong prosecution institution capable of enforcing rights recognized under the covenant.<sup>164</sup> To this end, government has duty to appoint or employ sufficient number of prosecutors by taking into account broad mandates given to public prosecutors in administration of criminal justice to make them capable to carry out such roles and mandates effectively and expeditiously.<sup>165</sup>

The current Attorney General institutional arrangement divides prosecutors in to different divisions as civil matter prosecutors, criminal matter prosecutors, tax prosecutors, ant-corruption prosecutors and other crime prosecutors. The problem here is that equal numbers of prosecutors were assigned to each division without considering high cases flows that occurs in criminal matters division. In study area, number of prosecutors assigned to crime division both in Woreda and Zone level were not more than two which is insufficient number compared to high case flow that occurs in crime division than civil matters division.<sup>166</sup> This hinders them to involve in crime investigation, to make regular and continuous visit to police and detention centers to cease unfounded cases from the very beginning and to avoid unnecessary sending of investigation

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<sup>160</sup>Interview with Sajin Amanuel, investigative police of Angacha Woreda police, done at his office on October 13,2020

<sup>161</sup> Ibid

<sup>162</sup> Ibid

<sup>163</sup>International covenant on civil and political rights(n3),art 2(2)

<sup>164</sup>Interview conducted with Adnew G/Medin, head of Doyegena Woreda justice office, done at his office on October 21, 2020.

<sup>165</sup> Ibid

<sup>166</sup> Interview conducted with Samuel Tadesse, prosecutor of Doyegena Woreda public prosecutor's office at his office on October 21, 2020

report back and forth between police and prosecution institution by conducting investigation in collaboration with police.<sup>167</sup>

#### **4.7. Interference of community elders**

Interfering against independent operation of the functions of the prosecutors is a crime.<sup>168</sup> FDRE crime policy as well as draft criminal procedure and evidence law recognizes the use of ADR mechanisms to solve criminal matters in a peaceful, expeditious and cost minimizing manner.<sup>169</sup> Compromise, plea bargaining and use of customary institutions proceeding were some among alternative dispute resolution mechanism.<sup>170</sup> Compromise is one among ADR mechanisms, but all crimes can't be subjected to compromise and there are certain conditions or principles to be fulfilled to end the dispute through compromise. These are: -the crime shall be the one which is punishable upon complaint or simple crime, consent of the suspect and victim to end the dispute through compromise and it is prohibited to end crimes committed by recidivists through compromise.<sup>171</sup>

In study area, community elders' interferences on functions of prosecutors by using compromise as a means. For instance, in case of grave crimes, community elders appear before a court and ask to resolve the dispute through compromise on such crimes which are not subjected to compromise.<sup>172</sup> In this time, prosecutor objects to the idea of compromise; hence the interest affected by commission of a grave crime is the interest of state or general public but not the interest of the private party.<sup>173</sup> Due to these reasons, community elders interferes on the functions of prosecution by disappearing prosecution witnesses from their residence and forces Kebele administrators to give report in writing as if they were not available in their residence.<sup>174</sup> Police, due to fear of community elders and custom of the area, brings such report to court without searching other areas that the prosecution witnesses may available and the court closes the file for a time being by respecting the right of the prosecutor to re-open the file at any time when

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<sup>167</sup>Draft criminal procedure and evidence code(98),art 52(3)(4)

<sup>168</sup>See art 24(1) and art 20(1) of FDRE and SNNPR Attorney General establishment proclamation respectively

<sup>169</sup> See art 162 of draft criminal procedure and evidence law, see also FDRE Crime policy of 2009,section 4.6

<sup>170</sup>Draft criminal procedure and evidence law(n98),art 183

<sup>171</sup>Ibid, art 165(2) (3) and art 166(2)

<sup>172</sup> Interview conducted with Abeba Dobamo, prosecutor of Hadero Tunto Zuria prosecution office, done at his office on December 27, 2020

<sup>173</sup> Ibid

<sup>174</sup> Ibid

witnesses became available.<sup>175</sup>This affects public prosecutors' duty to ensure the criminal justice system operates as expeditious as possible.<sup>176</sup>

In case of simple crimes that were punishable up on complaint, it is possible to resolve such disputes through compromise at any time before judgment. In this time, community elders after taking the case for compromise, they may ask additional time repeatedly or fails to report the result of the compromise with in a time provided by court and also fails to end the case through compromise at all.<sup>177</sup> This happens due to different factors. The first one is lack of commitment among the community elders to resolve the case within short period of time and the second one is that parties may refuse to end the case through compromise even they give their consent in court due to the imposition of grave criteria's by community elders.<sup>178</sup> Sometimes community elders appear to prosecution office before the prosecutor files charge to end the dispute through compromise, but fail to report the result within a time provided by prosecutor or reports as the compromise has not achieved after passage of long time.<sup>179</sup>This makes the prosecutors to file the charge after lapse of statutory period provided by law to institute charge.

#### **4.8.Poor participation of society in administration of criminal justice**

Participation of society has great role in administration of criminal justice. To this end, any person who is requested to cooperate with the Attorney General and public prosecutor in the execution of their powers and duties has a duty to cooperate if it is not beyond his capacity and does not cause danger.<sup>180</sup>Anyone who does not respect and enforce the decision of the Attorney General and public prosecutors; or violates the duty to cooperate become punishable with simple imprisonment or fine,<sup>181</sup> or punished as per pertinent criminal law.<sup>182</sup>In study area, there is poor

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<sup>175</sup>I Interview with Sajin Amanuel (165)

<sup>176</sup> Recommendation19(2000)(n26),Principle 24(a,b,d )

<sup>177</sup> Mekides Ayano Vs.Kembata Tembaro Zone high Prosecutor, criminal cases file no.09790, Durame, unpublished.

