CRITICAL EXAMINATION OF THE RIGHT TO SPEEDY TRIAL WITH RESPECT TO PERSONS ACCUSED OF CORRUPTION CRIME IN ETHIOPIA: A CASE STUDY

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Declaration Statement

I, **Melkam Negussie**, 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 has been duly acknowledged.

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Acronyms

ABA:	American Bar Association
ACAs:	Anti-corruption Authorities
ACHR:	American Convention on Human Rights
ACHPR:	African Charter on Human and peoples‘ Rights
Art.	Article
BPR:	Business Process Re-engineering
CPC:	Criminal Procedure Code of Ethiopia
ECHR:	European Convention on Human Rights
FAC:	Federal Attorney General
FDRE:	Federal Democratic Republic of Ethiopia
FEACC:	Federal Ethics and Anti-Corruption Commission
FPC:	Federal Police Commission
ICCPR :	International Covenant on Civil and Political Rights
ICESCR:	International Coenant on Economic, Social and Cultural Rights ,
UDHR:	Universal Declaration of Human Rights
UK:	United Kingdom
UN:	United Nations
UNCAC	United Nations Convention Against Corruption
USA:	United States of America

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Abstract

The right to speedy trial of persons accused of crime is a fundamental human right guaranteed by international human rights instruments *inter alia*, UDHR, ICCPR and ECHR. The right has also been incorporated in the substantive and procedural laws of Ethiopia such as the 1995 FDRE Constitution, the 1961 CPC of Ethiopia, etc.In spite of this, the violation of the right to speedy trial of persons accused of corruption crime is a serious problem in Ethiopia. Normally, delay in bringing the accused to trial must be justified on grounds of reasonableness and good cause. In Ethiopia, there is no standard to determine what constitutes delay in corruption crime proceedings and hence, delay is to be determined by courts using their discretionary power on a case by case basis. The denial of the right to speedy trial of persons accused negatively affects both the interest of the accused and the society at large. The impacts of prolonged trial proceedings on the accused include: anxiety and psychological strain out of public suspicion, limiting employability and educational opportunities of the accused and loss of ability to defend because of long incarceration. Likewise, denial of the right to speedy trial erodes the public confidence on the judiciary, weakens prosecutor evidence and lets criminals escape justice and limits the contribution of the accused person to the society through employment and re-socialization. The problem of delay is observed in the overall process of criminal investigation, prosecution and trial stages of corruption crime proceedings. The purpose of this research is to critically examine the right to speedy trial of persons accused of corruption crime in Ethiopia by focusing on Addis Ababa. The problems attributed to violation of the right to speedy trial of persons accused of corruption crime are institutional and legal by nature. The institutional problems relate to man power, skill, knowledge and level of cooperation in relation to government bodies and parties involved in the adjudication of corruption crime such as investigating officers, prosecutors, courts, prison administration and advocates. The legal problems occur because of the gaps in the laws applied in the adjudication of corruption crime. The most important ones in this regard are the provisions of the CPC on remand and adjournment.

Key words: The Right to Speedy Trial, Delay of Corruption Crime Proceeding, Investigating Officers, Prosecutors, Courts, Prison Administration

Chapter I

Introduction

1.1. Background

The prosecution of criminals is one of the fundamental principles of the legal systems of almost all states of the world. To this end, countries have come up with their own legal and institutional mechanisms to combating and arresting of crimes. In spite of this, however, nowadays the types and complexity of offences have increased more than ever.

One of the most effective ways of preventing and combating crime is by promulgation and implementation of criminal law. In this regard, the purpose of the 2005 FDRE Revised Criminal Code is to ensure order, peace and security of the State, its peoples, and inhabitants for the public good.[1] What is more, the Code aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.[2] On the other hand, the extent to which human rights are respected and protected within the context of criminal proceedings is an important measure of society's civilization.[3] The protection of human rights is important not only to the accused but also it has a far reaching importance to the interests of the society at large. There are a number of fundamental human rights that aim to protect the rights and freedoms of persons accused of criminal offences. One of the fundmental human rights of accused persons is the right to fair trial. The right to fair trial is a right containing a bundle of rights which aim to ensure the proper administration of justice by protecting the fundamental rights and freedoms of persons accused of crime both in the pre-trial and trial stages of criminal proceedings. One among the fair trial rights of accused persons is the right to speedy trial. The right to speedy trial is a fundamental human right incorporated under many international legal instruments and domestic laws of states. Art. 10 of the UDHR states that everyone is entitled in full equality to a fair and public hearing by an independent and

[1] The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No.414/2004, Negarit Gazeta, No., Year, 9th of May, 2005, Art. 1
[2] Ibid.
[3] Solomon Areda, Causes and Effects of Delay of Criminal Procedures with the possible Remedies: a Case Study, Senior Essay, Addis Ababa University, Faculty of Law, 1997., p. II

impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.[4] The right to speedy trial is not clearly mentioned under the UDHR but one can still find its elements since a criminal proceeding short of speedy disposition does not amount to a fair trial. In addition, the right to speedy trial is also enshrined in other international human rights instruments and domestic laws of almost all states of the world. Hence, the FDRE Constitution under Art. 20(1) states the right of all persons to speedy trial before ordinary court of law within a reasonable time after having been charged.[5] The same Constitution also provides the right of an arrested person to appear before a court of law within 48 hours of his/her arrest.[6] In addition, other substantitive and procedural laws of Ethiopia guarantee the right to speedy trial of accused persons.[7] The realization of the right to speedy trial requires strong legal and institutional commitment on the part of the government. Therefore, all actors involved in criminal disposition should be strong and efficient enough to guarantee the protection and realization of the right to speedy trial of persons accused.

Despite the legal recognition of the right of accused persons to speedy trial, interviews conducted and dead court cases reviewed by the researcher show the existence of rampant violation of the right to speedy trial of persons accused of crime in general and corruption crime in particular in Ethiopia. No doubt corruption crime has farreaching problems to a country like Ethiopia that it should be prevented and prosecuted. However, the trial of persons accused of corruption crime should not be done in disregard of their human and fundamental rights. No doubt that the violation of the right to speedy trial of persons accused of crime is not new to Ethiopia. However, there are some peculiar reasons why the right to speedy trial of persons accused of corruption crime should be researched separately from other crimes. The first reason concerns the nature of corruption crime. Corruption crime as opposed to other crimes is usually perpetrated by a group of persons concerting together.[8] Hence, in the majority of cases two or more persons may be charged with two or more counts of corruption crime. The charge instituted against the accused persons usually contains so many pages of documentary evidence and long

[4] UDHR ,Adopted and Proclaimed by General Assembly, Resolution 217 A (III) of 10 December 1948, Art. 10
[5] Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, Proc.No.1/1995, Negarit Gazeta, 1st Year, No.1, Art. 20(1)
[6] Id., Art. 19(3)
[7] The 1961 Criminal Procedure of Ethiopia, Proclamation No.185 of 1961,Negarit Gazeta, 1961 see Arts. 225-227
[8] Interview with Ato Aschalew Ashagre, Assistant Professor., Lecturer in Law and Consultant and Attorney-At-Law, Done at his Office on 8 January, 2018

list of witnesses. The same holds true to defenses presented by the persons so accused as well. Hence, the examination of so many pages of documents and hearing of many witnesses so adduced both by the prosecutor and the accused persons takes a very long period of time thereby causing delay of corruption trial process.[9] Secondly, corruption crimes especially, grand corruption crimes, are committed in areas of government finance, tax, land and construction. So, the primary focus of the public and the government is usually directed towards the prosecution of such persons not the protection of their fundmental rights and freedoms. However, the government cannot evade its duty to protect the right to speedy trial of persons accused emanating from international and its domestic laws under the disguise of prosecuting persons accused of corruption offense.[10] Thirdly, there is a public suspicion that some corruption charges are intentionally framed and used by the executive organ of the government as a political weapon to harass and lock away certain political figures who had fallen out of favor with the government. So, the executive may use all its powers to prolong corruption trial proceedings of the individuals concerned so that they languish in prison cells.[11]

Generally, the major causes of delay of corruption crime proceedings in Ethiopia are attributed to the institutions involved and laws applied in the adjudication of corruption crime. Therefore, the purpose of this research paper is to critically analyze the adequacy and efficacy of institutions engaged in the trial process of corruption offense such as investigating officers and prosecutors of the FEACC,[12] courts, prision administration and advocates by delimiting the focus on Addis Ababa and also examining the adequacy and efficiency of the laws used to adjudicate corruption crime to protect the right to speedy trial of persons accused.

1.2. Research Questions

This research paper has the following research questions as its underlying theme:

[9] Ibid.
[10] Ibid.
[11] Tewodros Dawit Mezmur, Institutional Response to Corruption: A Critical Analysis of the Ethiopian Federal Ethics and Anti-Corruption Commission, Faculty of Law, University of the Western Cape, South Africa, October 2009, p. 34
[12] The Federal Attorney General Establishment Proclamation No. 943/2016 was promulgated in May of 2016. As per Art. 22(2) and (3) of this Proclamation the prosecution and corruption crime investigation powers given to the FEACC under its establishment Proclamation No. 433/2005 (as amended by Proclamation No. 883/2015) and the Revised Anti-corruption Special Procedure and Evidence Proclamation No. 434/2005 (as amended by Proclamation No. 882/2015) and other laws are transferred to the FAG and the FPC, respectively. Federal Attorney General Establishment Proclamation No. 943/2016, Negarit Gazeta, 22nd year, No. 62, Addis Ababa, 2nd May, 2016.

- Is the existing legal framework in Ethiopia adequate to protect the right to speedy trial of persons accused of corruption crime?
- Is the institutional setup in Ethiopia adequate to prosecute corruption crime without jeopardizing the right to speedy trial of persons accused?
- How the structure, staffing and capacity of government bodies and other parties involved in the prosecution of corruption crime impact the right to speedy trial of persons accused?
- What are the practical problems facing speedy disposition of corruption crime proceedings in Ethiopia?

1.3. Research Objectives

This research has the general objective of exposing if the right to speedy trial of persons accused of corruption crime in Ethiopia is respected by taking some random dead case files from the Federal High Court in Addis Ababa. The following are the specific objectives of this research:

- Exploring the legal framework relating to the right to speedy trial of persons accused of corruption crime in Ethiopia,
- Exposing the adequacy of the existing institutional framework to prosecute as well as to safeguard the right to speedy trial of persons accused,
- Examining the structure, staffing, capacity and level of cooperation of government bodies and other parties engaged in the prosecution of corruption crime and their impact on the protection of the right to speedy trial of persons accused in Ethiopia,
- Analyze if the right to speedy trial of persons accused is practically respected or violated in Ethiopia using some selected dead case files, conducting interviews with stakeholders such as investigating officers, prosecutors, judges, accused persons, and advocates,

1.4. Statement of the Problem

The right to speedy trial of persons accused of crime is the hallmark of every criminal legal system. The right to speedy trial of persons accused is such that accused persons are availed justice that is fair and prompt. Corruption crime proceedings in Ethiopia are characterized by long delays that accused persons have to wait years before a judgment is passed. The causes of the denial of the right to speedy trial of persons accused of corruption crime may be categorized into institutional and legal.

The institutional causes of delay relate to problems relating to organizational setup, staffing, knowledge and skill of the government bodies and other parties involved in the trial of corruption offense. The major institutional causes of delay of corruption crime trial proceedings include: very few number of investigating officers and prosecutors; lack of adequate number of judges; transfer of judges before a case is decided; absence of judges; very few number of court divisions allocated to try corruption crime; lack of good command of the law and failure to apply the law on the part of judges and insufficient level of cooperation between the different government bodies involved in the disposition of corruption cases.

The legal causes of delay would arise from the gaps on the laws applied to adjudicate corruption crime cases. For example, the provisions of the CPC on remand and adjournment are the most important ones here. The CPC Art. 59 (3) allows 14 days of remand on each occasion without limiting the maximum number of occasions remand is to be granted and hence, this allows accused persons to be remanded for unlimited number of occasions thereby causing denial of their right to speedy trial. On the other hand, Art. 91 of the CPC on adjournment also gives courts discretionary power to adjourn a case at any stage of the hearing, to decide whether to adjourn a case and also to determine the period for which a case is adjourned. These are some of the instances where the law can cause delay in corruption crime proceedings. The fact that Ethiopia is not ready both legally and institutionally to adjudicate corruption crime cases in an expeditions manner is causing violation of the fundmental rights and freedoms of accused persons. Hence, most persons accused of corruption crime will have to wait years before their case is decided and until then they will be subjected to long incarceration and suffer from social, economic and psychological problems. Even some accused persons may be heard saying that they do not expect fair decision to be given to their cases after a very protracted trial process but all they want is to get over with the lengthy and tiresome trial process.

1.5. Research Methodology

The research employs both qualitative and quantative research methodology. Thus, books, research works, reports, bulletins, laws, articles, commentaries, dead court cases and interviews are some of the sources used to explore the right to speedy trial of persons accused of corruption crime in Ethiopia. The research makes general overview of the international and domestic legal regime relating to the right to speedy trial of persons accused of corruption crime. The research is done by delimiting the study area to Addis Ababa and probing into the human resource, capacity and level of cooperation of the relevant government bodies engaged in the prosecution of corruption crime including investigating officers, prosecutors, the Federal High Court, and Federal Prison Administration and their impact on the right. It also dwells on the impact of domestic laws applied for the prosecution of corruption crime on the right to speedy trial of persons accused of corruption crime. This research uses desk research, interviews with stakeholders, *inter alia*, investigating officers, prosecutors, judges, accused persons. Moreover, review of dead court cases selected by purposive samplying method is made to examine the right to speedy trial of persons accused of corruption crime. In general, the research tries to answer research questions using Ethiopian laws.

1.6. Significance of the Study

This research is useful in many ways. There is meager empirical research that is directly related to the right to speedy trial of persons accused of corruption crime in Ethiopia. This research will help to inform the legislative, executive and judicial organs of the government that their actions are contributing to the delay of corruption crime proceeding in Ethiopia. As a result, the lives of accused persons is ruined by lengthy proceeding. Hence, this research will help to aware policy makers, legislative, executive and judicial organs of the government that the protection of the fundamental right to speedy trial of accused persons is as important as the need to combat corruption crime. As a result, policy making and amendment activities by the government can use this research as an input so as to make policies and laws that guarantee the protection of the right to speedy trial of persons accused. This research will help the legislative, executive and judicial organs of the government to look at themselves and give solution to problems that are causing delay in the disposition of corruption crime. The research is not comprehensive that further research should be done on the right to speedy trial of persons accused of corruption crime in Ethiopia. So, new researchers can use this research to conduct research to address matters not covered herein. Finally, this research may serve as a reference material for academic purposes.

1.7. Scope of the Research

This research makes critical examination of if the right to speedy trial of persons accused of corruption crime in Ethiopia is protected by focusing at the Addis Ababa level only. In so doing, the research tries to define the content of the right to speedy trial, factors to consider in deciding if a trial is speedy or not. *Here, the research utilizes the factors developed by the United States Supreme Court's decision in Barker v Wingo to measure if a trial is speedy. This is so because this is a landmark case on the right to speedy trial in American law and also generally taken as a reference point in many other legal systems.* The research also makes brief overview of the international and Ethiopian legal framewok relating to the right to speedy trial of accused persons. Besides, the research makes empirical study of the legal and institutional causes of delay of corruption criminal proceedings in Ethiopia by reviewing documents, interviewing relevant personnel and undertaking review of dead case files at the Federal High Court in Addis Ababa at Lideta. The main objective of the research is delimited to the protection of the right to speedy trial of persons accused of corruption crime in Addis Ababa only and hence, it does not study the situtation else where in other parts of Ethiopia.

1.8. Limitation of the Research

The limitation the researcher faced during the course of conducting the research relate to the scantiness of literature covering the Ethiopian criminal justice system in general and the adjudication of corruption crime in particular. Besides, some investigating officers, prosecutors, judges and prision administration officers were not cooperative to provide the necessary information to the researcher for fear of actions taken by their superiors and citing political reasons. Besides, conducting an all-inclusive interview with stakeholders apart from the above mentioned reason was not possible due to financial restraints since very nominal research grant was given to the researcher.

1.9. Ethical Considerations

The researcher made untmost effort and due care to comply with ethical consierations of the research. To this effect, the researcher secured a letter from the Associate Dean of the school of Law and Governance Studies at Addis Ababa Universiy requesting all of concerned bodies to cooperate the researcher with his research. Accordingly, most of the prosecutors, investigating officers, judges, lawyers and other officials were willing to be interviewed by the researcher believing that the research contributes positively for the improvement of the status of the right to speedy trial of persons accused of corruption in Ethiopia. In addition, when collecting data that requires permission of appropriate authority, the researcher has taken due care to get permission and to properly preserve and to utilize it for the purpose of conducting this research only. Further, in the interpretation of data, the researcher has provided an accurate account of the information and has not used language or words that are biased against persons because of their background.

1.10. Structure of the Research

The research is comprised of five chapers. Chapter one introduces the research, discusses the research questions and objectives, statement of the problem, research methodology, significance of the study, scope of the research, limitation of the research and ethical considerations. Chapter two delves into the theoretical foundations of the right to speedy trial such as the definition, the reasons for and standards for speedy trial and what consititutes deay in criminal proceedings. Chapter three presents brief overview of the legal framework governing the right to speedy trial of persons accused at the international and domestic level and also institutional framework relating to corruption crime in Ethiopia. Critical examination of the right to speedy trial of persons accused of corruption crime in Ethiopia is made under chapter four. This chapter analyzes the adequacy and efficacy of the existing institutional and legal frameworks in Ethiopia for the realization of the right to speedy trial of persons accused of corruption crime. It specifically looks into the major substantive and procedural criminal legislations applied in the disposition of corruption crime and their impact on the right to speedy trial of persons accused. In addition, the organizational setup, man power, capacity and cooperation that exists in institutions engaged in the prosecution of corruption crime cases especially; the investigating officers, prosecutors, prision administration and courts vis-à-vis the prompt dispostiton of corruption crime cases is scrutinized. In addition, the views of accused persons if their right to speedy trial is protected during the corruption trial process is also addressed under this chapter. This chapter also benefits from interviews done with stakeholders and review of selected dead court cases. Finally, chapter five contains concluding remarks and possible recommendations of the research.

Chapter Two

The Right to Speedy Trial: Conceptual and Theoretical Framework

2.1. Definition of the Right to Speedy Trial

The right to speedy trial is one of the grandest fundamental rights under which it is asserted that government prosecutor may not delay the trial of a criminally accused person arbitrarily and indefinitely. The right to speedy trial is a legal concept which has neither a precise definition nor a delimited scope. However, it goes without saying that the content and the essence is better understood when practiced than simply put on definitional terms. Here the researcher tries to look into some definitions given to the term. Merriam-Webster dictionary defines speedy trial as follows: ―*A trial conducted according to prevaling rules and procedure that takes place without unreasonable or undue delay or within a statutory period.*" According to this definition, the first precondition to have speedy trial is conduction of a trial based on existing rules and procedure. The second element of the definition is that a reasonable delay is to be tolerated if there is no fixed time limit for completion of a trial. The third element of the definition is that in the presence of a fixed time limit then a trial is said to be speedy if it is completed with in the period set by law.[13]

On the other hand, Black‘s Law dictionary defines speedy trial in the following words: ―*A trial that the prosecution, with reasonable diligence, begins promptly and conducts expeditiously.*"[14] As per the above definition speedy trial refers to the procedure in criminal proceedings where the prosecutor is expected to commence and dispose of a criminal case as promptly and as expeditiously as possible. Besides, the essence of speedy trial lies in the fact that the prosecutor in criminal proceeding starts off the trial proceeding quickly and should exert utmost effort to kill off the case as promptly as possible by injecting among others reasonable diligence. However, this definition is narrow because it assigns the task of conducting trial and the importance of speedy trial to the prosecutor only.

[13] ___________, Speedy Trial, Merriam-Webster Online Dictionary, Incorporated, 2017, Unpaginated, Available@ https:/www.Merriam-Webster.com, Accessed on 12/01/2018 at 9:40 PM

[14] Brian A. Garner (Editor- in- Chief), Black's Law Dictionary, 8th Ed., West, a Thompson Business Co., St. Paul MN., 2004., p.1436

According to the United Nations Human Rights Committee (CCPR), 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 take place ‗without undue delay.‘‘[15] Although the General Comment provides a useful guide, it should have gone further and stated that the time of the actual grant/fulfillment of the remedy should also be taken into account. On another account, the right to speedy trial has been defined as one "free from vexatious, capricious, and oppressive delays manufactured by the ministers of justice.[16] In relation to the subjects of the right, it is provided that the right extends both to those imprisoned and those admitted to bail.[17] This right of the accused is not, however, absolute since it does not preclude the right of public justice.[18] Though as a matter of principle the accused is entitled to avail him/herself of the guarantee of speedy trial, such right may not be obtained in cases where the accused is on the run or s/he is a fugitive or delay is attributable to the defendant‘s own conduct.[19] The ultimate goal of the right to speedy trial is not merely speed. Instead, the overriding consideration of the right is availing justice both to the accused and the public.[20] In light of the above definition, it is submitted that the right to speedy trial is a guarantee against unpredictable, cruel and unjust trial by the organs of justice. Finally, Knight succinctly describes speedy trial as one ―without unreasonable delay".[21] Therefore, it is inferred that unnecessary and excessive delay should not be created. If delay is not to be avoided, it should be justified taking into account the requirements of due process of law, justice and fairness, etc.