<sup>178</sup> Interview conducted with Tamirat Haile, Prosecutor of Kambata Tembaro Zone public prosecutors department, done at his office on October 23, 2020

<sup>179</sup> Ibid

<sup>180</sup> See art 23(1)of FDRE and art 19(1) of SNNPR Attorney General establishment proclamation

<sup>181</sup>Federal Attorney general establishment proclamation(n18),art 24(2)

<sup>182</sup>South Nations Nationalities Attorney General proclamation(23),art 20(1) of Amharic version

cooperation of society with justice actors and prosecutors fail to take action on a person who violates its duty to cooperate with public prosecutors.<sup>183</sup>

Poor cooperation of society with justice actors makes bringing criminal suspects, accused and prosecution witnesses before a court of law difficult.<sup>184</sup> This may result from loss of public confidence on justice actors and loss of protection given to witnesses and whistleblowers of criminal offenses.<sup>185</sup> Due to this, society in study area, fails to report the commission of the crime and hide themselves from giving testimony or reporting the commission of crime.<sup>186</sup> Prosecution institutions fail to give adequate protection to witnesses and whistleblowers of criminal offenses, since it is a power and responsibility of prosecution institution to decide on application to seek protection and to give protection to witnesses and whistleblowers of criminal offenses.<sup>187</sup> Due to this, society fail to cooperate with them and such loose cooperation of society causes difficulty to render expedited justice at any stage of criminal proceedings.

#### **4.9. Skill or legal knowledge gap on side of prosecutors**

To be appointed as a prosecutor, countries set the fulfillment of different criteria's. In the absence of clear criteria, it is easy to guess what type of individuals would come to power. In Ethiopia, having law education and skill necessary for prosecution work, graduate in law with diploma and have required experience or be a graduate in law with a degree or above, successful completion of pre-service training given for the sector were some among the criteria's required to be assigned or employed as a prosecutor.<sup>188</sup> It is a duty of prosecution institution to design and execute training to prosecutors through giving training on new idea and practice and through exchange of experience, thus increasing the prosecutor's professional knowledge and

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<sup>183</sup> Interview conducted with Tarefa Beyene, Kambata Tembaro Zone prosecution department prosecutor, done at his office on December 3, 2020.

<sup>184</sup> Ibid

<sup>185</sup> Ibid

<sup>186</sup> Criminal procedure code(n27),art 94(1)(2)

<sup>187</sup> Protection of Witnesses and Whistleblowers of Criminal Offences Proclamation No.699/2010,art 7(2) and art 8(1),see also art 20(10) of draft criminal procedure and evidence code

<sup>188</sup> See Art 11(2)(e,f) of FDRE AGP and SNNPR public prosecutors regulation no.170/2011,art 5(c)(e)(

<sup>188</sup> South Nation Nationalities prosecutors regulation(161),art 57

skill.<sup>189</sup>Also, it is a duty of each prosecutor to perform their duties and mandates effectively and failure to show effort and diligence at work was taken as simple disciplinary offense.<sup>190</sup>

In study area, prosecutors most of the time take too long time to decide on investigation files, pass erroneous or unclear decisions and prepare unclear charge which open for repeated amendments due to lack of legal knowledge ,skill and determination to examine investigation files in line with law and evidences.<sup>191</sup> In a case of Temesgen Alemayew vs. Prosecutor<sup>192</sup>, while preparing charge, prosecutor fails to include one of the witnesses in the list of evidences and asks amendment of the charge to include such witness and court adjourn the case for a week to wait the submission of amended charge. After receiving the amended charge, the judge adjourns the case to take plea of the accused, but on the day appointed to take plea of the accused, the prosecutor again ask to amend the charge by saying that the time of the commission of a crime was miss stated on the charge.<sup>193</sup>In a case of Tadesse Ashamo vs. Prosecutor, prosecutor while preparing charge, states date of the commission of crime wrongly and latter ask amendment of the charge.<sup>194</sup>

Additionally, prosecutors have mandate to direct investigation principally or to conduct investigation in collaboration with police, particularly in case of serious and complex crimes. Even such power and mandate was given to prosecution institutions, prosecutors lack necessary skills and techniques of investigation.<sup>195</sup>Due to this, most of the time, investigating police and prosecutor fails to agree on certain process of investigation and police also fails to perform such orders given by prosecutor in course of investigation.<sup>196</sup>Thus, disagreement or dispute between prosecutor and investigative police can results the arrested person to face unnecessary prolonged detention in pre-trial crime investigation stage.

#### **4.10. Corruption**

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<sup>189</sup> Ibid

<sup>190</sup>South Nation prosecutors regulation(161),art 73(2)(b)

<sup>191</sup>Interview conducted with Tarefa Tesfaye, Kambata Tembaro Zone high court judge, done at his office on November 9, 2020

<sup>192</sup> Temesgen Alemayehu vs., Shinshicho town public prosecutor, criminal case files no.12061, unpublished.

<sup>193</sup> Ibid

<sup>194</sup> Tadesse Ashamo vs. Kambata Tembaro Zone high Prosecutor, criminal case file no.09467,Durame,unpublished

<sup>195</sup> Interview conducted with Mitiku Mathewos, prosecutor of Kedida Gamela Woreda prosecution office, done at his office on October 13, 2020.

<sup>196</sup> Ibid

The problem of corruption is so acute in justice sectors than others.<sup>197</sup> To avoid such problem, strict criteria's were required to be appointed or employed as a prosecutor. FDRE Attorney General Establishment proclamation requires prosecutors to serve as a public servant with strict ethical condition, being impartial from conditions that may influence their decision-making capacity and ethical condition of public prosecutors shall be based on: constitutionality, respect for the law, impartiality and accountability.<sup>198</sup>SNNPR prosecutors' regulation also requires the prosecutor to be a person with good ethical behavior, exhibit good behavior and conduct within and outside the office.<sup>199</sup>Any prosecutor that may involve in taking or soliciting bribes; creating a situation which leads to an improper decision; creating inconvenience to a customer by delaying a service without a good cause become liable for serious disciplinary offenses.<sup>200</sup>

Prosecutors may involve in activities that can affects their impartiality, take bribe to simplify or aggravate the charge irrespective of the nature and complexity of the crime and fail to decide on investigation files on time to harm one of parties.<sup>201</sup>. They can intentionally delay criminal proceedings in favor or against one of the parties by using different delaying tactics. This tactics may include sending the file for further investigation by pointing out irrelevant grounds, sending the file for further investigation even after the disappearance of evidences in which further investigation was required to be conducted, become negligent to follow up and supervise execution of court orders by police in order to avoid unnecessary adjournments and causing inconvenience to parties by delaying a service without a good cause.<sup>202</sup> This contributes to delay of the case and makes the accused as well as suspect to face unreasonable delays waiting trial or judgment.

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<sup>197</sup> Mary N.P.Corruption and justice sector problem, school of law LLM thesis,2003,Adis Ababa University, page 23

<sup>198</sup>Federal Attorney General establishment procl(n20),art 11(2)(b,e,i) and art 11(3) (c)

<sup>199</sup> SNNPR Regulation(n161,)art 5(e) and art 68(5)

<sup>200</sup> Ibid, art 73(1)(a,d,e)

<sup>201</sup> Ibid

<sup>202</sup>Interview conducted with Abeba Dobamo(n179)

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATION**

#### **5.1. Conclusion**

Speedy trial right is a legal concept that describes procedural rules to protect criminal suspects or accused persons from unreasonable delays. It stated under many, national, regional and international human rights instruments. Such instruments use the phrases like trial without undue delay, trial within a reasonable time and trial without unnecessary delay. To determine the reasonableness of the period, some jurisdictions states statutory period and others left such power to the discretion of the courts. The guarantee of the right to speedy trial requires all stages of criminal proceedings to be carried out without undue delay.

Even the mode of the Criminal Justice System and the powers of the prosecutors differ from country to country, prosecutors play a fundamental role in the administration of criminal justice. In some jurisdiction, prosecutors only have prosecution roles; in others they have roles in investigation in addition to prosecution. In Ethiopian criminal justice system, prosecutors have broad power in the administration of criminal justice starting from involving in pre-trial crime investigation to post trial proceedings. In spite of these powers, prosecutors face many legal, practical and institutional challenges in their endeavor to enforce the right to speedy trial.

Budget constrains is one among the challenges which public prosecutors can face while enforcing the right to speedy trial. Government allocates limited budget to prosecution institutions irrespective of broad power given to them in the administration of criminal justice. Allocation of limited budget affects prosecutors from performing broad power and mandates given to them in the administration of criminal justice in an effective, efficient and expeditious manner.

Poor participation of prosecutors in investigation and supervision of the police is another factor for the delay of proceedings. Prosecutors have power and mandates to direct investigation principally or to conduct investigation in collaboration with police, particularly in case of serious and complex crimes. In study area, there is poor participation of prosecutors in investigation stage due to failure of the police to notify the commission of the crime as well as commencement of investigation thereof to prosecutors and also prosecutors lack commitment and determination

to involve actively in investigation phase. Due to this, prosecutors most of the time faces unfounded or incomplete investigation reports, which can results in unnecessary sending of the file back and forth for further investigation. The other is that, police most of the time fails to ensure appearance of accused or witnesses as per court order due to lenient follow up and supervision of prosecutors.

Repeated and longer adjournments were another factor that can cause delay in proceedings. Criminal procedure code as well as draft under art 94(2) and art 243(2) (a-k) respectively states illustrative grounds to adjourn hearing of any cases, and it is open to ask and grant adjournment for any sill grounds since the grounds are not exhaustive. Due to these reasons, courts most of the time adjourns the case by citing insufficient reason and work load is their usual reason to adjourn the case.

Insufficient number of prosecutor is another challenge which affects prosecutors from carrying out their roles effective and expeditiously. Since prosecution institution both in Federal and state level was administered by budget allocated by government, executive body allocates little budget irrespective of broad power given to prosecution institution. Attorney General institution lacks budget to appoint sufficient number of prosecutors to avoid the problem of delay.