2.2. Why Speedy Trial?

Among the legitimate purposes of government is the punishment of those who violate the rights of others through the commission of violent or forceful acts, such as murder, rape, robbery, theft,

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[15] 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

[16] __________, Justice Overdue: Speedy Trial for the Potential Defendant Reviewed work(s), Stanford Law Review, Vol. 5, No. 1, Stanford Law Review, Dec., 1952 , p. 95, Available athttp://www.jstor.org/stable/1225967, Accessed: 09/05/2012 08:49

[17] Ibid.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Harold V. Knight, With Liberty and Justice for All: The Meaning of the Bill of Rights Today, Oceania Publications, New York, 1967, p. 197.

burglary, or trespass.[22]This in turn requires a network of processes ranging from arresting the alleged offender, charging him/her with the particular offense committed, conducting investigations, examining witnesses and other evidence and finally convincing him/her with criminal sanctions if found guilty or acquitting him/her when innocent.[23]

In the course of trying to ascertain the guilt or innocence of the alleged offender, delays are created. This may be because of abuse of discretionary power on the part of authorities. However, there has to be a balance between the need to punish accused persons and the need to protect the right to speedy trial of persons accussed. Whatever the cause, unconstitutional delay substantially affects both the interests of the accused and that of the society which await to see justice being served in due time. Hence, it can be concluded that the right of the accused to speedy trial is a notion that encapsulates the interest of both of the accused and the society. Below is discussion of the interest of the accused and the society in speedy disposition of cases.

A. Interests of the Accused

The fact that a person is accused of a crime does not mean that s/he will be convicted of the commission of such crime as being accused of crime does not mean that s/he is the actual culprit of the crime since there is always a fifty- percent chance that s/he may be found innocent. An innocent person may come in contact with the alleged crime only by accident or in the course of leading his/her day to day life activities. The degree of contact may make him/her to appear like a suspect that s/he has to face all the processes which the criminal justice system ordains; to establish his guilt or innocence. Until final judgment is given by the court, the right of the accused person to an expedited trial may be compromised severely as a result of factors found within and outside of the justice system. The violation of the right of the accused to speedy trial in turn has negative consequences on the fundamental rights and interests of the accused. Therefore, there are certain rights to be protected or violated depending on whether the right to speedy trial of the accused person is protected or violated.

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[22]Jacob G. Hornberger, The Bill of Rights: The Rights of the Accused, The Future of Freedom Foundation, Virginia, February 1, 2005, unpaginated, Available at www.fff.org.

[23] Donnald Foster (ed.), American's System of Criminal Justice (Introduction), in Readings in Criminal Justice, Mrcutchan Publishing Corporation, California, 1969, pp. vii-xv

Firstly, the right to an expedited trial is an important safeguard for the accused against anxiety and psychological strain out of public suspicion.[24] The U.S. Supreme Court reiterated the same language with regard to the importance of the right to speedy trial when it said the right is ‗an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused to defend himself.'[25]

Of all the above interests recognized by the U.S Supreme Court, the limiting of the chances that defenses will be prejudiced because of the disappearance of witnesses or the fading of memories over time is found at the apex of the ladder. This is so because denial of the right to speedy trial exposes the accused to suffer the loss of evidence important to the defense. The erosion of significant evidence is even more likely to occur when delays precede rather than follow accusation: without notice of a criminal charge or perhaps even an arrest, defendants may have no reason to preserve sources of evidence that can weaken or vanish with age. As Justice Douglas wrote in his concurring opinion in United States v. Marion:

> *... Those delays may result in loss of alibi witnesses, the destruction of material evidence and the blurring of memories. At least when a person has been accused of a specific crime, he can devote his powers of recall to the events surrounding the alleged occurrences...* [26]

Secondly, denial of the right to speedy trial limits accused's employment and educational opportunities. [27]The accused will be forced to expend money to cover the costs of his/her defense through out in the adjudication process. By so doing his/her financial interests will be affected which is detrimental both to him/her and the family s/he supports.

Thirdly, the accused may be kept in custody for different policy reasons such as to restrain him/her from absconding, destroying material evidence or intimidating witnesses etc. But prolonged trial process have negative implications on the physical and psychological well-being of the accused and on the discovery of the guilt or innocence of the accused. Pre-trial jail

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[24] ABA Project on Minimum Standards for Criminal Justice: Standards Relating to Speedy Trial, Institute of Judicial Administration, 1967.

[25] Hornberger, Cited at note 22, Unpaginated

[26]United States v. Marion, 404 U.S. 307, 331 (1971) (Douglas, J., concurring)

[27] Sanford H. Kadish (Ed.), Encyclopedia of Crime and Justice, Vol. 4, The Free Press, New York,1983, P.1506

institutions are worse compared to that of prisons. Unreasonably prolonged detentions thus force the defendant to plead guilty just because s/he wants to avoid such situations.[28] Besides, the longer the period the accused is incarcerated, the more is the possibility that his/her morale will be impaired and as a result his/her effort towards establishing his/her innocence will be seriously affected.

B. Interest of the Public

The right to speedy trial is commonly thought to be a right of an accused, but it actually benefits society as a whole and not just individual defendants.[29] In Barker v. Wingo, the Supreme Court of the United States declared ‗There is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.'[30]This highlights that the society does have an interest comparable to the accused in seeing justice served in due time. There are manifold societal interests that speedy trial promotes.

Prosecution represents the interests of the society in apprehending offenders, maintain peace and order, assuring safety to citizens etc. To this end, prosecutions have to show reasonable diligence to see that justice is attained within a time as small as possible. In prolonged delays, prosecution witnesses may die, their memories may be lost. They may even refuse to cooperate because of repeated trips to courts, etc. This weakens the strength of prosecution's evidence. The prosecution may be forced to reduce the charge or even to drop the case altogether.[31]What is more, delayed justice allows criminals to cut deals with prosecutors.[32] This creates chance for criminals to escape conviction which endangers the interests of an ordered society.

The speedy trial right has an impact on society in other areas as well. Speedy trial is necessary to gain the confidence of the public in judiciary. Conversely, long delays may lead to erosion of the

[28] Ibid.
[29]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
[30] Ibid.
[31] Kadish, Cited at note 27, P. 1507
[32]Barker v. Wingo, 407 U.S. 514, 521 (1972)

trust the society places on the criminal justice system in general and the courts in particular and thus the society may ultimately withdraw cooperation.[33]

Finally, failure to dispose of criminal cases promptly affects the contribution of the accused to the society through employment and his/her re-socialization after s/he is released from prison. In Barker v. Wingo, the United States Supreme Court noted that violation of the right to speedy trial contribute to the backlog of cases; increase the likelihood of individuals to jump bail, escape, or commit other crimes; contributes to prison overcrowding, which leads to increased costs, expose defendants who are not bailed to conditions destructive of human character, and even violent rioting.[34] For those who are eventually found innocent,their potential to be contributing members of society through any kind of employment is lost during pre-trial incarceration.[35] On the other hand, the possibility of rehabilitating those who are eventually found guilty is diminished since correction procedures cannot be started until after trial. Besides, the rehabilitation schemes of offenders are achieved at a great financial expense to society.[36] Generally, the respect and protection of this right should be the priority of any justice system in order to up keep these balancing interests.

2.3. What Constitutes Delay in Criminal Proceedings?

Most domestic and international bills of human rights contain the right to trial within a reasonable time, often termed the right to be tried without undue delay or the right to speedy trial.[37] In principle, undue delay of criminal proceedings is said to occur when the time taken for a criminal matter to be resolved is over and above the time necessary to resolve it.[38]

Accordingly, different jurisdictions have opted for different approaches to decide if there has been any delay in criminal proceedings. Generally, there are two main approaches to determine if there is delay in criminal proceedings. The first relates to the cases where the law maker puts a

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[33]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
[34]Barker v. Wingo, Cited cited at note 32
[35]Chepiga, Cited at note 29, P. 353
[36] Ibid.
[37] See section 3.1 below for a brief account of how the right to speedy trial of accused person is fared in the major international human rights instruments.
[38]Jason Payne, Criminal Trial Delays in Australia: Trial Listing Outcomes,Research and Public Policy SeriesNo. 74, Australian Institute of Criminology, 2007, p. 7.

specific period of time within which a trial in respect of accused person must be commenced and disposed of. It is akin to suggesting that every criminal matter has a duration (number of days) within which a resolution of a fair trial can and should be found, and any excess over this optimal duration indicates delay.[39] Based on this approach, delay is said to occur when there is no conformity with the statute of limitation provided by law. This approach is reflected in the American Bar Association (ABA) Standards for Criminal Justice, Standards Relating to Speedy Trials, as follows:

> *A defendant's right to speedy trial should be expressed by rule or statue in terms of days or months running from a specified event. Certain periods of necessary delay should be excluded in computing the time for trial, and this should be specifically identified by rule or statue in so far as practicable.*[40]

In light of the ABA Standard the right of the accused to speedy trial is to be regulated by a rule of law and it shall be expressed in terms of days or months counted from a certain event. However, certain reasonable periods prescribed by law should be exempted from being included in the calculation of time for trial and even in the presence of which delay is said not to happen.

In the matter of *State v. Stanphill*, the court of Appeals of Kansas had had the occasion to compare and contrast the constitutional right to a speedy trial in the abstract vis-a-vis that right as implemented by legislation. In the words of the court, ―. . .the right to speedy trial provided for in our State Constitution is legislatively defined by the various statutes enacted to supplement the general language of the Constitution and render the constitutional guarantee effective."[41]

The purpose of the statutes, therefore, is to simply amplify what has been guaranteed by the constitution with respect to the right to speedy trial in general terms without fixing the period with in which a trial is to be resolved. Besides, statutes of limitations also limit exposure to criminal prosecution to a fixed period following allegedly criminal acts. This avoids the problem

[39] Payne, cited at note 38, P.7.

[40] American Bar Association (ABA) Standards for Criminal Justice, Standards Relating to Speedy Trials, 1974 Supplement, Section 2.1.

[41] State v. Stanphill, 206 Kan. 612, 615-616, 481 P.2d 998 (1971)

of having to defend oneself against charges that involve incidents long obscured by time and encourages officials to commence prosecutions with reasonable dispatch.[42]

For example, as per the USA Federal Speedy Trial Act of 1974,which was passed by USA Congress to effectuate the Sixth Amendment right of federal criminal defendants to a speedy trial, subject to certain excludable delays[43], a defendant must be brought to trial within 100 days of arrest or service of summons[44] and it seeks to accomplish this goal by setting out time within which indictments must be filed[45], arraignments must be held[46] and trial must commence.[47] The penalty for non-observance of the statute of limitation and subsequent delay of criminal proceedings is dismissal of the charges altogether.[48] In conclusion, the constitutional requirement of right to speedy trial is said to be fulfilled where there is obedience with the statute providing for the time within which a trial is to be finalized. However, failure to discharge a criminal case within the period of time brings about the violation of the right of the accused to speedy trial.

The second approach finds use where the constitution simply recognizes the right to speedy trial of the accused in the absence of a time frame within which a criminal proceeding is to be disposed of. The same is true in Ethiopia where the right to speedy trial is simply encapsulated in the FDRE Constitution in the absence of any statutory timeline within which a criminal proceeding is to be disposed of and hence, the time necessary for the disposition of a criminal case and the question of what constitutes delay is decided by the courts exercising their discretionary power on a case by case basis in their day to day activities.[49] In default of a

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[42]Phyllis Goldfarb and Arthur Leavens, Speedy Trial and Related Issues, February, 2012

[43] Federal Speedy Trial Act Section 3161(h) and Sec. 3161(h) as amended by the Speedy Trial Act Amendments Act of 1979

[44] Section 3161 (b)-(c), The USA Federal Speedy Trial Act of 1974

[45] Id., Sec. 3161(b).

[46] Id., Sec. 3161 (c).

[47]Ibid.

[48] Id., Sec.3162 (a).

[49] Prosecutors and judges whom the researcher interviewed on the impact that the introduction of a statutory period of limitation within which a criminal proceeding should be commenced and be disposed of, like the US Federal Speedy Trial Act of 1974, in Ethiopia would have, responded undoubtly that the introduction of such a statutory period of limitation would effectuate the right of the accused to speedy trial by setting a timeframe within which a criminal proceeding is to commence and be disposed of, would positively contribute and enhance the timely disposition of criminal cases. However, they expressed their fear that even though a rule providing for a statutory period of limitation is introduced the purpose sought to be achieved by the anticipated law to be made would not be met given Ethiopia's scarce or limited human, financial, and infrastructural resources since the implementation of such a statue requires strong and stable human, financial and infrastructural capabilities.

statutory period of limitation, therefore, resort is made to other considerations or facts to judge if there is violation of the right to speedy trial of the accused or not.[50] This stand is clearly reflected in the US Supreme Court's decision in *Barker v Wingo*. This case is considered to be the definitive case on the right to speedy trial in American law and is generally taken as a reference point in many other legal systems. This case established the factors to consider in deciding whether there has been a violation of the right to trial within a reasonable time. The factors that the Court identified are: (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant demanded-or-waived-his right to speedy trial, and (4) the prejudice to the defendant as a result of the delay.[51]

1. The Length of the Delay

The passage of time is a factor to be taken into account to allege if there has been denial of the right of the accused to speedy trial. The time frame for delay shall begin to run from the time when the accused is informed that the authorities are taking specific steps to prosecute him/her until the time s/he receives a final judgment on his/her case.[52]

There is no objective standard to determine whether a criminal case has been conducted in violation of the right to speedy trial of the accused. This determination is contingent upon individual facts and circumstances of the case. In one case, five years could be found to be a reasonable time, whereas in another case, one year could be found to be reasonable. The assessment of what represents undue delay will depend on the circumstances of a case, i.e. the conduct of the accused, the complexity of the case, and the conduct of the authorities. The ordinary delay in similar matters is also considered.[53]

In relation to the conduct of the accused, it is not necessary that the accused cooperates in a manner to expedite the trial process or renounce some of his/her rights, such as the right to silence. S/he is entitled to assert all his/her procedural rights. In some instances, however, such

[50] _________, What is a Fair Trial? A Basic Guide to Legal Standards and Practice, Lawyers Committee for Human Rights, New York, March 2000, p.16, See also e.g., Smith v. United States, 360 US. 1 (1959)
[51] Anthony L. Ciuca, The Right to a Speedy Trial—The Montana Supreme Court Realigns Itself with the United States Supreme Court's Balancing Test,Rutgers Law Journal, Vol. 39:90, 2008, p. 906.
[52] 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
[53] Ibid.

as where the accused repeatedly asks for postponement of hearings, this behavior may be taken into account.[54]

With regard to the complexity of the case, the general rule is that the more complex a case is, the more time will be permitted to conduct the trial. A case may be deemed complex because of the nature and seriousness of the alleged offense.[55] For example, an economic crime case that has been perpetrated transnationally will be much more complex than a simple robbery case and will require more time to investigate and try. A number of other things may be taken into account in looking at the complexity of the case, including the number of witnesses, the number of charges, and the number of the co-accused or other people involved in the trial.[56]

The conduct of the authorities is often the primary factor in determining whether there has been undue delay in trying a case. A finding of undue delay may occur where a prosecutor has not been actively investigating a case or has not proceeded diligently in the investigation, or where there have been unnecessary delays in investigating a case. The delay can be found at the trial or even the appeals stage, in addition to the investigation stage.[57] At the trial phase, a delay due to ineffective organization of the trial may also constitute a violation of the right to speedy trial.

2. The Reasons for the Delay

The second element of the Barker test is the reason for the delay. In this element the most important query is to ascertain which delays can be considered to be undue or reasonable. The court basically in this element shall examine and evaluate the sources of the delay and the reasons for the delay. It is commonly agreed that delays attributable to the accused do not violate the right to speedy trial.[58] Delays by the defense or his/her attempt to escape from the jurisdiction and other acts on his/her part cannot avail him/her dismissal of the indictment or charge. Generally, the delay must have been caused by the prosecution without good cause[59] and intentional delay by the prosecutor to hamper the defense shall be considered heavily against the

[54] Ibid.
[55] Ibid.
[56] Ibid.
[57] Ibid.
[58] Susan N. Herman, The Right to a Speedy and Public Trial : A reference Guide to the United States Constitution, Greenwood Publishing Group , 2006
[59] Ibid.

prosecution.[60] The complexity of cases and neutral causes which can be considered as good causes for delay, including the overcrowding of cases in courts are problematic to solve. It has been stated that since such neutral reasons are the responsibility of the government rather than the accused, they should be considered for the benefit of the accused, but should not be weighed as heavily in favor of dismissal as are deliberate delays caused by the prosecutor without good reason.[61]

The US Supreme Court in the Barker and Doggett decided that the reason for the delay for effective speedy trial claim should be attributed to the prosecutor and not to the defendant. The failure of the prosecutor to bring the prosecution timely including evidence and witnesses on its behalf should be one of the reasons for the delay in order for the defendant to secure relief on a speedy trial claim.

3. Whether the Defendant Demanded-or -Waived-His Right to Speedy Trial

The accused‘s assertion or non-assertion of his/her right to speedy trial is closely related with the issue of waiver.[62] Hence, the failure of the accused to raise the violation of his/her right to speedy trial amounts to renunciation of his/her right. The traditional doctrine on waiver was the demand doctrine.[63] According to the doctrine, an accused who fails to demand his/her right to speedy trial does not in fact want to benefit from speedy trial protection. The Barker Court in regard to waiver decided that waiver is an intentional relinquishment or abandonment of a known right or privilege." For this reason the court refused to infer waiver from the silence or simply from inaction and quoting *Carnley v. Cochran* the Court ruled that ―presuming waiver from silent record is impermissible. The record must show or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandably rejected the offer. Anything less is not waiver."[64] Therefore, it is only in such cases that failure of the accused to raise the right amounts to his/her waiver of his/her constitutional right to speedy trial.

[60] 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

[61] Jimmie E. Tinsley, Prejudice Resulting from Unreasonable Delay in Trial, J.D. American Jurisprudence Proof of Facts, 2nd Ed., Database Last Updated July 2008.

[62] Ibid.

[63] Ibid.

[64] Ibid.

4. The Prejudice to the Defendant as a Result of the Delay

This refers to the amount of prejudice suffered by the defendant because of harm done to the interests sought to be protected by the right to speedy trial. In this regard, the Barker Court considers three interests that the right to speedy trial seeks to protect. These interests are: (1) preventing capricious pretrial incarceration, (2) minimizing the defendant's anxiety, and (3) limiting the prejudicial effects of delay on the defense.[65] Of all these interests the most important one is limiting of the prejudicial effects of delay on the defendant‘s ability to defend him/herself because the more protracted the trial is the higher the risk for the defendant to find and substantiate his/her defense.This is so because as the trial takes more and more time the defendant‘s witnesses may die or disappear or may fail to recall the past events accurately and evidence may be lost due to long delay.[66] Personal prejudice inflicted on the accused owing to loss of liberty causes disruption of civic life, work, and family affairs due to delay of trial is also considered. It goes without saying that delay causes personal prejudice more than the normal effect of being accused of criminal charges.

Therefore, in any speedy trial claims all the above mentioned elements of the Barker test or balancing test should be taken into account by the court. It is worth noting that the aforementioned conditions are more or less a condition precedent to decide if delay exists or not.

Generally, delay in bringing the accused to trial must be justified on grounds of reasonableness and good cause. Accused‘s right to speedy trial is not violated if there is good cause for delay and what constitutes good cause for delay depends upon the discretion of the court. Such discretion cannot be exercised arbitrarily but it is to be based on all the facts and circumstances presented to the court. Good cause for delay has been held to exist where delay was necessitated by the law itself or was occasioned by the absence of the accused, the need of extensive preparation of the case by the public prosecutor. This is determined from all facts and circumstances of the case. Circumstances to be considered depend on gravity of the offense charged, character of evidence, number and residence of witnesses, nature of defense and others.

Finally, it is concluded that delay of criminal proceedings can be remedied when there are adequate, efficient and independent institutions and also when the laws applied in the adjudication process are clear and uptodate with fundmental human rights of accused persons.

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[65] Ibid. See also Smith v. Hooey, 393 U.S. 374, 377-79 (1969).
[66]Justice Powell in Barker v. Wingo, 407 U.S. 514 (1972)

Chapter Three

3. The Legal Framework Governing the Right to Speedy Trial of Accused Persons and Institutional Framework Relating to Coruption Crime in Ethiopia

In the previous chaper, we have looked into conceptual and theoretical background of the right to speedy trial by focusing on the definition, the reason for speedy trial, what constitutes delay in criminal proceedings and also the tests adopted to determine if there is delay of criminal proceedings. In this very chapter, an attempt will be made to briefly look into the international and Ethiopian legal regime governing the right to speedy trial of persons accused of corruption crime and the institutional setup relating to corruption corruptin crime in Ethiopia. The right to speedy trial of accused persons is a norm of international human rights law which is adopted by many countries in their constitutional and procedural laws.[67] It is designed to protect individuals from the unlawful and arbitrary deprivation of their basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. The right of accused persons to speedy trial contained in both international human rights instruments and Ethiopian legal laws are provided for persons accused of crime in general. Hence, they do not specifically talk of the right to speedy trial of persons accused of corruption crime. So, it is worth to understand that the speedy trial rights contained in the international and domestic bill of rights equally apply to speedy trial right of persons accused of corruption crime.