Deficient investigation report affects prompt decision-making capacity of prosecutors and forces prosecutors to send the case for further investigation. Police send unclear, unfounded or incomplete investigation files to prosecutors and it makes prosecutors to waste their time by examining such files to decide on them. Sometimes even the investigation files are genuine and clear, prosecutors fail to decide on investigation reports within statutory period and arrested or accused can face undue delay or unnecessary prolonged pre-trial detention.

Criminal procedure code of 1961 requires prosecutors to file a charge in a court having jurisdiction within fifteen days of the receipt of the police report or the record of a preliminary inquiry, but prosecutors most of the time file the charge after passage of long time and the code also fails to state effects for the failure to respect such period. Criminal procedure code as well as the current draft fails to state clear-cut effects for the failure to respect statutory period provided by law. Prosecutors most of the time, return investigation files for further investigation after passage of long time and they close the file after long time even the suspect was in custody.



The other factor that causes delay in proceeding is the problem associated with remand. Arrested person remain in custody for a time strictly required to carry out the necessary investigation. Art 59 of the criminal procedure code states that no remand shall be granted for more than 14 days on each occasion. It fails to state for how many occasions or frequency the remand should be granted. Due to loss supervision of prosecutors, police come on each adjournment to seek further additional period without doing any further investigation within a time given by a court. Due to this, even persons suspected for simple crimes faces unnecessary delay during investigation due to lose participation of prosecutors in investigation of simple crimes.

The other factor that can cause delay in criminal proceeding is improper using of working hours. Working hours and days of government institutions shall be applicable to working days and hours of prosecutors, but in study area, prosecutors most of the time arrive late and depart early and absent from work without getting permission from their immediate boss and they also handle meeting on regular working hours and days. This affects prosecutors from giving effective, efficient and expeditious services. In study area, the other factor that can result in delay in proceeding is insufficient or limited numbers of prosecutor assigned in crime matters division irrespective of broad mandates given for prosecution institution in the administration of criminal justice.

Community elders interfere on the functions of prosecutors by using ADR as a means to resolve the dispute. In case of grave crimes, they appear before a court to resolve the case through compromises and work to hide or to disappear the witnesses or accused when the prosecutor objects the idea of the compromise. In case of simple crimes, they fail to report the result of the compromise with in time provided by court due to lack of commitment among community elders to end the dispute in a short time. And after taking the case for compromise, parties fail to give their consent due to the imposition of grave criteria by elders and community elders fails to resolve the case at all after taking many adjournments to resolve the case through compromise.

Participation of society has great role in administration of criminal justice, but in study area, society fails to report the commission of the crime and witnesses hide themselves from giving testimony due to lose protection given to them in study area. The other factors that can result delay in proceeding is lack of legal knowledge and skill among prosecutors. Due to this, they take too long time to decide on investigation files, pass erroneous or unclear decisions and also

prepare unclear charge. Even they have mandate to direct investigation principally, they lack necessary skills of investigation and this results arrested or accused person to face unnecessary prolonged detention and delay in pre-trial crime investigation stage. Prosecutors also involve in many activities that can affect their impartiality and they create inconvenience to a customer by delaying a service without a good cause. Even broader power was given to public prosecutors in Ethiopian criminal justice system; they face many challenges in their endeavor to enforce the right to speedy trial. Thus, proceedings in the study area takes too long time in investigation and other stages of criminal proceedings and arrested and accused persons to face undue delays and prolonged detention awaiting trial and judgment.

## 5.2 Recommendations

Some recommendations to resolve challenges that affect the roles of public prosecutors in enforcement of the right to speedy trial are:-

- Government required to allocate sufficient budget to prosecution institutions by taking into account broad mandates given to them in the administration of criminal justice and should allocate capital budget that can be exercised by the institution out of strict and bureaucratic finance system.
- Prosecutors should actively participate in crime investigation to avoid receipt of unfounded, deficient and incomplete investigation reports which results in unnecessary sending of files back and forth for further investigation. They must make continuous visit to police stations to avoid unlawful arrests and prolonged detention.
- In order to enhance their active involvement in investigation and supervision of police, government should employ sufficient number of prosecutors and also give long and short term trainings to boost their skill and knowledge. Up on their visit, prosecutors not only ask and record the name of the arrested and who arrests or detains him/her, but they must take legal measures on anyone who illegally detains or subjects them to face long incarnation and order immediate release of the suspect who detained illegally.
- Courts should not adjourn hearing of the cases for any silly grounds and not give repeated and longer adjournment without sufficient grounds. Maximum duration and frequency of adjournment as well as remand has to be stated by the law with clear-cut effects for the failure to respect such statutory period.
- Prosecutors should perform their roles and functions free from any internal and external influences and decide on investigations files based on law and evidence only and they should take legal measure on anybody who interfere on the function of prosecution.
- Prosecutors should give any decision they think fit on investigation files within statutory period provided by law and there should be a law which states clearly states effects for the failure to respect the period and audit of files must carry out periodically and continuously.
- Prosecutors should respect regular working hours and avoid handling meeting on working hours and days and disciplinary measures should impose on any prosecutor who

arrive late, depart early or absent from work without good cause and getting leave from immediate boss.

- Prosecutors must take legal action on community elders who interfere on the functions of prosecutors and contribute to delay of proceedings by using different dilatory tactics.
- Government should give adequate protection for crime informants or witnesses to enhance their cooperation with justice actors. To this end, government has to allocate sufficient budget to give adequate protection to witnesses or to crime informants and to boost the participation of the society in the administration of criminal justice.
- Government should give long and short term trainings to increase prosecutor's professional knowledge and skill.
- Prosecutors as essential agents of justice must serve as a public servant with strict ethical condition and should not involve in activities that may influence their impartiality. To this end, periodical and continuous follow up and supervisions should be taken by an independent body without affecting institutional as well as professional independence of prosecutors and measures must be taken when they found involved in activities that can influence their impartial service.

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- ✓ International Covenant on Civil and Political Rights, Adopted by the United Nations General Assembly on 1966 at New York.
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- ✓ United Nations Human Rights Committee General Comment No. 13, United Nations Compilation of CCPR,1984,p.124,para 10



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## **VI. Interviews**

- ✓ Interview with Ato Adnew Gebremedhin, Doyegen Woreda public head, done at his office on October 9, 2020.
- ✓ Interview conducted with Yialem Tafesa, judge of Doyegen Woreda court, done at his office on November 17, 2020.
- ✓ Interview conducted with Admasu Tesfaye, president of Shinshicho Town first instance court, done at his office on October 12, 2020.
- ✓ Interview conducted with Belachew, head of Angacha Woreda prosecution office, done at his office on October 3, 2020.
- ✓ Interview conducted with Misigana Desta, judge of Shinshicho Town first instance court, done at his office on November 3, 2020.
- ✓ Interview conducted with Habtamu Tadesse, president of Kachebira Woreda court, done at his office on October 13, 2020
- ✓ Interview conducted with Woldeyesus Abeba, head of Kambata Tembaro Zone high public prosecutors department, done through phone on October 10, 2020.
- ✓ Interview conducted with Samuel Tadesse, prosecutor of Doyegen Woreda public prosecutor's office at his office on October 21, 2020.
- ✓ Interview conducted with Dejene Mathewos, Prosecutor of Prosecution department, done at his office on December 4, 2020.
- ✓ Interview conducted with Yohanes Paulos, prosecutor of Hadero Tunto Zuria Woreda prosecution office, done at his office on December 27, 2020.

- ✓ Interview conducted with Dilnesaw Alemu, Kachebira Woreda prosecution office prosecutor, done at in his office on November 6,2020
- ✓ Interview conducted with Gexu Abera, Vice president of Kambata Tembaro Zone high court, done at his office on December 4, 2020.
- ✓ Interview conducted with Reta W/Gabriel, prosecutor of Doyegenena Woreda prosecution, done at his office on October 10, 2020.
- ✓ Interview conducted with Girma, Judge of Angacha Woreda court, done at his office on October 8, 2020.
- ✓ Interview conducted with Daniel Latebo, Prosecutor of Angacha Woreda, done at his office on October 21, 2020.
- ✓ Interview conducted with Temesgen Mathewos, prosecutor of Angacha Woreda Prosecution office, done at his office on November 16, 2020.
- ✓ Interview conducted with Mesafint Petros, Advocate and consultant at law, done at his office on September 25,2020
- ✓ Interview conducted with Ato Siyoum, prosecutor of Doyegenena Woreda prosecution office, done at his office on October 10, 2020.
- ✓ Interview conducted with Tesfahun Abera, prosecutor in Kambata Tembaro Zone prosecution department, done at his office on December 4, 2020.
- ✓ Prosecutor of Angacha prosecution office, done at his office on October 3, 2020
- ✓ Interview conducted with Inspector Adena, Hadero Tunto Zuria police station head, done at his office on December 27, 2020.
- ✓ Interview conducted with Zewude Simion, Attorney and legal consultant, in his office on May 6,2020
- ✓ Interview conducted with Amanuel Kebede, investigative police of Angacha Woreda police station, done at his office on November 7, 2020.
- ✓ Interview conducted with Mihretu Ashebo, Advocate and consultant at law, done at his office on October 6,2020
- ✓ Interview conducted with Tarefa Abeba, Attorney and consultant at law, lecturer of Wachamo University law school, done at his office on December 3,2020
- ✓ Interview conducted with Fikirab, head of Angacha Woreda police Station, done at his office on November 7, 2020.

- ✓ Interview conducted with Temesgen Manado, Doyegena Woreda court president, done at his office on October 10, 2020.
- ✓ Interview conducted with Tarefa Beyene, Kambata Tembaro Zone prosecution department prosecutor, done at his office on December 3, 2020.
- ✓ Interview conducted with W/ro Mulunesh, Judge of Angacha Woreda court, done at her office on judge in her office on November 8, 2020
- ✓ Interview conducted with Zewude Simion, Attorney and consultant at law, done at his office on December 17, 2020.
- ✓ Interview conducted with Abeba Dobamo, prosecutor of Hadero Tunto Zuria prosecution office, done at his office on December 27, 2020.
- ✓ Interview conducted with Tamirat Haile, Prosecutor of Kambata Tembaro Zone public prosecutors department, done at his office on October 23, 2020.
- ✓ Interview conducted with Mitiku Mathewos, prosecutor of Kedida Gamela Woreda prosecution office ,done at his office on October 13,2020
- ✓ Interview conducted with Alemayew Defase, president of Kambata Tembaro Zone high court, done at his office on November 9, 2020.

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## **APPENDICES**

### **Interviews**

#### **I. Interview Questions for Heads of Public Prosecutors**

##### **Jimma University college of Law and Governance, School of Law**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and Governace,School of law, in order to assess the role of public prosecutors in enforcement of the right to speedy trial in Ethiopia and corresponding challenges; A case of Kambata Tembaro Zone prosecutors' offices. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions.