The international promise of the right of accused persons to speedy trial is very much reflected in the FDRE Constitution and other substantive and procedural laws of Ethiopia. The following briefy examines the international and Ethiopian legal regime on the right to speedy trial of persons accused of corruption crime.

3.1. International Legal Regime on the Right to Speedy Trial of Accused Persons

The right of the accused to a speedy trial is one of the fundamental human rights bestowed upon man by the virtue of humanity. Recognizing this fact, this right has been recognized by many

[67]Countries like U.S.A., Canada, U.K., and India have adopted this norm and it is enshrined in their Constitution. The Sixth Amendment to the United States Constitution is the part of the United States Bill of Rights which sets forth rights of accused person in relation to fair criminal trial. Section 11 of the Canadian Charter of Rights and Freedoms, which is part of the Canadian Constitution's Charter of Rights, protects a person's basic legal rights in criminal prosecution.

international human rights instruments such as UDHR, ICCPR, ECHR, ACHR and ACHPR. The UDHR makes no express mention of the right of the accused to speedy trial but Art. 10 of the same states that everyone is entitled in full equality to a fair and public hearing in the determination of any criminal charge against him.[68] Even if the above mentioned provision of the UDHR does not explicitly provide for the speedy trial right of accused persons, it is worth noting that the principle of fair disposition of a case is inclusive of the right to speedy trial of an accused.

The ICCPR Art. 3 clearly stipulates the right of anyone arrested or detained on a criminal charge to be brought quickly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.[69] Art. 14(3) (C) of the ICCPR further stipulates the right of the accused or detained person to be tried without undue delay.[70]

The ECHR is another instrument on the right to speedy trial of persons accused. ECHR Art. 6 states that, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial judicial organ set up by law in the determination of criminal charge against him/her.[71] The phrase ―within a reasonable time" in the forgoing Article is an indicative of the right to speedy trial of an accused. The ACHR likewise under Art. 8 establishes the right to speedy trial of accused persons by saying:

> *"----- Every person has the right to a hearing…… within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him …... [Emphasis Mine]*[72]

Last but not least, the ACHPR is the last human right instrument on the right to speedy trial of accused persons. [73] Art. **7**(1)(d) of ACHPR states that every person shall be entitled to a right to

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68 UDHR, Cited at note 4, Art. 10

69 ICCPR, Adopted by the United Nations General Assembly on 1966 at New York, Art. 9(3)

70 Id., Art. 14(3)(C)

71 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

72 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. 8

73 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,The Preamble

be tried within a reasonable time by an impartial court or tribunal.[74] In view of the ACHPR any criminally accused person enjoys the right to have his/her case entertained within a reasonable time by an independent court or tribunal. The ACHPR is closer to the ACHR as to the content of guaranteed rights in general and the right to speedy trial of accused persons in particular, than to the ECHR.[75]

3.2 The Legal Framework Governing the Right to Speedy Trial of Persons Accused of Corruption Crime in Ethiopia

The 1995 FDRE Constitution contains the right to speedy trial of accused persons under its chapter three dealing with fundamental rights and freedoms. The FDRE Constitution states that fundmental rights and freedoms specified in the Constitution shall be interpreted in a manner conforming to the principles of the UDHR,[76] International Covenants on Human Rights and international instruments adopted by Ethiopia.[77]* Furthermore, the FDRE Consitution under Art. 20(1) recognizes the right of all persons to have a public trial before an ordinary court of law within a reasonable time after having been charged. [78] As far as the right of arrested persons is concerned, the FDRE Constitution gurantees all arrested persons to be brought before a court of law within forty eight hours (48 hrs.) of their arrest.[79] Further, Art. 19(4) of the same stipulates that the court may order a remand in custody of the arrested person for a time strictly required to conduct the necessary investigation and that it shall also have the duty to make sure that law enforcement authorities undertake the investigation in a manner conforming to the right to speedy trial.[80] This provision obliges the court to protect the right to speedy trial of arrested persons by allowing remand in custody of the arrested persons only for such time required to

[74] Id. Art. 7(1) (d)
[75] Obinna Okere, The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A comparative Analysis with the European and American Systems, Human Rights Quarterly, Vol. 6. No. 2, The Johns Hopkins University Press, May 1984, P. 155, Available at http:/links.jstor.org/sici=0275-0392%28198405%296%3A2%3C141%3 ATPOHRI%3E2.0.CO%3B2-M.
[76] It goes without saying that Ethiopia is one of the first signatories to the UDHR and a party to many other international human rights instruments which among others include: ICCPR, ICSCR, etc.
[77] FDRE Const., Cited at note 5, Art. 13(2), *As far as the place international agreements ratified by Ethiopia have in relation to domestic Ethiopian laws; Art. 9(4) of the constitution clearly stipulates that all international agreements ratified by Ethiopia shall be part of the law of the land. Based on this provision, it is understood that all international agreements which are endorsed by Ethiopia including international human rights instruments, shall form body/corpus of Ethiopian laws.
[78] Id., Art. 20(1)
[79] Id., Art. 19(3)
[80] Id., Art. 19(4)

finish the investigation and also by making sure that such investigation is not conducted to the deteriment of the right to speedy trial of the arrested persons. The foregoing provisions of the Constitution reveal that the right to speedy trial of arrested and accused persons is a right protected against arbitrary action of government officials.

Apart from the FDRE Constitution, other substantive and procedural laws of Ethiopia directly or indirectly recognize the right to speedy trial of persons accused. These include: the 2005 FDRE Criminal Code, the 1961 CPC of Ethiopia and the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 (as amended by Proc. No. 882/2015).

Art. 216(1) of the Criminal Code states that both the prosecution and criminal charge shall be barred and may no longer be instituted upon the lapse of the legal period of time provided by law.[81] Besides, courts are prevented from pronouncing a conviction or penalties or measures after expiry of the statute of limitation. [82]What is more, the Code imposes a duty on the part of the prosecution to observe barring of the criminal action by limitation even where the defendant fails to invoke same.[83] The above provisions protect the right to expedited trial by making sure that the prosecution files a case with in the timelimit set by law or else any case filed after lapse of the time frame to be barred in the interest of expedited justice.

The 1961 CPC of Ethiopia is another legislation recognizing the right to speedy trial of persons accused of crime. The CPC puts the notion of the right of the accused to speedy trial in a flexible manner so that it encompasses the overall criminal proceedings from initiation upto final disposition of the case. The CPC under Art. 29(1) ordains the police to bring the accused before the nearest court within 48 hours of the arrest or so soon thereafter as local circumstances and communications permit. Besides, in relation to investigation and prosecution of the accused, it lays down that every police investigation should be completed without unnecessary delay and be forwarded to the public prosecutor who may in his/her discretion press charges, order preliminary investigation to be held, order further investigation, or refuse to institute proceedings. On the other hand, Art. 59 of the CPC stipulates that the court before which the arrested person is presented shall decide whether the accused should be kept in custody or be

[81]The FDRE Criminal Code, Cited at note 1, Art. 216(1)
[82] Ibid.
[83] Id., Art. 216(2)

released on bail or be remanded on the application of the investigating police for sufficient time to complete the investigation. Furthermore, the CPC contains provisions relating to bail, preliminary inquiry, adjournment, framing of charge and other provisions that have a bearing on the right to speedy trial of persons accused.[84] As far as the right to speedy trial at the appeal stage of the proceeding is concerned the CPC establishes the obligation of the court against whose judgment an appeal has been filed to produce a copy of the record without delays with in fifteen days.[85] A period more than fifteen days is disregarding the right to speedy trial of the convicted person. However, the gaps on the provisions of the CPC relating to remand and adjournment are major causes of delay of corruption crime proceedings. This will be discussed at debth under chapter four of the research.

Finally, the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 (as amended by Proclamation No. 882/2015), which is a special law dedicated only to corruption crime proceedings, has some provisions relating to the right to speedy trial of persons accused of corruption crime. Preparatory hearing is one of the pre-trial devices introduced by the Proclamation which among others has the purpose of expediting proceeding of complex corruption cases. In relation to the principle governing preparatory hearing Art. 35 of the Proclamation provides thus:

> *Where it appears to a court that a charge of corruption offence reveals a case of such complexity and as a result of which the trial is likely to be of such length ... it may order a preparatory hearing shall be held. [Emphasis Mine]* [86]

In light of the above, preparatory hearing may be ordered only when the court is convinced that the corruption charge shows complexity that trial is likely to take very long period of time thereby resulting in the denial of the right of the accused to speedy trial. Besides, the power to order preparatory hearing lies within the discretionary power of the court. As per Art. 36(1) of the Proclamation preparatory hearing enables to identify issues which are likely to be material to the case; to assist the parties in comprehending the issues; to facilitate the proceedings; and to assist the court in the management of the trial. Preparatory hearing, therefore, helps to expedite

[84] CPC, Cited at note 7, See Art.s 29, 37(1)&(2), 38 cum 59, 64, 82(2), 94(2), 109, 187(1), 190(1) and 190(2).
[85] Ibid.
[86] Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 (as amended by Proclamation No. 882/2015), Art. 35

the criminal proceeding by filtering material issues to the case, facilitating the proceedings and enabling judicial management of the trial. Preparatory hearing serves the same purposes in other jurisdictions as well.[87] On the other hand, the court is obliged to make a ruling about any question regarding the admissibility of evidence and any question of law which is found necessary to give ruling before the trial commences.[88] Arts. 37 and 39 of the Proclamation contain obligations of the prosecutor and the accused respectively, which are indispensable for effective preparatory hearing proceedings.[89] It goes without saying that for preparatory hearing to achieve its anticipated purposes it requires the working together of the court, the prosecution and the accused.[90] However, as the researcher will disclose later on in the next chapter of this research the implementation of preparatory hearing in the prosecution and adjudication of corruption crime proceedings in Ethiopia is very unsatisfactory. As a result, some say that it has failed the objective of expediting corruption crime trial proceedings. The reasons why preparatory hearing has failed to achieve its puporsues remains to be contested among judges, prosecutors and accused persons. [91]

3.3. The Insititutional Framework Relating to Corruption Crime in Ethopia

There are internal and external factors that impact the success of anti-corruption authorities (ACAs) to fight corruption crime while at the same time protecting the right of persons accused to speedy trial. External factors are those that impact ACAs institutional effectiveness that include *inter alia,* political will, economic stability, relationship with civil societies and public trust and confidence.[92] On the contrary, internal factors are those conditions affecting ACAs

[87] For Example Section 7(1) of the UK Criminal Justice Act of 1987encapsulates the same purposes to be achieved by preparatory hearing. However, under Section 7(2) of the Act unlike Art. 35 of Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 which makes the ordering of preparatory hearing the exclusive domain of the court, the court may order preparatory hearing on the application of the prosecution, on the application of the accused and on its own motion. This the researcher believes will foster and boost the purposes of preparatory hearing in expediting the proceedings since some judges may advertently or inadvertently ignore the complexity of the case and go directly into the trial process. The availing of the right to make application both to the prosecution and the accused is a safety valve against discretionary power of the court.

[88] Proc. No 434/2005(as amended), Cited at note 86, Art. 36(2)

[89] Id., Art. 37 and 39

[90] Id., Art. 35-39

[91] This and other important issues regarding preparatory hearing will be dealt with at depth under Chapter 4

[92] Arsema Tamyalew*,* A Review of the Effectiveness of the Federal Ethics and Anti-corruption Commission of Ethiopia, European Union and the International Bank for Reconstruction and Development /The World Bank,2010, Pp. 3-5

ability to fight corruption effectively such as independence, permanence, availability of sufficient resources and appropriate staffing and adequate internal coordination.[93] In the sub-section below an attempt is made to discusses the institutional framework relating to corruption crime in Ethiopia.

3.3.1. The Federal Ethics and Anti-Corruption Commission

The FEACC was established in 2001 as an independent government agency of the Federal Government with the objectives of creating awareness, preventing, investigation and prosecution of corruption offenses and other improprieties.[94] The FEACC is answerable to the Prime Minister as set out in Art. 3(1) of Proclamation No. 433/2005 (as amended by Proc. No. 883/2015).[95] The Commissioner is appointed by the HPRs and the Deputy Commissioner is appointed by the Prime Minister.[96] Besides, Art. 14 of the same Proclamation fixes the term of office of the Commissioner and the Deputy Commissioner to be six years and both may not be removed except on those grounds stipulated in Art. 14.[97] The budget of the FEACC shall be allocated by the government and also it shall have the necessary staff to accomplish its duties and responsibilities.[98] Further, the independence of the FEACC in relation to cases under investigation or prosecution or to be investigated or prosecuted is guaranteed.[99]

Before the prosecution and the crime investigation powers given to the FEACC by law were transferred to the FAG and the FPC, respectively[100] the FEACC used to be comprised of eight directorates and three services. One of the directorates of the FEACC was the Investigation and Prosecution Directorate.[101] With the creation of this Directorate investigation and prosecution activities that were formerly carried out by two separate departments were brought under a single directorate.[102] According to the Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 433/2005 (as amended by Proclamation No. 882/2015), the

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[93] Id. Pp. 5-7
[94] Revised Federal Ethics and Anti-Corruption Commission Establishment Proclamation No. 433/2005 (as amended by Proc. No. 883/2015), Negarit Gazeta, 11th Year, No. 18, Addis Ababa, Art. 3(1) cum Art. 6
[95] Id., Art. 3(1)
[96] Id., Art. 10
[97] Id., Art. 14
[98] Id., Art. 10(3) cum Art. 21
[99] Id., Art. 4
[100] Proc. No. 943/2016, Cited at note 12, Art. 22(2) and (3)
[101] _________,Profile of Federal and Regional Ethics and Anti-Corruption Commissions of Ethiopia, UNDP/DIP, June 2012, p.27.
[102] Arsema Tamyalew, Cited at note 92,p. 14

Investigation and Prosecution Directorate, among others, was authorized to investigate and prosecute any alleged or suspected corruption offense committed in public offices or public enterprises or in the regional offices relating to subsidies granted by the Federal Government to the regions.[103] Besides, it had the power to freeze by court order assets and wealth that are allegedly obtained through corruption and cause (through court order) their forfeiture and confiscation.[104]

The investigation staff of the FEACC was made up of individuals from diverse professional backgrounds including economists, social scientists, engineers, lawyers, accountants, managers, and police, while the prosecution staff consists of lawyers.[105] The Investigation and Prosecution Directorate of the FEACC had about 130 employees out of which 32 were investigators and 35 were prosecutors. Out of the total figure of prosecutors, which was 35, 8 were trial prosecutors,[106] 8 were team leaders and the rest were office prosecutions.[107] Based on the BPR Study document of the Investigation and Prosecution Directorate of the FEACC, an individual trial prosecutor was projected to handle and prosecute a maximum of 60 cases annually.[108] Besides, the Support and Enforcement Team established under the Investigation and Prosecution Directorate of the FEACC was composed of 14 personnel and whose responsibility among others include: service of charges to accused persons, making sure that prosecutor's witnesses appear before the court, follow up and handing over of a wanted suspect and assisting search activities.[109] Needless to say that about 80% of on-going investigations in the 2010 budget year were focused entirely on grand corruption.[110] It is worth noting that the investigation powers, other

[103] Proc. No. 434/2005 (as amended), Cited at note 86, Art. 7(4)
[104] Id., Art. 7(6)
[105] Id., p.17
[106] Interview with Ato Waltenegus Fikire, A Senior Prosecutor at the FEACC, Done at his Office on 26 December, 2013, Ato Waltenegus disclosed that from 2010 onwards prosecutors at the Commission have been categorized into trial and office prosecutors.
[107] Interview with Ato Gebru Gebeyehu, Investigation and Prosecution Directorate Director at the FEACC, Done at 21 March, 2013.
[108] Federal Ethics and Anti-Corruption Investigation and Prosecution Directorate Business Process Re-engineering (BPR) Study Document, July, 2009
[109] FEACC, Investigation and Prosecution Directorate BPR Study Procedural Manual No. 1/2009, 2009, Art. 12
[110] Arsema Tamyalew, Cited at note 92, P. 15, Art. 2(9) of Proc. No. 434/2005 (as amended), cited at note 98, defines grand corruption as:
(a) Corruption offenses involving huge amounts of money committed in highly strategic public offices and public enterprises;
(b) Corruption offenses involving a public official; or
(c) Corruption offenses causing grave danger to national sovereignty, the economy, security, or social life.

than investigation of grand corruption and prosecution powers of the FEACC might be delegated, in whole or in part, to Federal or Regional crime investigation bodies and to Federal or Regional prosecution offices or regional anti- corruption institutions, as the case may be, respectively.[111]

The FEACC suffers from lack of adequate budgetary support and deficiency of sufficient man power and skills. Department directors at the FEACC disclosed that their units were under staffed and lacked the necessary skills to perform at optimal levels. In particular, the Investigation and Prosecution Directorate‗s staff did not have the required knowledge to successfully investigate and prosecute corruption offenses. The lack of adequate man power and staff means that the FEACC could not discharge its investigation and prosecution functions relating to corruption crime effectively while at the same time protecting the right to speedy trial of persons accused to expedited trial. And, hence violation of the right to speedy trial of accused persons was likely to happen.[112]

As of May, 2016, the prosecution and investigation powers of the FEACC, were transferred to the FAG and the FCC, respectively, traditional government law enforcement institutions having broad functions in addition to the ones transferred to them from the former. Hence, following sub-section attempts to make general overview of the FAG and FPC and how transfer of prosecution and investigation powers respectively, to these institutions affects the right to speedy trial of accused persons.

3.3.2. The Federal Attorney General

The FAG is as autonomous federal government ministerial office established by replacing and taking over the power and duties of the former Federal Ministry of Justice.[113] The main rationales for the establishment of the FAG was stated to be the need to establish one strong law enforcement public prosecution institution which can comprehensively protect public and government interest and deliver uniform, effective and efficient service and also to organize public prosecution institution that is governed by professional, institutional and public accountability, that works with transparency, participation and serves with full institutional and

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[111] Proc. No. 434/2005 (as amended),Cited at note 86, Art. 8(1) cum Art. 9(1)
[112] Arsema Tamyalew, Cited at 92, PP. 34-36
[113] Proc. No. 943/2016, Cited at note 12, Art. 22(1)

professional independence and win public trust.[114] The FAG is accountable to the Prime Minister and Council of Ministers and having the main objectives of ensuring rule of law and enforcing the criminal law.[115]

The FAG has broad power and duties generally relating to: criminal matters, civil matters, legal drafting, legal research and training and human rights.[116] The power and duties of the FAG regarding criminal matters include the following: save the powers given to the police by other laws, causes criminal investigation to be started on cases falling under the jurisdiction of federal courts, follow up report to be submitted on an ongoing criminal investigation and the investigation to be completed appropriately, ensures that investigation is conducted in accordance with the law, gives the necessary instruction; a 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; may seek support from the police in the process of giving decision on an investigation file; informs the relevant police about decisions given on criminal case files by the public prosecutor and court; reviews completed investigation files based on evidence and law and gives no case or closing decision where condition provided under the CPC are met; institutes criminal case charges by representing the federal government, litigates and withdraws charges.[117] On the other hand, the FAG is composed of an Attorney General appointed by the House of Peoples Recommendation and Deputy Attorney Generals appointed by the Prime Minister; line divisions, Management Committee, Federal Public Prosecutors Administration Council; public prosecutors appointed by the attorney General and the necessary staffs.[118] Currently, the FAG has eight Directorates, one of which being the Corruption Crime Prosecution Directorate.

With the establishment of the FAG, prosecution powers that were given to other government institutions* and prosecutors that used to work at these institutions such as the FEACC who have met the criteria set by the FAG were transferred to the FAG.[119] A senior public prosecutor divulged that the transfer of prosecution powers from other institutions in general and corruption

[114] Id., The Preamble, Paragraph I and II.
[115] Id., Art. 3(2) and
[116] Id., Art. 6
[117] Id., Art. 6 (a),(b),(c) and (e)
[118] Id., Art. 7
[119] Id., Art. 22(2), (4) and (6) cum Art. 25(2). *These institutions are: the FEACC, the Ethiopian Revenues and Customs Authority and the Trade Competition and Customer Protection Authority

crime prosecution power in particular to the FAG, has caused a lot of problems.[120] According to him, the FAG is comprised of eight Directorates and one of which is the Corruption Crime Prosecution Directorate. Moreover, out of the 75 prosecutors that were there at the FEACC when the FAG was established only 43 were transferred to different Directorates of the FAG and the rest were left out having not met the criteria set by the later.[121] Besides, new prosecutors were not recruited in place of the prosecutors dismissed. This in turn has aggravated the existing deficiency in number of prosecutors assigned to prosecute corruption crime and hence, causing delay of corruption crime proceeding.[122] Furthermore, most of the prosecutors that used to be recruited by the FEACC were senior prosecutors who relatively had better knowledge of peculiarities of corruption crime and trial proceeding. However, after the transfer of corruption crime prosecution power to the FAC, corruption crime is no longer afforded the special attention it requires and hence, it is viewed just like other crimes at the FAG. Hence, based on a misguided conception that any prosecutor can be assigned to prosecute any crime even junior prosecutors who have little knowledge and skill relating to the laws, procedures and prosecution of crime prosecution are being assigned to the Corruption Crime Prosecution Directorate. So, there will be delay of corruption crime proceeding because of lack of knowledge and skill of prosecutors.[123]

3.3.3. The Federal Police Commission

The FPC is an autonomous federal government organ and having investigation of crime as one of its objectives.[124] The powers and duties of the FPC among others include: to work in collaboration with the FAG and other relevant organs in relation to crime investigation and to investigate crime falling under the jurisdiction of federal courts.[125] The FPC is organized into: a Commissioner General and Deputy Commissioner Generals, Management Committee, police officers and the necessary support staff.[126] On the other hand, the investigation powers that were given to the Ethiopian Revenues and Customs Authority, Trade Competition and Customers

[120] Interview with Ato Bekalu Tamene, A Senior Public Prosecutor and Corruption Crimes Committed using Forged Documents and Fraudlent Acts Coordinaton Office Coordinator at the FAG, Done at his Office on Feb. 16, 2018

[121] Ibid.