**Name**\_\_\_\_\_

- 1.Please explain what does mean the right to speedy trial?
2. What are the roles of public prosecutors in enforcement of the right to speedy trial?
2. Do you think that prosecutors under your office exercise their mandates effectively to ensure enforcement of the right to speedy trial in all stages of criminal proceedings? How?
3. Do you think mandates given to prosecutors during investigation helps to avoid unnecessary prolonged detention in police stations during pre-trial crime investigation stage?
4. What activities have your office done to enhance public prosecutors roles in enforcement of arrested or accused persons right to speedy trial?
5. Is there any measure taken on those bodies who contribute for unnecessary delays in your office?
6. What are your office collaborating activities with other stake-holders to ensure protection of the arrested or accused person's right to speedy trial in criminal process?
7. What are the major problems that affect the roles of public prosecutors in their endeavor to enforce the right to speedy trial and what are such problems that cause undue delays?
8. In your opinion, what must be done to foster the roles of prosecutor in the enforcement of the right to speedy trial and to eradicate the problems of delays?
9. Is there any remedies for the violation of the right to speedy trial?

## **II. Interview Questions for heads of police stations or department**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law post graduate program, in order to assess the role of public prosecutors in the enforcement of the right to speedy trial in Kambata Tembaro Zone. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

**Name**\_\_\_\_\_

1. What do you think about the right to speedy trial? What does it mean?
2. Do you think that public prosecutors have roles in enforcement of the right to speedy trial in criminal proceedings? What are such roles?
2. Do public prosecutors exercise their mandate and duty effectively to ensure the realization of the right to speedy trial? If not what do you think is the reason?
3. How do you describe working relationship of police in your office with public prosecutors with regard to the protection of the right to speedy trial of arrested or accused persons?
4. Is there any mechanism or circumstances in which the police and public prosecutors work jointly for the enforcement of the right to speedy trial?
5. Do you think that joint investigation brings improvement in enforcement of the right to speedy trial in your office?
6. Is there any circumstance in which prosecutors forwarded any recommendation or corrective measure to be taken in order to improve the enforcement of the right to speedy trial?
7. What do you think is the major problems that affect efficient and effective operation of the roles of prosecutors in enforcement of the right to speedy trial and what are the factors that results delay in criminal proceedings? What should be taken as a solution?

### **III. Interview Questions for presidents of Courts**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law, in order to assess the role of public prosecutors in the enforcement of the right to speedy trial in Ethiopia, A case of Kambata Tembaro Zone. The researcher would like to assure you that the information provided would be used for research purposes only. To this end, I kindly request you to answer the following questions,

**Name** \_\_\_\_\_

1. What does the right to speedy trial mean?
2. Do you think that public prosecutors have the roles in enforcement of the right to speedy trial?
3. How public prosecutors enforce the right to speedy trial and what are their roles in enforcement of the right to speedy trial?
4. Do you think that prosecutors exercise their mandates and duties effectively to enforce the right to speedy trial? If yes, how? If no, what are the reasons?
5. Do you think that prosecutors give appropriate responses promptly to the arrested or accused persons complain for the violation of the right to speedy trial?
6. Is there any remedies available for the violation of the right to speedy trial?
7. Do public prosecutors arrange any mechanisms to arrested or accused persons to enforce the right to speedy trial during crime investigation and other stages of criminal proceedings?
8. What do you think is the major problems that affect efficient and effective operation of the roles of prosecutors in enforcement of the right to speedy trial and what are the factors that results delay in criminal proceedings?
9. What measures should be taken to overcome the problems?

#### **IV. Interview Questions for Defense Attorneys/lawyers**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law, in order to assess the role of public prosecutors in the enforcement of the right to speedy trial in Kambata Tembaro Zone. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

**Name of the Respondent**\_\_\_\_\_

1. What does mean the right to speedy trial?
2. Do you ever represented criminal suspects or accused persons and in which stages of criminal proceedings that the arrested or accused person's right to speedy trial is mostly violated in Kambata Tembaro Zone?
3. What are the roles of public prosecutors in enforcement of the right to speedy trial starting from crime investigation stage to final disposition of the case?
4. Have you ever get any assistance from prosecutors to present case related with the violation of the rights to speedy trial before the court of law? If not, what do you think is the reason?
5. What are the challenges you are facing in criminal proceeding that you represented concerning the right to speedy trial in pre-trial crime investigation or other stages of proceedings?
6. Do you think that public prosecutors are effective in their endeavor to ensure enforcement of the right to speedy trial? If no what do you think is the reason?
7. What are the major challenges that affect the roles of public prosecutors in enforcement of the right to speedy trial and what are causes for the delay in criminal proceedings?
8. What measures do you suggest to enhance effective and efficient operation of the roles of prosecutors to enforce the right to speedy trial?