[122] Ibid.

[123] Ibid.

[124] Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011 (as amended by Proc. No. 944/2016), Federal Negarit Gazetta,18th Year, No. 2, Addis Ababa, November 28, 2011, Art. 3(1) cum 5

[125] Id., Art. 6(2) and (4)

[126] Id., Art. 7

Protection Authority and the FEACC are transferred to the FPC.[127] However, the transfer of the above significant investigation powers to the FPC has been met with lots problems. In the words of an informant who wants to remain anonymous, following the transfer of investigation power from the above mentioned civilian institutions to the FPC, investigators that used to work at the FEACC and other civilian government institutions were also transferred to the FPC to work as investigators.[128]As a result, many of the investigators transferred, who are professionals in different fields of study, find it hard to adapt to the new military work discipline at the FPC and also unable to work harmoniously with the existing investigating police officers at the FPC, most of whom are only graduates of police training institutions, as a result of the gap in knowledge and skill between them, resigned from their work. This in turn resulted in decline in number of the investigating police officers. So, due to lack of man power and also the remaining investigating police having lost appetite to work are producing poor quality investigation reports and investigation is taking too long.[129]

Moreover, the investigating officers transferred to the FPC have retained the salaries and privileges they used to get before they were transferred to the FPC. This has created grievance on the part of existing investigation police officers of the FPC whose salary is very small compared to the salary of the transferred investigating police officers thereby furthering the delay of and production of poor quality investigation reports. The informant added that in order to rectify this problem, the FPC have presented a salary scale increment study document and request for recruitment of additional personnel to the government and awaiting response.[130] Besides, the police have a very poor public image and suffer considerably from resources such as financial, technological and skilled staff.[131]

In addition, the working of prosecutors and investigators in partnership under one institution has the benefit of enhancing the specialization and efficiency of ACAs while preventing delay of corruption crime trial proceeding.[132] But now with the transfer of prosecution and investigation

[127] Proc. No. 943/2016, Cited at note 12, Art. 22(3), (5) and (7)
[128]Interview with a senior Official at the Federal Police Commission Crime Investigation Bureau, Done at his Office on Feb. 16, 2018.
[129]Ibid.
[130] Ibid.
[131] Tewodros Dawit, Cited at note 11, P.34
[132] Ibid.

powers from the FEAC to the FAG and FPC respectively, the level of cooperation between the prosecutor and investigator and also the leading role of the prosecutor over investigation of corruption crime conducted by the investigating officer will be very much minimized. What is more, traditional law enforcement government agencies which deal with corruption crime while concurrently performing their normal functions may not give the fight against corruption the same significance as other items in their job description.[133] So, in these law enforcement institutions, it is not easy to attain efficient prosecution of corruption crime while at the same time protecting the right to speedy trial of accused persons.

It has been asserted that countries that have distributed prosecution and investigation power to traditional law enforcement agencies are those countries whose bureaucratic institutions are strong and efficient, and have sufficient resources and good coordination. However, Ethiopia has neither the required institutional capacity nor a well-developed inter-agency cooperation culture to implement multiple-approach type of ACAs arrangement.[134]

By way of conclusion, the FAG and FPC have more or less the same types of capacity and efficiency related problems like that of the FEACC such as: inadequate number of prosecutors; insufficient number of investigating police officers; poor level of cooperation between prosecutors and investigating police officers; pay gap between newly transferred investigating officers and already existing investigating police officers of the FPC, knowledge and skill gap between newly transferred investigating officers and already existing investigating police officers of the FPC, corruption crime being denied special attention at the FAG, poor public image and resource limitations. So, unless these problems are rectified soon, the situation for the right to speedy trial of persons accused of corruption crime will be far worse than that was in the FEACC. Hence, the findings and solutions forwarded by this research in respect of the FEACC can be used to remedy the problems in the FAG and FPC that cause denial of the right to speedy trial of persons accused of corruption crime.

[133] Arsema Tamyalew, Cited at note 92, P. 2
[134] Tewodros Dawit, Cited at note 11, P.34

Chapter Four

Critical Examination of the Right to Speedy Trial with Respect to Persons Accused of Corruption Crime in Ethiopia: A Case Study

4.1. Introduction

In the previous chapter, an attempt has been made to briefly look into the international and domestic legal regime governing the right to speedy trial of persons accused of corruption crime. The following chapter critically examines the practical implementation of the right to speedy trial of persons accused of corruption crime in Ethiopia by focusing on the adequacy and efficiency of government bodies and private parties that are engaged in the disposition of corruption crime such as investigating officers and prosecutors of the FEACC, courts, prison administration and advocates. In so doing, an attempt will be made to examine the decision making capacity, knowledge, manpower and level of cooperation between the investigating officers and public prosecutors of the FEACC and its impact on the right to speedy trial of persons accused. Moreover, issues relating to courts *inter alia*, absence of judges, transfer of judges and failure to abide by the law and their impact on prompt disposition of corruption crime are discussed.

In addition, an effort is made to examine the adequacy and efficacy of the laws applied presently to the prosecution of corruption crime to protect the right of persons accused of corruption crime. In this regard, the CPC provisons on remand and adjournment and the Revised Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 (amended by) provison on the preparatory hearing will be scrutinized. Besides, this chapter investigates the effect of transfer of judges, number of judges, and capacity of judges to apply the law on the protection of the right to speedy trial of accused persons. Moreover, acts of prision administration officers and advocates their impact on the speedy trial right of accused persons will be exposed. Finally, the views of accused persons if their right to speedy trial has been actually protected during the corruption trial process will be presented. The above mentioned points will be substantiated with interviews conducted with stakeholders and review of court cases.

4.2. Practical Examination of the Institutional and Legal Framewoks with Regard to Protection of the Right to Speedy Trial of Persons Accused of Corruption in Ethiopia

4.2. 1. Delay Caused by Investigating Officers and Public Prosecutors

The first thing that sets the criminal justice in motion is the making of investigation and identification of suspects when the investigation officer is of the opinion that a crime has been committed, is being committed or is about to be committed.[135] The channels and mechanisms used to obtain complaints about alleged corruption from whistle blowers are e-mail, telephone (hotline), fax, regular mail, or in-person statements.[136] After the accused has been identified, arrest of the suspect would be made if the investigating officer has justifiable reason to believe that a crime of corruption has been committed and the suspected person has committed it.[137] A senior prosecutor interviewed by the reseacher disclosed that some investigating officers at the FEACC do not commence investigation into an alleged corruption crime without first having the accused person being put in custody.[138] This in the opinion of the informant infringes upon the right to liberty of the accused persons. It is also a clear disregard of the ethical responsibility on the part of the investigating officers.[139]

As per Art.7(1) of the Revised Federal Ethics and Anti-corruption Establishment Proclamation No. 433/2005(as amended by Proc. 883/2015), the Federal High Court shall have first instance jurisdiction over corruption offences falling under the jurisdiction of the Federal Government other than those cases for which the Federal Supreme Court has first instance jurisdiction in accordance with the relevant law.[140] From the cumulative reading of sub-Art. (1) and (4) of Art. 7 of the same Proclamation it is inferred that all matters in relation to investigation of corruption offenses such as arrest, search, remand, bail, restraining order or any other related matters with investigation of corruption offences shall be made to the Federal High Court.[141]

[135] CPC, Cited at note 7, Art. 22. Besides, Proc. No. 433/2005 (as amended), Cited at note 94, Art. 23 states that the powers of the police and the public prosecutor set out in the CPC and other laws shall be given to the Commission in maters provided for in this proclamation.
[136] Profile of FEEACC, Cited at note 101, p.31.
[137] CPC, Cited at note 7, Art. 26(1)
[138] Ato Waltenegus Fikirae, Cited at note 106
[139] Ibid.
[140] Proc. No. 433/2005 (as amended), Cited at note 94, Art. 7(1) Cum Art. 12(1) of Federal Courts Proclamation No. 25/96 (as amended), Negarit Gazeta, 2nd Year, No. 13, 15th February, 1996.
[141] Id., Art. 7(1) cum (4).

Following the arrest, the investigation officer shall bring the accused to the nearest court within 48 hours of the arrest.[142] However, such time shall not include the time taken or required for journey from the place of the arrest to the court nor does it include consecutive holidays provided it is proved that the investigating officer has not intentionally arrested the accused to his/her prejudice.[143] The court, before which the suspected person is presented, shall decide whether such person shall remain in custody or released on bail as soon as possible.[144] Where the investigation is not finalized, the investigation officer may plead the court for remand to have ample time to complete the investigation.[145]

In relation to investigation of corruption offense, it is disclosed that investigation involving corruption offenses as opposed to other crimes is very complex and taxing owing to a number of reasons. The first reason is the fact that most corruption offenses are committed by a group of persons who are professional and having government authority.[146] Because of this perpetrators of corruption crime can cause the disappearance of important evidence and witnesses showing the commission of the crime.[147] The second reason is that since most corruption crimes are committed by experts such as accountants, economists, engineers, etc., that the investigation of which becomes difficult for a lawyer who is vested only in the law. Hence, it becomes mandatory that other specialists in other disciplines (accountants, economists, auditors, etc.) outside of the legal profession to take part in the investigation of the alleged corruption crime.[148] Soon after the investigation is finalized, the investigating officer should forward the investigation report to the prosecutor so that the latter gives an appropriate decision.[149]

The prosecutor, upon receiving the investigation report, may take the actions listed under Art. 38 of the CPC. The prosecutor may prosecute the accused when s/he believes that there is ample

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[142] CPC, Cited at note 7, Art. 29(1) cum FDRE. Const., Cited at note 5, Art. 19(3)
[143] Ibid.
[144] Id., Art. 29 cum 59(1)
[145] Id., Art. 59(2)
[146] Interview with Ato Teume Gebru, A Judge at the Federal High Court, 16th Criminal Bench, Done at his Office on 2 January, 2013.
[147] Soh Kee Hean,Investigation and Prosecution of Corruption Offences,Resource Material Series No.80,The Twelfth International Training Course on the Criminal Justice Response to CorruptionVisiting Experts' Papers, p.161.
[148] Expert Seminar on "Effective Means of Investigation and Prosecution of Corruption", Prepared by Anti-corruption Network for Eastern Europe and Central Asia at the OECD Anti-Corruption Network for Eastern Europe and Central Asia,20-22 October, 2010, Bucharest, Romania, P.8., Available at http://www.oecd.org/corruption/acn
[149] CPC, Cited at note 7, Art. 37(2)

evidence warranting conviction, order that a preliminary inquiry be held, order further investigations; or refuse to institute proceedings. The prosecutor should take the actions stated above within the minimum possible time for delay in prosecutorial decision making causes the denial of rights of the accused. The accused may be incarcerated before the case is tried and finally disposed. The effects of delay in investigation and prosecutorial decision making are worse in case of an accused who is not bailed out of custody because of weak financial position or the offense accused of being not bailable. It is worth noting that any person arrested for a corruption offence punishable for more than 10 years may not be released on bail.[150]

Besides, delay in pre-trial decision making also infringes upon the defense of the accused and brings about anxiety and psychological strain out of public suspicion on the accused among others. The law so to reduce the strain on the accused owing to pre-trial delays obliges the prosecutor to perform his/her duties or make decisions within the shortest possible time. If the prosecutor decides to file charges against the accused, s/he should do it within 15 days of the receipt of the investigation report.[151] The 15 days period limitation is set so as to safeguard the right of the accused to speedy trial and to minimize the adversities on the accused as a result of the delay in pre-trial criminal proceedings. However, taking into account backlog of cases on prosecutors, an attempt was made in the BPR Study Document of the Investigation and Prosecution Directorate of the FEACC to increase the 15 days period set by the CPC for the prosecution to frame charges against the accused to 27 days, a period that was practically seen to be workeable on the ground before the implementation of the BPR Document. But, the attempt to increase the 15 days period to 27 days was later abandoned altogether and against all odds it was decided to stick to the 15 days period provided for in the CPC. In the opinion of the researcher the abandonment of the intention to increase the 15 days limit to 27 days limit is a good thing in light of the right of the accused. On the other hand, even if the need to the increase the 15 days period contained in the CPC for the prosecutors to study the investigation report and frame charges against the accused to 27 days was strongly felt, it was only possible to do so by

[150] Proc. No 434/2005(as amended), Cited at note 86, Art. 4(1)

[151] CPC, Cited at note 7, Art. 109. In accordance with the BPR Study Document of the Investigation and Prosecution Directorate, before implementation of the new process a prosecutor used to take an average of 27 days to study and decide on an investigation report. However, using the BPR study a stretched objective of 15 days is set for the prosecutor to study and decide and also to frame and institute charges against the accused , that is 5 days to study and decide on the investigation report and 10 days to prepare and institute charges if s/he decides to do so.

amending the CPC of Ethiopia of 1961 by making another amending proclamation. Therefore, any attempt to amend the provisions of a proclamation by a law or ordinance which is inferior in hierarchy to it would be illegal.[152]

The law has imposed a duty on law enforcement agencies to discharge their functions within the shortest possible time or has set a period of time within which a certain act in pre-trial criminal proceedings is to be performed. For instance, the investigating police is required to complete the investigation within the shortest possible time. And, the prosecutor has to institute charges against the accused within a period of 15 days of receiving the investigation report. In practice, however, pre-trial delay in investigation and prosecution of corruption cases is a rampant problem facing accused persons these days. The different investigation files at the FEACC mentioned below reveal the disregard by the investigating officers of their obligation to complete investigation within a reasonable time.[153]

In one case[154] the accusation was brought to the investigating officer on 28/3/2004 E.C and investigation was commenced on 7/11/2004 and finalized after long delay on 24/03/2005. The investigation diary of the investigation report shows that the overall investigation took about 3 months even if the law obliges the investigator to finalize investigation within the shortest possible time. In the FEACC Prosecutor vs. Constable Tesfaye Derebe,[155] a tipoff was brought to the Federal Police on 03/08/2003 E.C. and investigation began on 28/03/2003 and completed on 22/01/2005. This discloses that investigation took about 1 year and 10 months. In a similar way, in the case of FEACC Prosecutor vs. Hymanot Zewde,[156] the investigating officer received tipoff on 15/04/2003 and commenced investigation on15/04/2003 and completed it on 17/10/2003. Here also investigation lasted about 6 months.

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[152] FEACC BPR Study Document, Cited at note 108

[153] The researcher wants to let readers know that he did not get a hands-on on the investigation and prosecution files mentioned in this sub-section because direct access to the dead investigation and prosecution files of the FEACC was denied on allegation of confidentiality or secrecy of the information contained therein. Hence, the investigation and prosecution files of the FEACC mentioned under this sub-section are only those collected from the FEACC Investigation and Prosecution Directorate Charts containing only the names and important dates with regard to files investigated and decided by the Directorate. As a result, it was not possible for the researcher to study and analyze the contents and other details with regard to the offenses mentioned.

[154] FEACC Prosecutor vs. Haile Georgis Lakew,FEACC Prosecution, 2011, Addis Ababa, unpublished

[155] FEACC Prosecutor Vs. Constable Tesfaye Derebe, FEACC Prosecution, 2011, Addis Ababa, unpublished

[156] FEACC Prosecutor Vs. Hymanot Zewde, FEACC Prosecution, 2011, Addis Ababa, Unpublished

In another case[157] likewise accusation was brought before the investigator on 16/06/02 and investigation started on 16/06/2002 and finalized on 02/01/2004. In this case also investigation took about 18 months. The investigation files above exhibit that investigation officers were acting in clear disregard of the provision of the law and have caused denial of the constitutional guaranteed right of the accused to speedy trial. In the case of FEACC Prosecutor vs. Azeb Bayu[158], the investigation officer got tipoffs on an alleged corruption crime on 02/11/04 E.C and investigation was commenced on 02/11/04 E.C and completed on 07/12/04 E.C. This means that investigation took almost one month to be completed.

As far the public prosecutor is concerned, the cases obtained by the researcher at the FEACC disclose breach of prosecutorial obligation to institute charges against the accused within 15 days of receiving the investigating officer‘s investigation report. This meant the 15 days legal limit is rarely adhered to by the public prosecutor. In one case[159], the investigating officer submitted the investigation report to the prosecutor on 16/01/2005 E.C. However, the prosecutor framed the charge against the accused after 4 months on 02-05-2005 E.C. From this one can realize the disparity between the practice and what the law ordains.

In a similar way, in the case of FEACC Prosecutor vs. Zayed Mohammed[160], the prosecutor received the investigating officer‘s report on 09/05/2003 but to ones dismay the prosecutor framed a charge against the accused after 1 year of receiving the investigator officer‘s investigating report on 30/04/2004. In another case[161], the investigation report of the investigator was brought before the prosecutor on 13/08/2003 but the later framed a charge against the accused 8 months after the receipt of the investigation report on 19/04/2004.

Based on the forgoing cases it is concluded that there is delay in corruption crime proceedings owing to the negligence of the investigating officers and public prosecutors to execute their tasks with in the time limit set by law. The causes for delay of corruption crime proceedings because of the investigation and prosecution may be classified into institutional and legal. Institutional causes are those affecting the Investigation and Prosecution Directorate of the FEACC and other

157 FEACC Prosecutor Vs. Habtamu Eka, FEACC Prosecutor , 2010, Addis Ababa, unpublished
158 FEACC Prosecutor Vs. Azeb Bayu, FEACC Prosecutor, Addis Ababa, 2012, Unpublished
159 FEACC Prosecutor Vs. Tesfaye Bezabih, FEACC Prosecutor, Addis Ababa, 2013, Unpublished
160 FEACC Prosecutor Vs. Zayed Mohammed, FEACC Prosecutor, Addis Ababa, 2012, Unpublished
161 FEACC Prosecutor vs. Dawit Moges, FEACC Prosecutor, Addis Ababa, 2011, Unpublished

agencies that may acquire such power by delegation from the former.[162] The major institutional problems include: lack of man-power, lack of coorperation between the investigator and the prosecution and lack of institutional control. The legal causes of delay arise from the loopholes in the provisions of the laws applied in the investigation and prosecution of corruption offense especially, the CPC. Below is the discussion of the institutional and legal causes mentioned above.

4.2.2. Institutional Causes of Delay

4.2.2.1. Number of Investigation Officers

If the number of man power assigned to a given profession is below the required number, then the quality and timeliness of the work output will be severely affected leading to inefficient, delayed and poor quality work output. This is so true in relation to the number of investigating officers at the FEACC. The number of investigating officers at the FEACC is not commensurate with the number of corruption cases reported to the FEACC. Currently, the Investigation and Prosecution Directorate of the FEACC has about 130 employees,[163] out of which 32 are investigators and 35 are prosecutors.[164] The BPR Study Document of the Directorate indicated that the Directorate should have 60 investigating officers instead of its current number of 32 investigating offiers.[165] This means the current number of investigators at the FEACC is 28 short of the number projected by the BPR document. The existence of very few number of investigating officers means that there will be backlog of corruption accusations that must await investigation by the FEACC.

In the 2010/11 annual report, for instance, the FEACC received 3162 tipoffs and accusations. Out of this total figure 52% were found to be within the jurisdiction of the FEACC and the rest 48% were outside of the jurisdiction of the FEACC.[166] In a similar way, the number of accusations and tipoffs received from July, 2008- June, 2009 were 1827. Out of the total number

[162] See Proc. No. 433/2005 (as amended), Cited at note 94, Art. 7(1)-(6) , 8 and 9

[163] The number of staff of the Directorate should be 161 as opposed to its current number of 130. See, FEACC BPR Study Document, Cited at note 107, P. 58

[164] Ato Gebru Gebeyehu, Cited at note 107

[165] FEACC BPR Study Document, Cited at note 108, p. 58

[166] The FEACC 2010/11 Statistical Report, UNDP/DIP, 2011, P. 23

of tipoffs and accusations 1086 were out of the jurisdiction of the FEACC (59.4%).[167] In the same period, a single investigator had the capacity to complete investigation of 9 files annually.[168] On the other hand, in the 2009 budget year, out of the 235 accusations in respect of which investigation was ordered, the investigation of only 110 (46%) files was completed and the rest 84 files were under investigation. In the same period, out of the total number of files investigated completely and files whose investigation was in progress, the number of files assigned to an investigating officer were 6 and 5 files annually, respectively. Besides, 56.9% (66 files) were completed in less than 4 months and the remaining 43.1% of the files took from 6 months up to 2 years time to complete.[169]

Based on the BPR Study Document of the Directorate, it used to take 5 months and 17 days for the investigating officer to complete investigation into an accusation and tipoffs received in relation to very serious corruption offense. A stretched objective is set to complete investigation of corruption cases within an average of 4 months period.[170] Besides, the BPR document also fixes the ideal number of investigation files that should be assigned to an investigator annually. Accordingly, 12 petty corruption cases should be assigned to an investigator; a senior investigator should handle 10 serious corruption cases; and a principal investigating officer in addition to professional assistance and coordinating responsibility s/he provides to team members should investigate 5 very serious corruption cases, annually.[171] If too many cases are assigned to a single investigator then his/her capacity to bring about an efficient and productive investigative work is minimized. The task of investigation demands that the investigator invests all his/her time and vigor to the accomplishment of the task at hand. In this regard, the Uniform Guidelines for Investigators provides that investigation is a profession demanding the highest personal integrity and persons responsible for the conduct of an investigation should demonstrate competence.[172] The competence of an investigating officer may be eroded because of a number of factors, among which is the assignment of numerous cases at once.

[167] FEACC, Study and Research Department, 2009 Annual Evaluation Report, August 2009. Currently, the Study and Change Department of the Commission is replaced by the Study and Change Management Directorate following the restructuring of the FEACC that took place in 2007.
[168] FEACC BPR Study Document, Cited at note 108, P. 50
[169] Id., P.7
[170] Id., P.22
[171] Id., P.50
[172] United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators,Vienna, September 2004, p. 18, Available at http://www.unodc.org/corruption.html

The responsibility of the investigator has a bearing on the life and property of persons. Hence, the investigator is duty bound to respect rights and freedoms of persons. If the investigator is burdened with too much case load, then the probability of the decision of the investigator to affect the rights and freedoms of persons is very high.[173] The most important of the prejudices as a result of case load on the investigation officer is the denial of the right of the accused to speedy trial since the investigator cannot complete the investigation of the files within the shortest possible time provided by law.

Almost all investigators and prosecutors interviewed by the researcher revealed the existence of lack of adequate number of investigators at the FEACC. And, in order to cope up with this deficiency, the FEACC delegates the investigation of some corruption files to other organs outside of it.[174] The respondents further said that the investigation of corruption cases by outside agencies takes more time and even sometimes incomplete investigations are produced. This in turn causes delay in pre-trial criminal proceedings as compared to those files investigated by the FEACC itself.[175] In one case[176], for instance, investigation into an alleged corruption crime began on 21/02/04 E.C and was completed after 6 months on 21/10/2004 E.C. The task of investigation was conducted by the Gamo area Police. In another case[177] also, investigation was started on 03-05-2000. Surprisingly, the police completed the task of investigation 3 years after the commencement of the investigation on 23/12/2003. The investigation was handled by the Were‘elu District Police. The provision of support and close supervision was seen as a soultion to tackle problem of delegated investigations from taking longer period of time as opposed to those done by FEACC.[178] In light of the aforementioned discussions one can conclude that the inadequate number of investigating officers is a ground of pre-trial delay in criminal proceedings involving corruption crime.

[173] OECD Expert Seminar, cited at note 148, P.8.
[174] Interview with Ato Zelealem Fekadu, Prosecutor II, at the FEACC, Done at his Office on 28th March, 2013 and with Ato Demissew Assefa, Investigator II, at the FEACC, Done at his Office on 28th March, 2013.
[175] Ibid.
[176] FEACC Prosecutor vs. Addisu Gele et al., FEACC Prosecution, 2012, Addis Ababa, Unpublished
[177] FEACC Prosecutor vs. Solomon Bezabih et al., FEACC Prosecution, 2011, Addis Ababa, Unpublished
[178] BPR Study Document, cited at note 107, p. 10.

4.2.2.2. Skill and Competence of Investigation Officers

The other issue relating to the investigation of corruption cases is a problem relating to the skill and competence of investigating officers. The skill and personal qualification of corruption crime investigators is a key to effective and impartial corruption crime investigations.[179] Anti-corruption law enforcement officers must have basic skills in areas where corruption is committed. They should also have a basic level of knowledge in accounting, public procurement procedures, tax and other relevant fields where corruption takes place. In the area of undercover operations, not only good technical equipment, but mostly skilled and experienced personnel are needed.[180] In this regard, the staff profile of the Investigation and Prosecution Directorate of the FEACC reveal that the investigators of the FEACC are relatively skilled and experienced. The investigation staff of the FEACC is composed of individuals from diverse professional backgrounds including economists, social scientists, lawyers, accountants, managers, and police.[181] However, this does not mean that investigators of the FEACC are equipped with all the necessary skills of gathering, analysis, and preservation of evidence relating to corrupton crime and crime investigation in general.

The public prosecutor whom the researcher contacted disclosed that some invistigators have insufficient training and skills that they sometimes gather evidence that is not even remotely related to the case at hand. In addition, investigators lack of sufficient training and skills is causing delay in investigation and production of incomplete investigation reports.[182] Besides, the then Director of the Department in an interview with another researcher acknowledged the fact that investigators lack the necessary skills to effectively investigate corruption offenses and emphasized the need for a long-term hands-on-education and training program. This lack of staff expertise has also meant that some cases had to be outsourced to the investigation Directorates of the police or other institutions.[183] It is worth nothing that investigators at the FEACC unlike investigating officers found in other institutions such as the police have better understanding of the fundamental rights and freedoms guaranteed to accused persons.[184] However, insufficient

[179] OECD Expert Seminar, Cited at note 148, P.8.
[180] Ibid.
[181] Arsema Tamyalew, Cited at note 92, P. 17
[182] Interview with Ato Amare Asrate, Prosecutor II at the FEACC, Done at His Office on 2nd January, 2013.
[183] Arsema Tamyalew, Cited at note 92, Pp. 17-18
[184] Ato Amare Asrate, Cited at note 182

number of investigators and gap in training and skills of investigators is causing delay in pre-trial corruption crime proceedings.

4.2.2.3. Number of Public Prosecutors

The existence of inadequate number of prosecutors is the other problem behind the denial of the right to speedy trial of persons accused of corruption crime. If too many investigation files are assigned to a prosecutor because of lack of man power, then s/he will not be able to frame charges within 15 days of the receipt of investigation report. The existence of too many investigation files means that the prosecutor needs adequate time to study and decide on the files assigned to him/her. The presence of insufficient numbers of prosecutors at the FEACC is causing delay in corruption offense proceedings. It was previously mentioned that the Investigation and Prosecution Directorate has about 130 staff members and out of which 35 are prosecutors.[185] Based on the BPR Study Document of the Directorate, the Directorate should ideally have 42 prosecutors instead of its current number of prosecutors of 35.[186] This shows that the present number of prosecutors is 7 short of the number projected by the BPR document. The disparity between work pressure and available number of prosecutors is creating a practical problem by protracting prosecutorial decision making thereby causing violation of the right of the accused to speedy trial.

Ato BegizewYaregal,[187]admits the fact that the number of prosecutors at the FEACC is below what is expected and mentions a number of reasons as to why. According to him, more and more experienced prosecutors frequently leave the FEACC in search of better pay, in order to become advocates after having obtained advocacy license, etc.[188] The informant remembers the lack of man power that was created in 2012 when a number of veteran prosecutors left the FEACC anticipating that the existing Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000 was about to be amended and as a result of which the advocacy license to be issued to prosecutors after 5 consecutive years of service was going to be abandoned by the amending proclamation.[189] He further added that once a prosecutor decides to leave the FEACC

[185] Ato Gebru Gebeyehu, Cited at note 107
[186] FEACC BPR Study Document, Cited at note 108, p. 58
[187] Interview with Begizew Yaregal, Team Leader at FEACC Study and Change Management Directorate, Done at his Office on 28 March, 2013.
[188] Ibid.
[189] Ibid.

s/he cannot be forced to change him/her mind and stay at the FEACC. Instead, it would be wise for the FEACC to put in place knowledge and skill transfer system from the experienced prosecutors to junior recruits so as to fill the gap to be created when the formers decide to leave. Currently, the FEACC is trying to maintain its staff of prosecutors by providing better pay, health insurance benefits both to prosecutors and their families, and giving further education opportunity.[190] Besides, the introduction of exit interview by the FEACC for employees leaving in general and prosecutors in particular, is advised so as to identify the root problems forcing prosecutors to leave the FEACC thereby adding to the problem of lack of man power and resulting in delay of criminal proceedings in relation to corruption cases.[191]

The other reason attributed to inadequate number of prosecutors is the fact that experienced prosecutors of the FEACC are from time to time being appointed to other posts in other government bodies. A case in point here is the appointment of senior prosecutors of the FEACC to judgeship. The FEACC cannot object to such appointment so as to maintain inter-organ relations between the FEACC and other government bodies, the courts for example.[192]

Besides, beginning from April 2007 prosecutors at the FEACC have been categorized into office and trial prosecutors and this in turn has made positive improvements with regard to the effective utilization of the available very few number of prosecutors.[193] This helps to mitigate the problem arising out of inadequate number of prosecutors because the same prosecutor will not be assigned to study investigation reports and make preparations for trial a the same time.

When the BPR Document of the Directorate is fully implemented, a prosecutor should study and decide on 36 investigation files of petty corruption cases, a senior prosecutor should examine and decide on 36 investigation files of serious corruption cases, and a principal prosecutor in addition to the professional assistance and coordinating responsibility s/he provides to team members, s/he should study and decide on 8 very serious corruption cases files, annually.[194]

[190] Ibid.
[191] Interview with Ato Abiy Dolly, Junior Researcher at the FEACC Study and Change Management Directorate, Done at his Office on 28 March, 2013.
[192] Ato Begizew Yaregal, Cited at note 187
[193] FEACC BPR Study Document, cited at note 108, p. 19
[194] Id., PP. 50-51

On the other hand, the public prosecutor is obliged to frame charges against accused person within 15 days of the receipt of the investigation report. In practice, as a result of too much work load prosecutors take long periods of time to frame charges and to file same to the court. As per the BPR Study Document of the Directorate, a prosecutor used to take 27 days to study and decide on a completed investigation file. However, upon implementation of the BPR Study Document, a stretched objective is set for a prosecutor to study and decide on a completed investigation file within 15 days of the receipt of the investigation file. Out of the 15 days period 5 days are allotted for the prosecutor to study and pass the appropriate decision on the investigation file and 10 days for the prosecutor to frame charges and file same to court.[195]

A prosecutor contacted by the researcher mentioned that most prosecutors consider the 15 day period for framing and institution of charges to be mandatory only in relation to accused persons whose bail right has been denied but not to those whose right to bail has been granted.[196] This in the opinion of the researcher amounts to amending the law by practice. This is because the application of Art. 109 (1) of the CPC which clearly provides the duty of the prosecutor to frame charges against the accused within 15 days of the receipt of the investigation report is not subject to any conditions. This means that the ordinance of this provision is applicable to all persons accused, irrespective of the denial or grant of bail right. Therefore, any attempt to interpret a clear provision of the law in the absence of any ambiguity or vagueness to its meaning is making a new law under the disguise of interpretation. The same respondent added that practically the courts give an order for the release of accused persons in custody if the prosecutor fails to frame charges within 15 days of the receipt of the investigation report.[197]

4.2.2.4. Skill and Competence of Public Prosecutors

The lack of prosecutorial skills and diligence is the other problem giving birth to delay in disposition of corruption crime proceedings. The fact that a prosecutor is a lawyer versed in the law does not warrant the prosecutor‘s mastery of prosecutorial skills and diligence in his/her duties. The gap in skills and competence could still be observed even after the prosecutor is inducted into prosecutorial training program. As a result, prosecutorial skills and competence

[195] Id., P.22
[196]Ato Zelealem Fekadu, cited at note 174. He further stated that prosecutors assert the 15 days period given to frame charges against the accused as a matter of right only but they do not usually make use of it to discharge the duty to frame charges within the same period.
[197] Ibid.

deficiencies in some prosecutors has been found to cause the denial of the right of the accused to expedited trial. Judges inquired by researcher pointed out the type of gaps in prosecutorial skills and diligence that adversely affect the right of the accused to speedy trial. The first problem relates to the fact that prosecutors present their witnesses to court without having them rehearsed. As a result, witnesses instead of aiding the administration of justice hinder the overall criminal proceedings by making a lot of inconsistent testimonies to the court. This in turn consumes the valuable time of the court and causes delay in the corrupton crime proceedings.[198] The other problem relates to the fact that prosecutors sometimes fail to serve the accused with criminal charge in time that the accused prays the court to adjourn the trial so that s/he can prepare his/her defense. In addition, some prosecutors file a charge against an accused person based on a investigation file they could have closed in the first place citing Art. 42(1) (a) of the CPC. The reason for this according to the informant is fear of responsibility that may arise if they close the file themselves based on Art. 42(1) (a) of the Code. These prosecutors institute the charge knowing they coud have closed it by themselves but they instead want the court to close it for them. This in turn creates harassment against the accused by denying him/her of the right to have expeditious disposition the case.[199]

In conclusion, the existence of very few number of investigating officers is causing delay in pre-trial corruption case proceedings. Moreover, the fact that there are very few number of investigation officers to investigate so many corruption cases is causing arrears of cases. By the same token, the fact that scanty number of prosecutors assigned to prosecute many corruption cases is a problem resulting in pre-trial delay of proceedings.

4.2.2.5. Unsatisfactory Cooperation between Prosecutors and the Investigating Officers

Ethiopia is a party to United Nations Convention Against Corruption (UNCAC) and Art. 38 of the UNCAC obliges each state party to take measures to encourage, based on its domestic law, cooperation among others between its authorities responsible for investigating and prosecuting

[198] Interview with Ato Yirga Ayecheh, A judge at the Federal High Court, 2nd Criminal Division, Done at his Office on 18 March, 2013.
[199] Interview with Ato Yosef Kiros, A judge at the Federal High Court, 1st Criminal Division, Done at his Office on 18 March 2013.

criminal offense.[200] Thus, Ethiopia as a state party to the UNCAC has a duty to take the required steps to facilitate cooperation between the investigating officers and prosecutors of the FEAC in the discharge of their duties. Hence, there has to be cooperation between the prosecutors and investigating officers of the FEACC. The investigator is duty bound to gather all the necessary information regarding an alleged crime. The public prosecutor based on the information obtained from the investigator decides whether to institute charges or not. The prosecutor may give to the investigating officer appropriate orders and directions so that the latter performs his/her duties pursuant to the law [201] and that the investigator has the obligation to abide by the lawful orders of the prosecutor.[202] The public prosecutor should play a leading role in the pre-trial investigation of corruption crime. Prosecutor‗s early involvement since receipt of information in some countries, allows increasing quality of cases referred to the court.[203]

In addition, the cooperation between the prosecution and investigator is important in the investigation and prosecution of corruption offense. Investigation into sophisticated crimes such as corruption offense requires close cooperation between the law enforcement agencies involved. When gathering evidence the investigator depends on the advice of skilled lawyers to ensure that the evidence produced is admissible in court.[204] In the past, there was no cooperation between the prosecutors and investigating officers at the FEACC. Prosecutors and investgating officers ruled out cooperation in the name of maintaining each other‗s professional independence and on the conviction that consultation between them had the only purpose of consuming their time.[205] The consequences of investigation conducted in the absence of the prosecutor included: production of incomplete investigation reports, repeated exchange of investigation reports between the investigating officer and the prosecutor and delay of decision making by the prosecutor.[206]

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200 United Nations Convention Against Corruption, Adopted by the UN General Assembly on 31 October 2003, New York, Art. 38

201 Herbert Harley, The Need to Criminal Courts, Yale Law Journal, Vol. 28, p. 569, See also Art. 8 of the CPC of Ethiopia of 1961

202 Ronald A. Anderson, Wharton's Criminal Law and Procedure, Vol. 5, New York, Rochester, 1957, p.9

203 OECD Expert Seminar, Cited at note 148, Pp.8-9.

204 ___________, Effective Prosecution of Corruption, Report on the Master Training Seminar, 11–13 February 2003, Asian Development Bank, Ghaziabad, India, p. 17

205 BPR Study Document, Cited at note 108, p. 12

206 Ibid.

Today, there is cooperation between the investigating officer and the prosecutor. However, the fact that there are very few number of prosecutors with too much case load has made the cooperation to be unsatisfactory.

When an incomplete investigation report is produced the prosecutor will return it back to the investigating officer so that s/he conducts further investigation. This repeated sending investigating reports back and forth between the investigation officer and prosecutor will continue until a complete investigation report is produced by the former. The unnecessary delays because of forwarding the investigation report back and forth between the prosecutor and the investigator is detrimental to the accused especially when s/he is in custody. This has a practical problem by causing delay of corruption criminal proceedings. In the 2010/11 budget year, for example, 393 files investigated by the FEACC were presented for prosecutorial decision. Out of the overall files, (36%) of which were closed and (34%) of which were decided to commence prosecution. Based on the overall prosecutorial decision, the decision to close case files ranked 1st, the decision to begin prosecution ranked 2nd and that relating to further investigation had 3rd place. This statistical data further divulges that 66% of the files did not result in prosecution.[207]

In the same period, the investigation of 590 files was delegated to other bodies. The Addis Ababa Police Commission had 72% share of the files delegated. A prosecutorial decision passed on delegated investigation files showed that 213 (36.1%) of the investigation reports were found to be incomplete and hence, they were referred back for further investigation. Based on the prosecutorial decision, the majority of the decisions made were relating to further investigation, while to begin prosecution ranked 2nd and decisions related to case closure ranked 3rd.[208] This shows the need to provide further training about the investigation of corruption crime to delegated investigating bodies, especially to Addis Ababa Police Commission since it has the majority of the delegated files. The above statistical data vividly demonstrate the delay of corruption crime proceedings and the consequent harassments to the rights and freedoms of the accused. Besides, an investigation conduted in the absence of the prosecutor also impacts the quality of the charge prepared from it. This in turn increases the number of charges amended and

[207]The FEACC Annual Performance Report for the years 2010/11, p. 87
[208] Id. P.90

closed.[209] The aggregate effect of the above problems is to deny the accused of the right to expeditious trial.

Therefore, so as to avoid the above problem it was decided that coorperation between the prosecutor and the investigator should be made mandatory at FEACC and seen as part of the usual task.[210]. However, the existence of very few number of prosecutors with too much work load has not permitted the level of cooperation that should exist between the prosecutor and the investigator to the level expected. Besides, the same factor has not enabled the prosecutor to play a leading role in the investigation of corruption crime.[211]

The investigator must use the power entrusted to him/her only for the purpose envisioned by the grantor of the power. On the other hand, abuse of power by the investigator may cause delay of investigation and incarceration of accused person for long period of time. Therefore, implementing institutional control mechanism whereby the prosecutor controls and supervises the conduct of the investigator has been found to be the best solution. In the advent of abuse of power by the investigator, the prosecutor may call upon the investigator for explanation, order the instant release of the accused if it is found that s/he was illegally detained, order transfer of the investigation file from one investigator to another or institute criminal charges against the misconducting investigator. In this regard, a prosecutor whom the researcher met said that most investigators at the FEACC have a good reputation for using their power with in the confines of the law and conducting investigation in a manner respecting the rights of persons accused.[212] Besides, the same informant also admitted the existence of very few investigators who cause the suspected person to be arrested first and then commence investigation. The rule is that the investigator should first gather evidence which shows that the suspect has committed the particular offense.[213] This clearly is an act of abuse of investigative power and breach of the ethical conduct of the investigator to respect the rights of accused persons. Therefore, delay in corruption crime proceedings is caused by unsatisfactory level of cooperation between the prosecutor and the investigator.

[209]BPR Study Document, Cited at note 108, p. 12
[210]Ibid.
[211] Ato Amare Asrate, cited at note 182
[212] Ato Waltenegus Fikire, cited at note 106
[213] Ibid.

4.2.3. Legal Causes of Delay

4.2.3.1. Remand

Remand is to commit an accused person to custody or release him/her on bail during an adjournment.[214] Based on this definition, remand has the effect of curtailing the liberty of the accused person and hence, it should not be allowed unreasonably. There must be a reasonable cause for remand to be allowed. A remand shall be deemed to be reasonable when sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand. Similarly, the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) state that ―Pre-trial detentions shall be used as a means of last resort in criminal proceedings with due regard for the investigation of the alleged offence and for the protection of society and the victim."[215] Rule 6.1 of the same states that pre-trial detention or remand shall last no longer than required to accomplish the objectives and shall be administered humanely and with due respect for the inherent dignity of human beings.[216]

In Ethiopia, Art. 59(1) of the CPC stipulates that the power to decide whether an arrested person shall be remanded or be released on bail is given to the court before which such person is brought.[217]As per Art. 59(2) of the CPC an investigative remand may be given by the court but solely for the purpose of completing the investigation.[218] It appears that remand for purposes other than investigation is forbidden under the same Article. Art. 59(3) of the CPC states that no remand shall be granted for more than fourteen days on each occasion. In the opinion of the researcher this article is defective and causes denial of the right of the accused to speedy trial. The provision prescribes only the giving of 14 days on each occasion without fixing the maximum number of occasions remand is to be given. The above provision gives the right for the investigating officer to request for remand again and again without limitation under the excuse of completing the investigation. This gap also leaves the fixing of the maximum number of occasions to the discretionary power of the court. This in turn may lead to long pre-trial

[214]Elizabeth A. Martin (Ed.), Oxford Dictionary of Law, 5th Ed., Oxford University Press, 2003, P. 422
[215]UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), General Assembly Resolution 45/110, 14 December 1990, Rule 6.1
[216] Id., Rule 6.2
[217] CPC., Cited at note 7, Art. 59(1)
[218] Id., Art. 59(2)

detention of the accused. This is so true because the investigating officer simply requests for remand of the acused on the mere excuse of completing the investigation. On the other hand, courts are willing to grant remand of the accused simply on the application of the investigating officer for ample time to complete the investigation. This leads to arbitrariness and abuse of power by the investigating officer and delay in pre-trial corruption crime proceeding. Asked as to whether the courts are repeatedly granting remand of the accused based on the mere application of the investigation officer to complete the investigation, a judge at the Federal High Court responded that if the court finds the granting of remand to be inevitable then it first tries to convince the accused the reason for and the fact of his/her of being remanded.[219]

Another judge at the Federal High Court inquired about the maximum number of occasions remand is granted by courts, he told the researcher that the courts are not willing to grant investigative remand for not more than two occasions. Even out of the two occasions, the courts are very cautious not to allow a second round of investigative remand for the full period of fourteen days. In the majority of cases courts give only half of the 14 days limit provided i.e. seven days.[220] This implies that although the CPC is silent on the maximum number of occasions remand is to be granted, the courts in their day to day application of the law are trying to limit the maximum number of occasions of remand to two. However, there is no consistency or uniformity in the application of Art. 59(3) of the CPC because judges give different interpretations to the same provision depending on the manner how they understand and choose to give effect to it. This in turn opens the way for existence of different interpretations in respect of a single provision of the CPC and hence, the accused may be exposed to longer or shorter period of time in custody based on the manner how the above provision is interpreted by judges.