## **Interview questions for arrested or accused persons**

This interview is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law, in order to assess the role of public prosecutors in the enforcement of the right to speedy trial in Kambata Tembaro Zone. The researcher would like to assure you that the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

**Name of the Respondent**\_\_\_\_\_

1. What did you know about the right to speedy trial?
2. Have you enjoyed the right to speedy trial? How long your case takes?
3. Do you think that your case completed in speedy manner during investigation and in other court proceedings?
4. Do you think that public prosecutors play their mandates and duties effectively to enforce the right to speedy trial? If your answer is No, what are the major challenges that affect the roles of prosecutors to enforce the right to speedy trial? If yes, how they enforce the right?
5. What do you think as solutions for major challenges or problems of unreasonable delays?
6. Have you brought complaint for unnecessary delay or prolonged detention to prosecutors? Have you get proper responses from prosecutors promptly? What are the remedies for the violation of the right to speedy trial?

### **A.Questionnaires**

#### **I. Questionnaires for accused or arrested person in Kambata Tembaro Zone JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE SCHOOL OF LAW**

This questionnaire is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law post graduate program, in order to assess the role of public prosecutors in enforcement of the right to speedy trial in Ethiopia and corresponding challenges: A case of Kambata Tembaro Zone. The researcher would like to

assure the respondents that, the information provided would be used for research purposes only and all responses will be treated in confidentiality. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions, thanking you in advance.

Date\_\_\_\_\_

Name\_\_\_\_\_

1. What do you think about the right to speedy trial?
2. Have you enjoyed the right to speedy trial in your cases? \_\_\_\_\_

For the questions below please mark on the choice you wants to answer or respond.

2. Do you bring complaint to public prosecutors for unnecessary delays? A. Yes B. No .If your answer is **yes** how often they response on your complaint? Please Explain

\_\_\_\_\_

If your answer is no what do you think is the reason? Please explain\_\_\_\_\_

3. Do they properly receive complaints for unnecessary delays and gives responses promptly? A.Yes B. No .If your answer in no, what are the reasons?

4. What are remedies provided by prosecutors for your unnecessary delays complain?

5. Have you ever experienced any unnecessary delays caused during every stage of criminal proceedings and what are factors for the delay?

Explain\_\_\_\_\_

6.Have you communicated with prosecutors for delay in proceedings and do prosecutors takes legal or other measures on those who contributes for unnecessary delays?A.yes,B,no

7. If your answer for question 6 is no, what are the reasons? Explain \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. How do you measure the roles of public prosecutors in enforcement of the right to speedy trial? A. Very Poor B. Poor C. Good D. V. Good

9. If your answer for question no. 8 is poor or very poor, what are the factors that affect the roles of prosecutors in criminal proceedings and causes unnecessary delays? Explain

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**II. Questionnaires for Public Prosecutors in Kambata Tembaro Zone  
JIMMA UNIVERSITY, COLLEGE OF LAW AND GOVERNANCE, SCHOOL OF LAW**

This questionnaire is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law, in order to assess the role of public prosecutors in the enforcement of the right to speedy trial in Ethiopia and corresponding challenges: A case of Kambata Tembaro Zone. The researcher would like to assure to the respondents that the information provided would be used for research purposes only and all responses will be treated in confidential manner. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions.

Name \_\_\_\_\_

Please respond on following question and mark on your choices among the provided alternative.

1. What does mean the right to speedy trial?

Explain \_\_\_\_\_

2. As a public prosecutor, what did you do to realize the right to speedy trial and what are your roles in enforcement of the right to speedy trial?

3. Can you solve complaints for undue delays caused during pre-trial police investigation or other stages of criminal proceedings? A. Yes B. No

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If your answer is “No” please explain your reason \_\_\_\_\_

**Note:** Please answer the following questions only if your answer for question 2 is “Yes”

4. Do you enforce the right to speedy trial in your office? A) Yes, B) No. If your answer is “No” what do you think is the reason? Please Explain\_\_\_\_\_

5. Is there any circumstance in which you have received complaints for violation of the right to speedy trial? A) Yes B) No.If your answer is “No” what do you think is the reason?

Explain\_\_\_\_\_

If your answer is “Yes” Please can you list some of such complaints and grounds for such undue delays \_\_\_\_\_

5. How do you explain your collaboration with other justice actors in case related with the enforcement of the right to speedy trial?A) Poor, B) Very Poor, C) Good, D) Very. Good if your answer is “Poor” or “V.Poor” what do you think is the reason? Please Explain\_\_\_\_\_

6. In case you noticed the violation of right to speedy trial of arrested or accused persons, are you taking an immediate intervention measures to solve the problem? A)Yes,B)No If your answer is “Yes” please explain what measures you are taking to solve the problem\_\_\_\_\_

If your answer is “No” what do you think is the reason? Please explain\_\_\_\_\_

7. After noticing the fact of unnecessary delays, is there any circumstances you have proceed to make legal action or any other corrective measures against bodies that results in unnecessary or unreasonable delays? A) Yes B) No

If your answer is “No” what do you think is the reason? Please explain\_\_\_\_\_

8.How you explain the roles of public prosecutors in enforcement of the right to speedy trial in your office? A) Poor B) V. Poor C) Good D) V.Good.If your answer is “Poor” or “V.Poor” what you think is the reason?

Explain\_\_\_\_\_

9. What are challenges for the enforcement of the right to speedy trial? Explain\_\_\_\_\_

10.What should be done to realize the right to speedy trial?  
\_\_\_\_\_

11. Are there any remedies for the violation of the right to speedy trial?

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### III. Questionnaires for judges in Kambata Tembaro Zone

This questionnaire is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law, in order to assess the roles of public prosecutors in enforcement of the right to speedy trial in Ethiopia and corresponding challenges: A case of Kambata Tembaro zone. The researcher would like to assure to the respondents that the information provided would be used for research purposes only and all responses will be treated in confidential manner. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions.