4.2.3.2. Adjournment

The guilt or innocence of an accused in corruption crime cannot be discovered overnight. The judge needs adequate time to examine evidence to reach at a decision and hence, adjournment is sought. On the other hand, the existence of prolonged and repeated adjournments that cause the disruption of a trial in progress would result in excessive delay of corruption crime proceedings. So, there is a need to strike a balance between the right to expeditious trial of accused persons

[219]Interview with Ato Abohay Guade, A Judge at the Federal High Court, 2nd Criminal Division, Done at his Office on 18 March, 2013.

[220] Ato Teume Gebru, Cited at 146

and the reasonable time needed to decide on a case. In practice, however, the provisions of the CPC governing adjournment has failed to accommodate these two interests effectively. The ordinances of the CPC relating to adjournment have gaps that give a wide discretionary power to the court thereby creating a practical problem by causing delay in corruption offense trial proceedings. A number of corruption cases studied at the Federal High Court show that the trial of corruption cases is taking very longer period of time to be disposed. Generally, the problems with regard to laws governing adjournment can be categorized into: the problem of interpretation or possibility of having different interpretations, the power of the court to give further adjournment and the problem relating to the grounds of adjournment enumerated.

The first problem relates to interpretation. The application of the provisions governing adjournment differs from courts to courts based on the perception of judges. Hence, there is no consistent application of Art. 94 of the CPC which deals with adjournment. There are three possible interpretations of the provision.

The first interpretation: As per Art. 94(1) of the CPC the court may of its own motion or on the application of the prosecution or the defense adjourn any hearing at any stage thereof where the interests of justice so requires.[221] In light of the above, the interest of justice is the condition precedent for granting of adjournment and hence, the court would never grant an adjournment unless the adjournment serves the interest of justice. On the other hand, Art. 94(2) of the same provides that adjournment may not be granted unless the conditions enumerated under it happen.[222] Hence, the interest of justice demands that only one of the circumstances listed under Art. 94(2) of the CPC occur because this Sub-Art. circumscribes the conditions under which adjournment is granted. However, this interpretation is not plausible because, for instance, assume that the accused person does not have sufficient means to pay for a legal counsel of his/her choice and in the absence of legal representation miscarriage of justice would result. In this case the interest of justice requires that the court be adjourned. This is so because Art. 20 of the FDRE Constitution guarantees the right of accused persons to be represented by legal counsel of their choice, and, if they do not have sufficient means to pay for it and miscarriage of justice

[221] CPC, cited at note 7, Art. 94(1)
[222] Id., Art. 94(2)

would result, to be provided with legal representation at state expense.[223] If we adopt the first interpretation of adjournment, adjournment is not going to be granted because the case in the above example is not mentioned under Art. 94(2) of the CPC. From the above it is gathered that it is not only when one of the conditions illustrated under Art. 94(2) arise that the interest of justice is said to require an adjournment. Hence, Art. 94(2) is not exhaustive but rather it is illustrative.[224]

Second interpretation: Sub-Arts.1 and 2 of Art. 94 of the CPC seem to stipulate two different conditions for granting adjournment. As per Art. 94(1) of the CPC, the court has a discretionary power to decide whether an adjournment is to be granted or not by showing that the interest of justice requires without referring sub-Art. 2 of Art. 94. As per Art. 94(2) of the CPC the court has to grant adjournment only when the conditions listed under it materialize. This is not plausible because it may happen that there may be certain conditions whereby the court may not be disposed to give an adjournment even if the conditions stated under Art. 94(2) occur for they may not sometimes serve the interest of justice. This interpretation is also faulty because there may be circumstances when the interest of justice does not demand an adjournment even if the conditions enumerated under Art. 94(2) are satisfied.

Third interpretation: Art. 94(1) of the CPC stipulates that it is only when the instest of justice dictates that adjournment is to be granted by the court. And, Art. 94(2) of CPC lists the conditions when adjournment is to be granted. But even if Art. 94(2) seems to grant adjournment when one of the conditions listed arise, the court will not grant an adjournment if the ―interest of justice" does not require adjournment. This interpretation seems to be workeable because in principle it is when the interest of justice requires that the court grants an adjournment. Thus, it would be improper for the court to give an adjournment on account of a condition which does not serve the interest of justice even if such condition is listed under Art. 94(2) of the CPC.[225]

This possibility of having different interpretations makes the application of the CPC on adjournment very difficult. Different judges perceive it in different ways and hence, there is no uniform way of application of law governing adjournment in our courts. Adjournments are

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[223] FDRE Const., Cited at note 5, Art. 20(1) &(5)

[224] Abiyu Mulugeta, The law and the Practice of Adjournment in Criminal Cases under Ethiopian Law, Addis Ababa University, Faculty of Law, A senior Thesis, 1989, Unpublished, p. 83

[225] Id., PP. 84-85

granted by our courts at the request of any party again and again. In such cases adjournment does not serve the interest of justice but rather it delays the end goal of justice. The provision of the CPC on adjournment has a loophole since it gives wide discretionary powers to courts to interpret it the way they like by common sense without any legal justification thereby causing delay of corruption crime proceedings.[226]

The other problem surrounding adjournment is the grounds of adjournment enumerated under Art. 94(2) of the CPC in respect of which adjournment should be granted for an indefinite period. It is stated under Art. 94(3) of the CPC that an adjournment cannot be granted for more than a week when: the public prosecutor or the accused for good cause fail to appear, the charge has been altered or added to and the prosecutor or the accused requires time to consider the prosecution or defense, the accused has not been served with the copy of the charge or even if served s/he cannot properly prepare his/her defense due to shortage of time and the prior sanction for the prosecution is required before the trial may start.[227] Under these circumstances the adjournment may not be granted for more than a week. These are conditions for which an adjournment is granted for definite period. However, except in these conditions an adjournment is for indefinite period of time, i.e. it is left to the discretion of the courts to determine the time that it considers sufficient for the adjournments purpose to be carried out. That is, except in Art. 94(2) (a) and (f-h), the matter is left to the discretion of courts to determine the time for an adjournment.

Except in the cases stated under Art. 94(3) which strictly fix a maximum period of one week for a single adjournment, the laws give a wide discretionary power to the judge to grant adjournment for an indefinite time that s/he considers is sufficient to enable the purpose for which the adjournment is granted to be carried out. This has created a practical problem and these days the gap between two trial sessions in a given corruption case is very long. The law allows the judge to adjourn a case for long period of time without a limitation as to what constitutes a reasonable time needed. The limitation stated under Art. 94(3) is not enough for the efficient functioning of criminal justice system. A time limit needs to be put with regard to the conditions of adjournment enumerated under Art. 94(2). Otherwise, it gives a wide discretionary power to our

[226]Interview with Ato Hagos Woldu, A Judge at the Federal Supreme Court, Done at his office on 23 February 2013.
[227] CPC, cited at note 7, Art. 94(3)

courts resulting in excessive and prolonged delay that cause repeated interruption of trial in progress for one reason or another.

On the other hand, a judge whom the researcher interviewed disclosed that the length of adjournment between two trial sessions in a given case varies depending on the stage of the corruption crime proceeding and the agenda of the court. For instance, a court may be adjourned for 1 week to give a ruling on a preliminary objection, in case of preliminary inquiry a court may be adjourned for about 20-25 days, in the case of preparatory hearing the court may be adjourned for about 2-3 weeks for the prosecution to prepare a written statement; in case of ordinary trial proceeding a decision on preliminary objection could take up to 1 week, in case there are a number of witnesses to be examined an adjournment could be given for 25-30 days. However, it is disclosed that a single adjournment could last up to 1 month.[228] Besides, the fact that there is no agenda guidelines applicable to courts and also that the existing agenda of the courts is overcrowded with too many caseloads is the cause for the existing delay in adjudication of corruption cases on account of adjournment.[229] Apart from the above, there may be some judges who may adjourn a case for longer period of time based on their whims without any reason even though such instances may happen very seldom.[230]

In addition to this, there is a problem in relation to courts power to grant further adjournment. It is stated under Art. 95(2) of the CPC that where the purpose for which the adjournment was granted has not been achieved for a reason not attributable to the fault of prosecution or the defense further adjournment is granted. Under these circumstances the law does not specify for how many consecutive terms further adjournment should be granted. For instance if prosecution witnesses fail to appear in court on the day fixed to receive their testimony repeatedly, a further adjournment will be granted again and again repeatedly. However, a senior judge at the Federal High Court disclosed that the courts are not willing to grant a further adjournment for not more than two terms in case where the prosecution witnesses fail to appear in court on the day fixed for witness examination.[231] On the other hand, there is a frequent complaint on the part of accused persons held in custody that the gap between two adjournments is too long that their

[228] Interview with Ato Yohannes Gesyab, a Judge at the Feeral High Court, 1st Criminal Bench, Done at this Office on 18 March 2013
[229] Ato Teume Gebru, Citied at note 146
[230] Ibid.
[231] Ibid.

right to speedy trial is defeated. Addressing the complaint of accused persons a judge responded that the court is very serious when granting adjournment in corruption cases involving an accused person held in custody. As a result, the court before granting adjournment tries to convince accused persons held in custody so that the laters are convinced regarding the causes for and the necessity of granting the adjournment.[232]

In our law there is no limitation as to the number of terms further adjournment is granted in case where the purpose for which the adjournment was granted has not been carried out. As a result further adjournments are given time and gain without limit. So, there has to be a limitation in this regard. The researcher suggests that further adjournment should not be granted for more than 4 consecutive terms. For instance, if the prosecution witnesses fail to appear up to 4 terms of adjournment, the court should close the file and discharge the accused keeping the right of the public prosecutor to move the file at any time when s/he finds sufficient evidence.

The CPC states that an adjournment is for indefinite period of time in case the witnesses of the prosecutor or the defense are not present. This means that it is left for the discretion of the courts to determine for how many times adjournment is to be given and the duration of each adjournment. As far as the practical aspect of the above, a judge based on his experience disclosed that in the majority of cases the courts are not willing to grant adjournment for more than two terms in case the witnesses for the prosecutor are not present on the day fixed for receiving their testimony.[233]

As to the manner how an adjournment of cases is made, it is that since there is no agenda guidelines in the courts, adjournments are granted taking into account the courts work load. In this regard if for instance witnesses of the prosecutor fail to appear in court on the day fixed for hearing then the next court session to examine absentee witnesses will be adjourned so as not to disrupt other proceedings that were adjourned after the case in respect of which witnesees failed to appear are extertained unless there is a room to squeeze in the examining of the witnesses between cases that are adjourned after it.[234]

[232] Ato Abouhay Guade, cited at note 219
[233] Ato Teume Gebru, cited at note 146
[234] Ato Abuhay Guade, Cited at note 219

Some random cases reviewed by the researcher reveal many adjournments being given in a single corruption case. In one case[235] the case was first brought before the Federal High Court on 18/11/1999 E.C. and was finally decided on 26/04/2004 E.C. In the course of the trial proceedings, the case was adjourned about 30 times and the case was 54 months long when decided. In another case[236] also the case was opened on 16/09/1998 E.C and it was decided on 12/12/2003 E.C. The case was adjourned for 26 times and took about 63 months to be disposed.

In the Case of FEACC Prosecutor vs. Elizabeth W/Gabriel et al, the case was commenced on 18/04/2000 E.C and disposed of on 3/12/2003 E.C. During the overall criminal proceedings 70 adjournments were given and the trial took a total of 44 months.[237] In another case[238], the case was first opened on 14/12/2000 E.C and was finally decided on 23/12/2004 E.C.This case was also adjourned 58 times and it was 48 months old when disposed.

Similarily, in the case of FEACC Prosecutor vs. Seife Desta, the overall trial proceedings ran from 29/7/2000 E.C to 20/11/2004 E.C.[239] During this time the trial was adjourned for about 57 times and up on disposition the case was 51 months old. The forgoing selected cases depict that corruption crime proceedings are ridden with so many adjournments from their commencement upto their disposition thereby causing refutation of the right to speedy trial of the persons accused.

So far an attempt was made to discuss delay of corruption crime proceedings caused by gaps in the law. The next sub-section analyzes how the courts stand in relation to protecting the right to speedy trial of persons accused of corruption crime.

[235]Prosecutor vs. Leullekal Kasse, Federal High Court, 15th Criminal Division, Criminal Case File No 57547, Addis Ababa

[236]FEACC Prosecutor vs. Same Wube et al, Federal High Court, 15th Criminal Division, Criminal Case File No 47089, Addis Ababa

[237]FEACC Prosecutor vs. Elizabeth W/Gabriel et al, Federal High Court, 15th Criminal Division, Criminal Case File No 62293, Addis Ababa

[238]FEACC Prosecutor vs. Ato Zermu Ahmed et al, Federal High Court , 15th Criminal Division, Criminal Case File No. 70369, Addis Ababa

[239]FEACC Prosecutor vs. Seife Desta, Federal High Court, 15th Criminal Division, Criminal Case File No. 66211, Addis Ababa

4.2.4. Delay Caused by the Courts

The duty of courts to protect the fundamental rights and freedoms of persons can be achieved only when they are adequately and properly structured with the adequate number of personnel and when they are empowered with all institutional and legal inputs necessary for their proper running. However, if courts are suffering from problems relating to the absence of judges, lack of man-power, failure to apply the law properly and other problems instead of being venues for resolution of disputes they become forums for violation of fundamental human rights and freedoms of citizens. One of the problems that occur when courts are not functioning properly due to the above mentioned problems is the denial of the right to speedy trial of persons accused of corruption crime is. In what follows below is the discussion of issues relating to adequacy and efficiency of the Federal High Court, which is empowered by law to entertain corruption crime cases falling under the jurisdiction of the Federal Government save for those cases falling under the jurisdiction of the Federal Supreme Court in accordance with the pertinent law vis-à-vis the protection of the right to speedy trial of accused persons.[240]

4.2.4.1. Absence of Judges

As a matter of principle all judicial affairs are expected to be conducted in public[241] and the continued presence of the judge is essential since there can be no open court in the absence of a judge. This is so because the continued presence of the judge during the entire process of the trial such as the examination of witnesses, arguments of the counsel, the passing of judgment, sentencing, etc. is a condition precedent for the validity of the overall criminal proceedings.[242] A judge is a public official appointed or elected to hear and decide legal matters in court.[243] A judge, among others, makes formal determination of guilt or innocence, rules on motions and sets sentences. Accordingly, the cardinal role of the judge in the administration of justice demands that s/he should invest his/her time for the discharge of his/her duties and that s/he should not be absent from the trial proceeding.[244] The judge should appear in the court at each and every stage of the criminal proceeding so that s/he may conduct the trial and safeguard the

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[240] Proc. No. 433/2005 (as amended), Cited at note 94, Art. 7(1) Cum Proc. No. 25/96 (as amended), Cited at note 117, Art. 12(1)

[241] FDRE Const., Cited at note 5, Art. 20 (1) cum of Proc. No. 25/1996 (as amended), cited at note 120, Art. 26(1)

[242] Corpus Juris Scundum, Criminal Law, Vol. 23, 1961, Section 972, P.882.

[243] Brian A. Garner, Cited at note 14, p.857.

[244] Corpus Juris Scundum, Criminal Law, Vol. 48, 1961, Section 2, P. 946.

rights of the litigating parties. The right to speedy trial of persons accused of corruption crime is one of the rights that would be infringed as a result of absence of the judge to court. The judge is an intrinsic part of the court that his/her absence even temporarily from the trial leads to loss of effective control of the proceeding which in turn damages the integrity of the trial. In addition, the presence of the judge in the hearing of the argument is important in order to give a ruling on objection.[245]

On the other hand, the number of judges that should sit in courts to hear disputed questions appearing before them varies depending on the nature and type of crime and the hierarchy of court in question. This brings us to the concept of full bench in criminal proceedings. As per Art. 23 (2) of the Federal Courts Proclamation Re-amendment Proclamation, a single judge shall sit in each division of the Federal First Instance Court and Federal High Court. Notwithstanding the provisions of Sub-Art. (2) of the same Article, criminal charges brought before the Federal High Court that are punishable with more than fifteen years rigorous imprisonment shall be heard by a division of the court consisting of not less than three judges. Besides, sub-Art. 3 of the same further states that the Federal Judicial Administration Council may, issue directives for cases to be heard by three judges which otherwise could have been heard by a single judge under the same Proclamation. Accordingly, corruption cases are one of those cases falling under Art. 23(3) of the above mentioned Proclamation which should be seen with not less than three judges, whether punishable with more than 15 years of imprisonment or not.

The Federal High Court shall be deemed to be fully constituted to adjudicate corruption cases when it is consisted of three judges, a presiding judge and two other judges.[246] However, any number less than three judges shall not constitute full bench of judges.

In the course of the criminal proceeding if any one or more judges are absent from the bench, the court would be adjourned because the court cannot conduct hearing of cases without full bench of judges. Not only is the hearing but also the making of order or decision in relation to the criminal proceeding would be adversely affected by the non-appearance of a judge from the trial. If this happens the litigating parties would go home disenchanted by the nonattendance of the

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[245] Corpus Juris Scundum, cited at 242, p. 883.

[246] Federal Courts Proclamation Re-amendment Proclamation No. 454/2005, Negarit Gazeta, 11th Year, No. 42,14th June, 2005, Art. 23(3)(b)

judge without their cases being given an order or decision. Besides, the adverse effect of the nonappearance of a judge in court would be big in relation to parties to a criminal proceeding who are held in custody and who are following their cases from prison. This is so because absence of a judge from a court means a hearing, an order or decision that was scheduled for that specific day would be postponed leaving the accused person to remain in custody waiting for justice to be done. What is more, the absence of a judge in court repeatedly brings about the denial of the right of the accused to speedy disposition of his/her case. The violation of the right of the accused to speedy trial in turn exposes the accused to physical and psychological problems and also damages his/her defense. [247] Nowadays, absence of judges in corruption crime divisions of the Federal High Court is a rampant problem attributable to delay of corruption trial process. Different corruption cases studied at the Federal High Court show that adjournments were given due to absence of judges.

In the case of the FEACC Prosecutor v. Mohammed Werdi [248] the case was adjourned 4 times as a result of the nonappearance of one of the three judges. However, the court apart from saying that the case was adjourned due to the nonappearance of the judge did not provide any justification as to the specific reason why the judge was absent. In a certain case[249], the court adjourned the case for about 6 times as a result of nonattendance of judges. In this case also the court did not divulge the reason for absence of the judge. Similariy a case was adjourned for about 10 times because of the absence of one of the three judges to court. [250] The court likewise did not mention the exact reason why the judge failed to appear in court. The above mentioned cases show that cases were adjourned so many times because full bench of judges were not present to hear the cases and the courts in adjourning the cases did not supply specific reasons why the judges failed to attend.

Judges contacted by the researcher supplied reasons which are attributable for the absence of judges in court. The first reason is that a judge or his/her family members such as his/her spouse,

[247] Hornberger, Cited at note 22, Unpaginated
[248] FEACC Prosecutor vs. Mohammod Werdi, Federal High Court, 1st Criminal Bench, FEACC Criminal Case File No. 527/01, Addis Ababa
[249] FEACC Prosecutor vs. Tesfaye Mammo, Federal High Court, 15th Criminal Bench, Criminal Case File No. 101811, Addis Ababa
[250] FEACC Prosecutor vs. Yohannes Negash, Federal High Court, 15th Criminal Bench, Criminal Case File No. 104333, Addis Ababa

or children or close relatives may get sick or die that s/he must take them to hospital or arrange their funeral and mourn their loss, as the case may be.[251] The interviewee further added that a judge is human being who is susceptible to all the problems an average person in the society faces. In such a case, the absence of the judge is acceptable on the condition that s/he informs the fact of his/her absence without delay so that a replacement in his/her place can be made to prevent disruption of the criminal proceedings.[252] The second reason why a judge may not report to office is because of lack of a sense of duty and responsibility. Although this may not be cited as a justification for all absences happening in court, it may happen that some judges may intentionally avoid reporting to office due to lack of sense of duty and responsibility. [253] A judge who is conscious of his/her duty and responsibility understands the disappointments and frustrations his/her absence from court would have on litigants. However, an irresponsible judge cares less about reporting to office and the effects of his/her absence to the parties awaiting trial.[254] Apart from the above, another respondent vehemently asserted that a judge should at all times avoid absenteeism for judgeship is the means of his/her livelihood and if s/he does not feel that way s/he should vacate his/her seat.[255] In concluson, the absence of judges in court cannot be avoided and hence, a contingency plan that enables to replace absent judges with substitute ones easily and do away with delay of proceeding because of absence of judges should be devised.