Name \_\_\_\_\_

Please respond on following question and mark on your choices among the following alternative.

1. What does mean the right to speedy trial?

Explain \_\_\_\_\_

2. Do you think that prosecutors have roles in enforcement of the right to speedy trial in criminal proceeding from crime investigation to final disposition of the case? A. Yes B.No  
If your answer is **yes**, how they enforce the right to speedy trial?

Explain \_\_\_\_\_

If your answer is “No” please explain your reason \_\_\_\_\_

**Note:** Please answer the following questions only if your answer for question 2 is “Yes”

3. Is there any circumstance in which prosecutors can receive complaints from arrested or accused person for the violation of their right to speedy trial? A) Yes B) No

If your answer is “No” what do you think is the reason? Please explain \_\_\_\_\_

If your answer is “Yes” Please can you list some of such complaints and grounds for such undue delays \_\_\_\_\_

4. How do you explain the collaboration of public prosecutors with other justice actors in case related with the enforcement of the right to speedy trial in your court? A) Poor B) Very Poor C)

Good D) Very Good .If your answer is “Poor” or “V.Poor” what do you think is the reason?

Please explain\_\_\_\_\_

5. In case prosecutors noticed the violation of right to speedy trial, do you think that there are circumstances for the prosecutors to take an immediate intervention measures to solve the problem of unreasonable delays? A) Yes, B)No

If your answer is “Yes” explain what measures prosecutors are taking to solve the problem\_\_\_\_\_

If your answer is “No” what do you think is the reason? Please explain\_\_\_\_\_

6. Do you think prosecutors are providing effective responses for complaints of arrested or accused persons for unnecessary delays promptly? A) Yes B) No

7. If your answer for question 6 is “No” what do you think is the reason? Please explain\_\_\_\_\_

8. Is there any mechanism for prosecutors to take measures against bodies that causes unnecessary or unreasonable delays? A) Yes B) No .If your answer is “No” what do you think is the reason?

Explain\_\_\_\_\_

9.How do you explain the roles of public prosecutors in enforcement of the right to speedy trial in your court? A)Poor B)V. Poor C)Good D)V.Good.If your answer is “Poor” or “V.poor” what do you think is the reason?

Explain\_\_\_\_\_

10. What are the challenges that cause delay in criminal proceedings and affects the roles of prosecutors in enforcement of the right to speedy trial? Explain\_\_\_\_\_

11.Is there any remedies for the violation of the right to speedy trial?

#### **IV.Questionnaires for investigating police officers in Kambata Tembaro Zone Jimma University, College of law and Governance, School of law**

This questionnaire is provided to collect data for post graduate research paper in Jimma University College of law and governance school of law post graduate program, in order to

assess the role of public prosecutors in the enforcement of the right to speedy trial in Ethiopia and corresponding challenges; A case of Kambata Tembaro Zone. The researcher would like to assure to the respondents that the information provided would be used for research purposes only and all responses will be treated in confidential manner. To this end, as your cooperation is very essential for the reliability of this research, I kindly request you to answer the following questions.

Please respond on following question and mark on your choices among the alternative.

1. What does mean the right to speedy trial?

2. Do you think that prosecutors have roles in investigation stage to avoid unnecessary prolonged detention or delays during pre-trial crime investigation or in other stages of criminal proceedings? A) Yes, B) No

If your answer is “No” what do you think is the reason? Please Explain\_\_\_\_\_

3. If your answer is yes, what are the roles of prosecutors in enforcement of the right to speedy trial?

Explain\_\_\_\_\_

4. Is there any circumstance in which public prosecutors can receive any complaints from arrested or accused person for undue delays caused during pre-trial crime investigation and other stages of criminal proceedings to take any necessary legal measures? A) Yes B) No

If your answer is “No” what do you think is the reason? Please Explain\_\_\_\_\_

If your answer is “Yes” Please can you list some of such complaints and grounds for undue delays

5. How do you explain collaboration of prosecutors with other justice actors in case related with the enforcement of the right to speedy trial? A) Poor B) Very Poor C) Good D) Very Good

If your answer is “Poor” or “Very Poor” what do you think is the reason?

Explain\_\_\_\_\_

6. Do you think that prosecutors have power to take legal measures on anybody that results in delay in criminal proceedings? A) Yes, B) No. If your answer is “Yes” please explain what measures they have taken or they can take to solve the problem of undue or unreasonable delays?

If your answer is “No” what do you think is the reason? Please explain\_\_\_\_\_

7. Do you think that prosecutors in your area are providing effective responses for complaints of unnecessary delays promptly? A) Yes B) No

8. If your answer for question 7 is “No” what do you think is the reason? Please explain\_\_\_\_\_

9. Is there any mechanisms which prosecutors have proceed to make legal action or any other corrective measures against bodies that results in unreasonable delays? A) Yes B) No  
If your answer is “No” what do you think is the reason? Please explain\_\_\_\_\_

10. How you explain the roles of public prosecutors in enforcement of the right to speedy trial in your office? A) Poor B) V. Poor C) Good D) V. Good. If your answer is “Poor” or “V. poor” what do you think is the reason. Explain  
12. What are the roles of public prosecutors in enforcement of the right to speedy trial and what are the factors that results delay in criminal proceedings?