4.2.4.2. Transfer of Judges from One Bench to another Bench

The transfer of judges from one division of the court to another division of the same court or from one court to another court is a common phenomenon in our courts. There are a number of reasons for the transfer of judges in the Federal High Court. Transfer of judges may occur: because of ailing health of a judge; when the judge is promoted; [256] in response to shortage of judges in other divisions of the same court or in another court; as a result of consolidation of previous criminal divisions;[257] to make sure that judges do not get fed up by sitting in the same

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[251] Interview with Ato Tadesse Atnafu , A Judge at the Federal High Court, 16th Criminal Bench, Done at his Office on 2 January, 2013.
[252] Ibid.
[253]Interview with Ato Getachew Yirga , A Judge at the Federal High Court, 16th Criminal Bench, Done at his Office on 2 January, 2013
[254] Ibid.
[255] Ato Abohay Guade, Cited at note 219
[256]Ato Yohannes Gesyab, Cited at note 22
[257]Interview with Ato Alemayehu Legesse, A Deputy Registrar at the Federal High Court, Done at his Office on 18 March, 2013

division of the court for too long; to prevent creation of corrupt relations between parties to a case and a judge as a result of the later sitting at the same division of the court for too long.[258]

Transfer of judges is made by the President of the Federal High Court subject to the directives to be given by the President of the Supreme Court.[259] Concerning the time frame within which transfer is made, the Vice President of the Federal High Court said that a judge shall stay at one division of the court for maximum period of two years and transfer is made after expiry of such period. However, in some circumstances transfer of a judge may be made before the lapse of two years in response to frequent applications and complaints received in relation to manifest misconduct of a judge and also if there are rumors that a judge is engaged in corrupt practices with parties to criminal litigation.[260]

In relation to the effect of transfer of judges on the speedy disposition of corruption cases, the Vice President of the Federal High Court said that transfer is made with utmost care and prudence to make sure that no prejudice happens to the rights of the parties to the criminal proceedings. Once transfer is made, the new judge in place of the outgoing judge should thoroughly study and examine the case file and make himself or herself familiarized with the case.[261] This in turn prevents the speedy disposition of corruption cases.

In principle, a judge should not be transferred unil s/he has given decision on a case s/he has been in charge of from the beginning. So, it is recommended that judges who have acquainted themselves with a case from the beginning should not be transferred until they have decided on it save for transfer of judges when one or two of judges in another division of the court are unable to attend the trial for good cause.[262] Besides, it has been held that transfer of a judge constituting a full bench of judges in a given trial bench must not be permitted after all judges have become familiarized with cases except in exceptional cases and provided that no harm could result as a result of the transfer.[263]

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[258]Interview with Ato Hafeze Abajemal, A Judge at the Federal High Court, 1st Criminal Bench, Done at his Office on 18 March, 2013

[259] Proc. No 25/1996 (as amended), Cited at note 140, Art. 18(2)

[260]Interview with Ato Habte Fechala, Vice President of the Federal High Court, Done at his Office on 22 March, 2013

[261] Ibid.

[262]Corpus Juris Scundum, Cited at note 242, p. 883

[263]Ibid.

Transfer of judges is a common incident in the Federal High Court and hence, it is hardly possible to find a corruption case entertained by the division of the Federal High Court composed of the same judges from inception up to the disposition of the case. In the case[264] of FEACC prosecutor Vs. Mikeyas Worku, substitution of judges was made for about 14 times during the whole criminal proceeding. In criminal Case File No. 97818[265], replacement of judges was made for about 5 times throughout the entire criminal proceeding. In a similar way, the substitution of judges was made for about 11 times throughout the overall trial proceeding in the criminal case file no. 64920.[266]In light of the above cases transfer of judges is a cause for delay of disposition corruption crime cases. In this regard, a seasoned judge at the Federal High Court said that it is not possible to do away with the transfer of judges totally. But the job of those making transfer of judges should be to make sure that such transfers are not made arbitrarily and unreasonable in order that the right of the parties is not harmed and that miscarriage of justice does not happen.[267]

4.2.4.3. Number of Judges and Criminal Divisions

The fact that number of judges and criminal divisions of the Federal Higt Court is not equivalent with the increasing number of corruption cases is the other important reason causing delay in the disposition of corruption cases. Currently, the total number of judges in the Federal High Court is 49. Out of this figure, 1 judge is assigned for the Federal High Court in Addis Ababa at Kaliti, 2 judges are assigned for the Federal High Court in Addis Ababa at Bole, 3 judges are assigned for the Federal High Court at Dire Dawa and 3 judges are assigned for the Federal High Court Circuit Hearing.[268] On the other hand, the remaining 40 judges are assigned for the Federal High Court in Addis Ababa at Lideta and out of which 26 are assigned to the Criminal Division of the Federal High Court. Out of the total number of judges assigned to the criminal division of the Federal High Court at Lideta, only 9 are assigned to hear cases of corruption crime. All the 9

[264]FEACC vs. Mikeyas Worku, Criminal Case File No. 85025, Federal High Court, 1st Criminal Bench,unpublished
[265]FEACC Prosecutor vs. Redat Sagene Getachew Arega, Federal High Court, 2nd Criminal Division, Criminal Case File No. 97818, unpublished
[266]FEACC Prosecutor vs. Habtamu Fantu, Yonas Dejene and Zerihun Tumecha, Federal High Court, 15th Criminal Bench, Criminal Case File No. 64920, unpublished
[267]Ato Abohay Guade, Cited at 219
[268]Ato Habte Fechala, Cited at note 260

judges are distributed to the 1st, 2nd and 15th criminal divisions of the Federal High Court at Lideta.[269]

An interviewee in relation to the number of judges reiterated that the number of judges in the Federal High Court has shown an increase when compared to the one in the previous years. The increase in the number of judges in the opinion of this informant has enabled to shorten the time taken to dispose of a single corruption case. For instance, it used to take 3 years to dispose of a simple corruption case but now this period has been shortened to 1 year time. Likewise, it used to take an average of 6 or 7 years to dispose of a serious corruption case. But now thanks to the increase in number of judges the time has been shrunk to 3 years.[270]

As opposed to the above allegation, however, the total figure of pending corruption cases in the Federal High Court reveals that the number of judges in the Federal High Court is not equivalent with the mushrooming number of corruption cases. Today, the Federal High Court has 22 criminal divisions. It is true that the number of criminal divisions of the Federal High Court have increased over the years but they are not yet commensurate with the available case load. A good example in this regard is the number of criminal divisions assigned to hear corruption cases. Only the 1st, 2nd and 15th criminal divisions of the Federal High Court Lideta Bench are assigned to hear cases of corruption crime.[271] No doubt that the number of criminal divisions of the Federal High Court that see corruption cases have increased from 1 to 3. However, this has not prevented case backlog in the courts owing to the imbalance between the number of criminal divisions and lack of man power on the one hand, and the number of cases coming to the court, on the other. As a result of this, too many adjournments are frequently granted by the courts that result in frequent interruption of trial proceedings.[272] Hence, the trial of most corruption cases takes very long period of time and as a result, there is delay in the trial of corruption cases. This can be inferred from the overall number of corruption cases pending in the Federal High Court at Lideta. As of the day this data was gathered,there were 242 corruption cases pending in the Federal High Court at Lideta. Out of this total figure, 53 were pending in the 1st criminal

[269] Ibid.
[270] Ato Hafeze Abajemal, Cited at note 258
[271] Ato Habte Fechala, cited at note 260
[272] See sub-section 4.2.3.2 above for an in-depth discussion of the issues relating to adjournment

division, 123 are pending in the 2nd criminal division and 65 are pending in the 15th criminal division of the Federal High Court.[273]

From this one can easily imagine the existing disparity between number of judges and criminal divisions at one hand and the available backlog of cases in the Federal High Court on the other. So, it can be concluded that lack of man power and very few number of criminal divisions in the Federal High Court at Lideta are responsible for delay of corruption trial process.

4.2.4.4. Failure to Apply the Law

Failure of subjects of the law to apply the provisions of the law is one of the important reasons why certain laws fail to achieve the objective intended for them by the law maker. A good example in this regard is that relating to preparatory hearing which is envisaged by the Anti-Corruption Special Procedure and Rules of Evidence Proclamation No. 434/2005 (as amended by Proc. No. 882/2015) (herein after referred Proc. No. 434/2005 as amended) which among others has the purpose of expediting corruption proceedings. However, as a result of the failure of the courts, prosecutors and the acused to apply it properly, the proceeding of preparatory hearing has not delivered the promise of expediting corruption proceeding.

Art. 35(1) of Proc. No. 434/2005 (as amended) provides that where a charge of corruption offense appears to be complex and as a consequence of which the trial is likely to be of such length, and where the purposes set out under Art. 36 of the same Proclamation are going to be achieved the court may order preparatory hearing to be held.[274] In light of this provision, the court orders preparatory hearing in relation to complex corruption cases that are likely to cause delay of proceedings. The purpose of preparatory hearing is to identify issues which are likely to be important to the case; to assist the parties in comprehending the issues; to facilitate the proceedings; and to assist the court in the management of the trial.[275] In addition, both the prosecutor and the defendant/s to the case have respective obligations in relation to preparatory hearing. Hence, the prosecutor has the duty give to the court and the accused a written statement setting out the principal facts for prosecution and evidence, witness and provision of law upon

[273] Federal High Court Pending Corruption Cases Statistics as of 12/7/2005 E.C , Data Obtained from the Federal High Court Data Center
[274] Proc. No 434/2005 (as amended), Cited at note 86, Art. 35(1)
[275] Id., Art. 36(1)

which the prosecution is based.[276] The defendant, on his/her part, shall give the court and the prosecutor a written statement containing the general terms of his/her defense and objections s/he has to the case statement, any point of law and the admissibility of evidence which s/he relies on and the extent to which s/he agrees with the prosecutor relating to document and other matters.[277] The court on its part has a duty to make a ruling relating to any question as to the admissibility of evidence and any question of law before the trial commences.[278]

Judges, prosecutors and accused persons blame each other as to why preparatory hearing has failed to deliver the promise of expediting corruption proceedings. Judges claim that both prosecutors and the accused put together and submit many pages of documents as evidence and call up on a long list of witnesses to courts without considering their relevance to the prosecution and the defense, respectively.[279] The judges as a result invest quite a lot of time to examine and give a ruling on the admissibility of the documents so presented. This seen in view of the very few number of judges available has created a work load on the courts. Hence, the courts will be forced to grant a number of adjournments to study and give a ruling on the documents.[280] In addition, in most corruption cases both the prosecution and the accused call up on so many witnesses as evidence. As a result, the hearing of too many witnesses in corruption cases will also consume a considerable amount of time. This clearly has its own share to protract the proceeding of preparatory hearing. In this regard, a judge mentioned that he recalls one corruption case where the hearing of an expert witness took about three months.[281] The other problem in relation to the hearing of witnesses relates to the prosecutor presenting his/her witnesses unrehearsed. Thus, the witnesses instead of proving the allegation of the prosecution cause delay of criminal proceedings.[282] Furthermore, there are circumstances where the witnesses called by the prosecution and the accused fail to appear in court on the day fixed for examination and this in turn takes its share in delaying disposition of the corruption cases.[283]

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[276] Id., Art. 38
[277] Id., Art. 39
[278] Id., Art. 36(2)
[279] Ato Getachew Yirga, Cited at note 253
[280] Ibid.
[281] Ato Teume Gebru, Cited at note 146
[282] Ato Yosef Kiros, Cited at note 199
[283] Ibid.

On the other hand, Proc. No. 434/2005 (as amended) does not provide for the right of the prosecutor in preparatory hearing to submit rebuttals to the statement of defense presented by the accused. But in practice the courts allow the prosecutor to submit rebuttals to statement of defense after accused presents same to the court.[284] This clearly is a contradiction with the ordinance of the law. The fact that the courts introduced a new norm by allowing the prosecutor to present a rebuttal to statement of defense defeats the very purpose of preparatory hearing to expedite corruption offense proceedings. It is worth nothing that the success and efficacy of preparatory hearing presupposes the cooperation among the prosecution, the courts and the accused.

Prosecutors on their part forward their own reasons why preparatory hearing has failed to expedite corruption trial proceedings. The first reason according to prosecutors is the number of adjournments given by courts that cause delay of corruption crime proceedings. As a result, the proceeding of preparatory hearings on average takes a period from 2 up to 6 months.[285] The second reason relates to lack of consensus or willingness on the part of prosecutors and accused persons to identify set of issues to have between admitted between them in relation to the case and also the failure of the courts to give a ruling in that regard.[286] In preparatory hearing proceeding the court shall make a ruling in relation to admissibility of evidence and any question of law which is found necessary to give ruling before the trial starts such as preliminary objection.[287] In the course of preparatory hearing if the court finds that the evidence adduced by the prosecutor against the accused fails to prove the allegation against the later, then the case should be closed and the accused be dismissed at the earliest possible time by reserving the right of the prosecutor to reopen the case after gathering sufficient evidence.[288]

The other problem concerns lack of cooperation and understanding between the prosecutor and the accused. Theoretically speaking, the prosecutor shall give the court a written notice of documents and any other matters the truth of which ought in the prosecutor‘s view to be admitted and agreed.[289] The accused likewise, shall give the court and the prosecutor a written notice

[284] Ato Yohannes Gesyab, Cited at note 228 and Ato Gebru Gebeyehu, Cited at note 107
[285] Ato Amare Asrate, cited at note 182
[286] Ato Gebru Gebeyehu, cited at note 107
[287] Proc. No 434/2005(as amended), Cited at note 86, Art. 36(2)(a) and (b)
[288] Id., Art. 41
[289] Id., Art. 37(3)

stating the extent to which s/he concurs with the prosecutor relating to documents and other matters mentioned above.[290] Practically, however, there is distrust and unwillingness on the part of prosecutor and accused persons to agree on the documents and matters to have been admitted between them. As a result, the prosecutor and accused choose to keep at bay and remain polarized throughout the proceeding of the preparatory hearing and also the trial process.[291]

What is more, in the majority of cases accused persons build their defense by totally denying all the allegations presented against them even if they know they may be proved against them later on in the trial proceedings. This by itself is a problem which obstructs preparatory hearing from expediting the conduct of corruption proceeding. Besides, the fact that courts are not willing to make a ruling in respect of admissibility of evidence and issues that are admitted by the parties is also to be blamed for the failure of preparatory hearing to expedite corruption case proceedings.[292]

According to a former prosecutor at the FEACC the main problem hindering the effective implementation of preparatory hearing is the lack of knowledge, capacity and expertise on the part of judges and prosecutors. He said that a training that aimed to fill the existing knowledge and skill gap on the part of judges ad prosecutors in the implementation of preparatory hearing was organized by FEACC but it was immediately discontinued on the ground that it would interfere with the business of judiciary for it would make judges to be biased in favour of the FEACC.[293] In the opinion of the researcher discontinuing a training that would have brought a positive change on the implementon of preparatory hearing on unfounded and absurd reason is not acceptable. By way of conclusion, the failure of courts, prosecution and accused to apply the ordinance of preparatory hearing as it is by judges, prosecutors and accused persons is the reason behind the failure of preparatory hearing to expedite corruption crime proceedings.

4.2.5. Delay Attributable to Prison Administration

The Federal Prision Administration has the obligation to bring accused persons who are denied the right to be released on bail or are unable to furnish the amount of money requied to secure

[290] Id., Art. 39(4)
[291] Ato Gebru Gebeyehu, Cited at note 107
[292] Ibid.
[293] Interview with Ato Ayele Gemechu, Consultant and Attorney- at-Law, Done at his Office on June 6, 2013, Ato Ayele was a former prosecutor at the FEACC.

their release, to the court so that they can attend court proceedings involving their case. Therefore, any failure on the part of the prison administration officers to present the accused to court results in the adjournment of the case thereby causing corruption crime proceeding. According to Ato Alemayehu Gizaw the principal reasons mentioned by the Federal Prision Administration officers for failing to bring the accused to court on the date of appointment include: problem with transport vehicle or the fact that a transport bus is full; there is no an officer who can escort prisoners to court; liaison officer of the Prison Administration failing to collect court summons and orders or writing an incorrect date of appointment and the accused unwilling to appear to court by keeping silent when his/her name is called out.[294] Based on the above one can conclude that failure of the Federal Prison Administration to present the accused to court causes delay of corruption proceeding since the case will be adjourned time and again waiting for the accused to appear.

4.2.6. Delay Caused by Advocates

Any advocate has the duty to assist the organs of administration of justice in the effort to promote respect for the law and the attainment of justice. Besides, an advocate shall, in particular discharge his/her professional duty of his/her client, other lawyers and opposing party, the court, his/her profession, and the society in general honestly, faithfully and truthfully.[295] Hence, it is illegal and unethical for any advocate to engage in any act which infringes upon the law and stands in the way of the effort of organs of administration of justice in the attainment of justice. On the other hand, the advocate is duty bound to exhibit a high level of professional competence and skill in the advocacy service s/he renders. [296] This shall include the obligation of the advocate to use his/her knowledge and work experience so as to safeguard the rights and interests of his/her client and to follow up his/her client‘s case diligently and take all the necessary measures cautiously and timely to get an expeditious and just decision.[297] On the other hand, the fee any advocate demands from his/her client shall be fair and reasonable and the factors that must be considered in fixing the amount of fee payable to the advocate include:

[294] Interview with Ato Alemayehu Gizaw, Consultant and Attorney-At-Law, Done Inside the Compound of the Federal High Court Lideta Bench on December 18, 2017

[295] Federal Court Advocates' Code of Conduct Council of Ministers Regulations No. 57/1999, Federal Negarit Gazeta, 6th Year, No. 1, Addis Ababa - 24th Sept. 1999, Art. 3

[296] Id., Art. 8(1)

[297] Id., Art. 8(2)

factors such as the time and labor required of the service given to the client; the fee customarily charged for similar legal services, etc.[298] Thus, advocates should not take their profession as a means of generating lucrative source of income by disregarding their professional duty of rendering their service to their clients and the society honestly, faithfully and truthfully. Nowadays, there are different problems pertaining to advocates that are causing denial of the right to speedy trial of persons accused of corruption crime.

The first problem relates to the fact that advocates engage in a number of dishonest practices in order to get more money than provided in the advocate-client contract by employing case delaying tactics. For instance, some advocates implore the court to adjourn the case alleging that they do not understand the charge even when it is clearly framed.[299] The second problem concerns advocate‘s lack of the necessary legal knowledge and capacity to handle a case at hand. For example, in preparatory hearing the advocate brings together a number of documents as evidence and also cites legal provisions carelessly without considering their relevance to the case.[300] In such a case, the judge has no choice but to adjourn the case so as to study and decide on the admissibility of the documents.[301] This is turn causes delay of the corruption crime proceedings. The third problem relates to advocate‘s disregard of his/her duty to follow up the case of the accused diligently and take all the necessary measures timely to get an expeditious and just decision. So, the advocate may fail to present defense for the accused, fail to fetch court order or fail to give the court order to the whom it is addressed. Hence, the defense of the accused will not be presented or the feedbck to the court order will not be brought to court on the date set by court. So, the advocate pleads the court to adjourn the case so that s/he can present the defense for the accused or bring the feedback to the court order as the case may be, on the adjourned date.[302] Similarily, as a result of advocates‘s failure to fetch summons or orders from the court or to give same to witnesses or receipients of the order that defense witnesses may fail to appear to court and feedback of to a court order may not be brought to the court on the set date.[303] Besides, an advocate may take so many cases than what s/he can handle and hence, there

[298] Id., Art. 42
[299] Ato Zelealem Fekadu, Cited at note 174
[300] Ato Teume Gebru, Cited at note 146
[301] Ibid.
[302] Ato Alemayehu Gizaw,Cited at note 294
[303] Ibid.

will be overlapping case agendas. Because of this, the advocate will appear in court in respect of one of the cases and fail to appear in court in respect of the other case. [304]

4.2.7. Views of Accused Persons Regarding the Practical Implementation of the Right to Speedy Trial During Corruption Crime Trial Process

Right to speedy trial is an important safeguard to prevent undue and oppressive incarnation prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself /herself.[305] This implies that the main beneficiaries of the guarantee of speedy trial right are accused persons. In what follows below an attempt is made to present the views of accused persons or their attorneys if their right to speedy trial is practically being protected during corruption offense trial process. An attorney[306] representing three persons accused of petty corruption crime at the Federal High Court told the researcher that a formal charge against his clients was instituted in the mid of 2006 E.C. Since his clients denied the charge brought against them the court ordered prosecutor‘s witnesses to be heard. The witnesses of the prosecutor were examined after two adjournments were given on account of the agenda of the court being full. The gap between each adjournment was 1 month and half. This means that it totally took about 3 months to examine the prosecutor‘s witnesses. Then, the court gave an appointment to give a ruling on whether the case for prosecution had been made out or not. The court was again adjourned two times to give a ruling regarding whether the accused persons should defend the case or be acquitted. This time reason given by the court to adjourn the case was that the testimony of the prosecutor‘s witnesses was not transcribed from the recorder. On the third adjournment, the court found out that the case against the accused persons had been made out and hence, my clients should call upon their defense. This means the court took almost 5 months to make a ruling whether the accused should defend the charge or be acquitted. After that the accused persons called upon three defense witnesses to be heard. Unfortunately, the court adjourned the hearing of our witnesses for two times alleging that its case agenda was fully packed that it could not hear the defense witnesses.

[304] Interview with Ato Mekete Teferi, Consultant and Attorney-At-Law, Done at Lideta Court House Compound on December 18, 2017

[305] _______, Speedy Trial, American Bar Association, Available at https://www.americanbar.org, Accessed on 15th January, 2018 at 12:36 AM

[306] Interview with Ato Baye Mekonnen, Consultant and Attorney-At-Law, Done at Compound of the Federal High Court Compound Lideta Bench, Done on January 9, 2018

On the next appointment all three of our witnesses were not present in court that the case was adjourned on our request. On the next adjournment the court heard only one of the three defense witnesses and adjourned the case to examine the remaining two witnesses. On the next appointment one of the remaining two defense witnesses was involved in a car accident and thus, the case had to be adjourned. Finally, all the remaining two witnesses were heard. Now, the court is adjourned for mid of Tir 2010 E.C. to give a guilty or not guilty judgment on the accused persons. The advocate added that it is amazing how a petty corruption charge brought against his clients can take almost 4 years and he can imagine the strain and concern his clients has to live by every day.[307]

Another case that shows the dire situation of the protection of right to speedy trial of accused persons is the high profile grand corruption case of Melaku Fenta et al. Ato Melaku Fenta, the Former Director General of the Ethiopian Customs and Revenues Authority, was detained on May 10, 2013 along with 12 other individuals among them is His deputy Gebrewahed W/Giyorgis.[308] They first appeared in court on May 13, 2013 and even after four years and seven months the case is still pending before the Federal High Court 15th Criminal Bench.[309] Ato Melaku Fenta made his frustration and loss of hope as a result of the lengthy court proceeding known to the court when he was making a defense statement in respect of the charge instituted against him by the then FEACC prosecutor on case File No. 141356 and in respect of which the Federal High Court 15th Criminal Bench ruled that the case against him had been made out that he should call up on his defense. In his statement he said that the fact that God has not shown him any glimpse of justice even after four years and seven months of imprisonment that he doubts God Himself.[310] Hence, he said the only thing he wants is to see that his case gets decided expeditiously not that he expects fair decision to be given to his case. He closed his defense statement by saying that ―the harassment and abuse he is under is more than he can take and

[307] Ibid.
[308] Daniel Birhane(ed),"Minister Melaku Fenta Detained on Corruption Charges," Available at: https://hornaffairs.com, May 10, 2013@10:46 PM, Accessed on: January 11, 2018@ 9:00 AM
[309] Daniel Birhane (ed),"Court Report: Melaku Fenta et al Fisst day Corruption Trial: First Day,"Available at: https://hornaffairs.com, May 13, 2013@10:36 PM, Accessed on: January 10, 2018@ 9:00 AM
[310] __________,―Ato Melaku Fenta said that the only thing he wants to see is that his case gets decided expeditiously but he does not expect fair decision to be given his case", Ethiopian Reporter Newspaper, Amharic Version, Vol. 23, No. 1832, November 19, 2017 Edition, PP. 1 & 63, Translated by the Researcher, Available at https://ethiopianreporter.com, Accessed on January 8, 2018@ 11:30 PM

beyond his capacity that the only things he pleads the honorable court is to decide his case expeditiously.[311]

On the other hand, a senior advocate shared his views relating to the practical problems on the prosecution and the court that are attributable to delay of corruption trial process which he observed in the course of representing accused persons. According to him most prosecutors do not follow the law and do not prepare well enough when filing charges. As a result, prosecutors create delay of proceedings by presenting different documents one after the other as evidence in the middle of the trial process. The same advocate further added that a prosecutor appears in court representing the prosecution institution and hence, it is wrong to think that a prosecutor who was in charge of a case and the case are inspepareable that the case cannot proceed in case the prosecutor fails to appear in court for what ever reason. But in practice, a prosecutor who appears in court in place of a prosecutor who fails to appear in court instead of studying the case file left by the previous prosecutor and proceeding with the case from where it was left off, s/he implores the court to adjourn the case. Thus, the case will be adjourned for another 2-3 months.[312]

Furthermore, the above advocate divulged that the examination of both the prosecution and defense witnesses is recorded on an electronic device. However, on the date set to examine witnesses the court will be adjourned for another day on the ground that the recording device is not working. Besides, on the date fixed to make a guilty or not guilty verdict on the accused, the case will be adjourned for 2 or 3 times on the ground that witnesses‘ testimony has not been transcribed into hardcopy. Even after the testimony of the witnesses is transcribed courts will adjourn cases alleging that there is no available court room to proceed with the court session. It is worth noting that the gap between two adjournments is usually 2 to 3 months.[313] Furthermore, courts schedule a case in consultation with the accused and the prosecutor and also taking into account their own agenda. But the date set for court session, the courts will be adjourn the case claiming that they have not examined the file because of too much case load. In relation to the time during which a corruption case gets decided, the advocate said that the shortest possible time a case gets decided is 3 years and in the majority of cases it takes upto 5 years for a case to be disposed.

[311] Ibid.

[312] Interview with Ato Samuel Ephrem Maru, Consultant and Attorney-at-Law, Done at His Office on 10 January 2018

[313] Ibid.

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

Persons accused of crime have the fundamental human right to speedy trial. This right has been recognized both by international human rights instruments and Ethiopian laws. In spite of this, there is denial of the right to speedy trial of persons accused of corruption crime in Ethiopia. Delay in bringing the accused to trial must be tolerated on the grounds of reasonableness and good cause. There is no fixed rule for determining good cause for delay. In the absence of a standard to determine what constitutes delay in corruption crime trial proceedings, it must be decided by the courts on a case by case basis.

Generally, the causes of delay of corruption crime proceeding relate to the inadequacy and inefficiency of the institutions and parties involved in the disposition of corruption crime such as the investigating officers, prosecutors, courts, prison administration and advocates and also of the gap in the laws applied in the adjudication of corruption crime.

As of 2016, the prosecution and investigation powers of the FEACC were transferred to the FAG and FPC, respectively. However, the FAG and FPC have more or less the same types of capacity and efficiency related problems like that of the FEACC. So, unless these problems are rectified soon, the situation for the right to speedy trial of persons accused of corruption crime will be far worse than that was in the FEACC. Hence, the findings and solutions forwarded by this research in respect of the FEACC can be used to remedy the problems in the FAG and FPC that cause denial of the right to speedy trial of persons accused of corruption crime.

The right to speedy trial of persons accused of corruption offence suffers highly from delay in investigation and prosecutorial decision making. The law requires investigating officers to complete investigation without unnecessary delay. But in practice most investigating officers do not complete investigation within a reasonable time and hence, they repeatedly plead the court to remand the accused to have ample time to complete investigation. The prosecutor is obliged to perform his/her duties within the shortest possible time. If the prosecutor decides to file charges against the accused, s/he should do it within 15 days of the receipt of the investigation report. However, as opposed to the law most prosecutors do not institute charges within 15 days limit. For instance, in one case the prosecutor framed a charge against the accused after 1 year of receipt of the investigation report.

The number of investigating officers and prosecutors at the FEACC was not commensurate with the number of investigation and prosecutorial work. Before, the prosecution aand investigation powers of the FEACC were transferred to the FAG and FPC, respectively, the Investigation and Prosecution Directorate of the FEACC had about 130 employees, out of which 32 were investigators and 35 were prosecutors. Lack of manpower means that too many corruption accusations and investigation reports, await a single investigating officer and prosecutor, respectively. On the other hand, the investigating officer is required by law to complete investigation within the shortest period of time while the prosecutors is obliged to frame charges within 15 days of receiving the investigation file. However, as a result of work load both the investigating officer and prosecutor were not performing their duties awithin the period fixed by law. Besides, it was disclosed that most prosecutors considered the 15 days limit to file charges to apply only to accused persons who are denied the right to bail but not to accused persons who are out on bail. Moreover, many prosecutors left the FEACC for different reasons. Thus, insufficient number of investigating officers and prosecutors caused delay of corruption crime proceedings.

Another problem to blame for the violation of the right to speedy trial of persons accused of corruption crime is deficiency in skill and competence of prosecutors. Some manifestations of lack of skill and competence of prosecutors include: presenting unrehearsed witnesses in court, failing to serve a charge to the accused in time and instituting a criminal charge based on investigation file they could have closed by themselves as per Art. 42 (1)(a) of the CPC.

The cooperation between the investigating officers and prosecutors is important since it is based on the investigation file of the former that the later decides to file charges. The prosecutor should play a leading role in the investigation of corruption crime and should also give the necessary order and direction to the investigating officer so that s/he performs his/her duties based on the law. The consequences of investigation conducted in the absence of the prosecutors included: production of incomplete investigation reports, repeated exchange of investigation reports between the investigating officer and the prosecutor and delay of decision making by the prosecutor. Today, there is cooperation between the investigating officer and the prosecutor.

However, the fact that there are very few number of prosecutors with too much case load has made the cooperation to be unsatisfactory. Thus, unsatifactory cooperation between the investigation officer and the prosecutor is cause of delay or corruption proceedings.

The laws in the CPC of Ethiopia of 1961 by themselves are grounds for the denial of the right to speedy trial of persons accused of corruption crime. The laws on investigative remand and adjournment are put down in a general manner thereby giving wide discretionary powers to the investigating officers, public prosecutors and courts to encroach upon the right to speedy trial of accused persons. It is stated under Art. 59(3) of the CPC that investigative remand shall not be granted for more than 14 days on each occasion. This provision fixes only the maximum number of days on each occasion but fails to limit the maximum number of occasions of remand to be granted. Since there is no statutory time limit in our laws within which investigation of corruption crime should be completed; the investigating officer can plead the court for remand repeatedly to have sufficient time to complete investigation. This gap also leaves the fixing of the maximum number of occasions to the discretionary power of the court. As far as the practice is concerned a judge disclosed that the courts are not willing to grant investigative remand for not more than two occasions. Even out of the two occasions of remand, the courts will only allow a second round of investigative remand of seven days.

On the other hand, the ordinances of the CPC relating to adjournment have gaps that give a wide discretionary power to the court thereby creating a practical problem of delay of corruption offense trial proceedings. The problems in relation to the laws on adjournment can be categorized into: the problem of interpretation, the power of the court to give further adjournment and the problem relating to the grounds of adjournment enumerated. Practical cases studied at the Federal High Court reveal that there are so many adjournments given before a case is decided. A good example in the respect is the Case of FEACC prosecutor vs. Elizabeth W/Gabriel et al, where the case was adjourned 70 times before it was finally decided.

The other cause of delay of corruption crime relates to courts. An open court trial to be valid requires the presence of judges during the entire course of the trial. The Federal High Court shall be deemed to be fully constituted to adjudicate corruption cases when it is consisted of three judges. The case will be adjourned if one or more of the trial judges are not present in court. This in turn protracts the overall corruption trial process. Nonattendance of judges is a practical problem faced in the Federal High Court. In the case of FEACC Prosecutor vs. Yohannes Negash the case was adjourned for about 10 times because of the absence of one of the three judges in court. Family emergency and lack of sense of duty and responsibility are said to be the major reasons behind absence of judges.

Transfer of judges from one division of the court to another and from one court to another usually happens in the Federal High Court for a number of reasons such as ailing health of a judge; when the judge is promoted; in response to shortage of judges and as a result of consolidation of previous criminal divisions to mention a few. This contributes to denial of the right to speedy of accused persons as the newly assigned judge has to study the case to familiarize himself /herself with it. Transfer of judges is said to be made every two years save for exceptions. Transfer of judges is a rampant problem in the Federal High Court and is attributable for infringement of the right to speedy trial of accused persons. In one case, substitution of judges was made for about 14 times during the whole criminal proceeding.

The number of judges and criminal divisions at the Federal High Court is not equivalent to the number of cases coming to the courts. The total number of judges assigned to the criminal division of the Federal High Court in Addis Ababa is 22 judges and out of which only 9 are designated to hear cases of corruption crimes at the 1st, 2nd and 15th criminal divisions of the Federal High Court. The fact that there are very few numbers of judges and criminal divisions to see corruption crime is the major cause of breach of the right to speedy trial of persons accused.

The failure of the prosecutor, accused persons and court to apply the law as it is another problem attributed to infringement of the right to speedy trial of persons accused of corruption crime. This is the case in the implementation of the procedure of preparatory hearing. Generally, the purpose of preparatory hearing is expediting complex corruption proceedings. In preparatory hearing, the prosecutor, accused and courts have their own respective obligations. The prosecutor has the duty give to the court and the accused a written statement setting out the principal facts for prosecution and evidence, witness and provision of law upon which the prosecution is based. The defendant likewise, shall give the court and the prosecutor a written statement containing the general terms of his/her defense and objections s/he has to the case statement, any point of law and the admissibility of evidence which s/he relies on and the extent to which s/he agrees with the prosecutor relating to document and other matters. The court on its part has a duty to make a ruling with regard to any question surrounding the admissibility of evidence and to give a ruling on any question of law before the trial commences.

However, preparatory hearing has not delivered the promise of expediting corruption trial process owing to the failure of the prosecutor, accused persons and courts to effectively apply and discharge their respective obligations arising out of preparatory hearing. Furthermore, courts as opposed to the law have introduced a new norm by allowing the prosecutor to present a rebuttal to the statement of defense presented by the accused even if such is not envisaged by the law. Moreover, the fact prosecutors and accused persons are not willing to identify set of issues to have been admitted between them and also lack of knowledge and expertise on the part of prosecutos, judges and advocates in relation to preparatory hearing are additional reasons to be blamed for failure of preparatory hearing.

Furthermore, prison administration is to be held responsible for infringement of the right to speedy trial of persons accused. Delay occurs as a result of the Federal Prison Administration failing to present the accused in court on the date of appointment. The common reasons cited by the Federal Prison Administration not to bring the accused to court on date of appointment include: problem with transport vehicle or the fact that a transport bus is full; lack of an officer who can escort prisoners to court and liaison officer of the Prison Administration writing an incorrect date of court appointment.

Advocates also has their share of contribution to delay corruption trial process. The fact that some advocates take their profession as a source of income, lack of the necessary legal knowledge and capacity to handle a case at hand, failure to follow up the case of the accused diligently and take all the necessary measures timely to get an expeditious and just decision are issues related to advocates that cause denial of the right to speedy trial of persons accused of corruption crime.

Finally, accused persons and their advocates shared their views about the practical implementation of the right to speedy trial in corruption trial processes. They said that courts adjourn cases so many times on the reason that court‘s agenda was full, testimony of witnesses was not transcribed into harcopy, the electronic witness testimony recording device was not working properly, etc. They added that the gap between two adjournments is too long. They disclosed that most corruption offense trial processes take very long period of time to be disposed. Hence, the violation of right to speedy trial of accused persons occurs.

5.2. Recommendations

The researcher recommends the following points so that the problems attributed for denial of the right to speedy trial of persons accused of corruption offense can be rectified.

I. Recommendations to the Federal Police Commission

- The number of investigating police should be increased in order that the number becomes commensurate with the increasing number of corruption crime allegations reported to the FPC.
- Continuous trainings and education should be given to the police so that the existing gap in skill and competence relating to gathering, analysis and preservation of evidence relating to corruption crime can be filled.
- The FPC should give/cause to be given human right education and legal awareness training to its investigating police staff so that investigating of corruption crime is conducted based on the law and respecting the right of accused persons.
- The salary of investigating police officers should be increased so that they can be motivated to produce quality investigation reports with in the shortest possible time.

II. Recommendations to the Federal Attorney General

A. To Remedy Delay of Corruption Crime Proceeding Caused by Prosecutors

- More prosecutors should be hired in order that the number of prosecutors at the FAG becomes equivalent to the prosecutorial function and hence, there can be efficient prosecution function within the shortest possible time as required by the law.
- The FAG should provide better pay and benefits in order to keep experienced prosecutors from leaving the FAG in search of better pay and benefits. Besides, the FAG should devise a mechanism to transfer skills and knowledge from veteran to junior prosecutors.
- Prosecutors should file charges against the accused within 15 days of the receipt of the investigation file and the 15 days limit set by law to frame charge against the accused should be strictly adhered to by prosecutors since it applies indiscriminately both to accused persons who are denied bail or not.
- The FAG should give continuous education and training to its prosecutors so as to do away with delay of corruption proceedings resulting from gaps in skills, knowledge and decision making capacity.

- The cooperation between the investigating police and prosecutors must be strengthened by hiring adequate number of prosecutors so that prosecutors can discharge their prosecutorial functions effectively while at the same leading the investigation of corruption crime and also actively controlling and supervising the conduct of the investigating police.
- A mechanism should be devised so that a prosecutor who appears in court substituting a prosecutor in charge of the case not being present in court studys and proceeds with the case from where it was left of instead of pleading the court for adjournment.
- The FAG should take measure/cause measure to be taken, based on the law, against those public prosecutors who are found to have breached laws or disciplinary rules.

B. To Remedy Delay of Corruption Cimre Proceeding Caused by Advocates

- The FAG should strengthen its institutional control over the advocates in the pre-admission and post-admission to practice law. By way of pre-admission control, the FAG should strictly enforce the criteria pertaining to personal qualifications and good conduct of persons applying for license as set out in the Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000 so that individuals who should be admitted to practice law fulfill the necessary criteria and qualifications.
- By way of post-admission control, the FAG should exercise adequate institutional control over advocates to ensure that advocates practice law and are responsible towards their honorable profession. If an advocate is found to be guilty of an alleged misconduct, the FAG should either suspend or revoke his/her license and dismiss him/her from the profession. The Federal attorney General should not wait for complaint from the injured party instead it should always supervise the acts of the advocates on its own motion and take appropriate measures.

III. Recommendations to Courts

- All the three judges of the Federal High Court constituting a full bench to adjudicate a corruption crime must appear in court so as to avoid infringement of the right to speedy trial of persons accused because of absence of judges to court. If one or more of the judges fail to appear in court beyond his/her capacity, then s/he should report the fact of his/her absence without delay so that a substitute judges/s in his/her place could be found and that delay of corruption trial proceeding can be avoided.

- In order to remedy delay of corruption offense proceedings on account of transfer of judges transfer of judges should not be made just because two years have lapsed since the judge has been on the given bench or division of the court. Instead, transfer of a judge should not be made until the judged has made a decision on a ripe case s/he has been in charge of. Besides, transfer of judges should be done at the time when the least delay could occur. The best time to transfer judges is during summer recess of the courts so that the newly transferred judges will have time to study the cases pending in their particular division and can come ready to court when courts return to duty after recess.
- The government must allocate adequate budget to increase the capacity of courts to handle more cases promptly by building more court houses and making the necessary facilities available to judges, prosecutors and defense counsel so that the number of corruption crime divisions can be increased in order that backlog of cases on the existing corruption crime divisions can be reduced and more corruption crime cases can be handled expeditiously.
- More judges should be appointed to the Federal High Court corruption crime division so that the increase in numbers of judges helps in more cases being disposed of promptly.
- The Federal High Court should hire more employess that can transcribe testimony of witnesses and fix problems with the witness testimony recording device quickly so that delay of corruption crime trial proceedings because of testimony of witnesses not being transcribed and the recording device not working properly can be avoided.
- Courts should implement modern information technology assisted agenda guidelines based upon which they can schedule cases effectively so that the long gap between two court adjournments can be shortened and delay of corruption trial process can be remedied.
- Judges, prosecutors and accused persons should conduct themselves in accordance with the provisions of the law. Particularly, in relation to preparatory hearing, courts, prosecutors and accused persons should discharge their respective obligations so that preparatory hearing can achieve the goal of expediting complex corruption cases as envisaged by law.
- The courts should apply the law as it is and hence, they must abtain from creating a new law out of their own practice. So, courts must stop allowing the prosecutor in preparatory

hearing to submit rebuttals to the statement of defense presented by the accused as it is not envisaged by the law.

- Continuous and timely trainings should be given to prosecutors, judges and lawyers in order to acquint them with the necessary knowledge and skills relating to peculiarities of corruption crime in general and implementation of preparatory hearing in particular so that the exiting problems relating to corruption crime trial process and implementation of preparatory hearing can be solved.

IV. Recommendations to Federal Prison Administration

- The government should allocate enough budget to the Federal Prison Administration so that more employees who attend matters relating to accused persons can be hired and necessary facilities such as adequate number of transportation vehicles to transport accused persons to court can be bought so as to do away with delay of corruption trial proceedings because of inadequate number of man power and lack of or broken transportation vehicles,
- The Federal Prison Administration should give continuous trainings to its employees regarding the fundamental rights and freedoms of accused persons and also their overall duties and responsibilities towards the accused, prosecutor and courts,
- Employees who fail to discharge their duties properly and result in denial of the right to speedy trial of persons accused should be held accountable,

V. Recommendations to the Legislator

- The provisions of the CPC that give wide discretionary power to courts to give investigative remand should be amended in a manner it does not create delay of corruption trial proceedings. Accordingly, the law should fix the maximum time limit with in which investigation of corruption crime should be completed. Hence, the researcher recommends that in relation to simple corruption cases investigative remand should not be allowed for more than one occasion of 14 days and in complex corruption cases it should not be allowed for not more than four occasions, that it for 56 days.
- The laws relating to adjournment which are a bar to the speedy disposition of corruption crime should be amended. To this effect, Art. 94 (1) of the CPC should be amended in order that the apparent loophole creating different interpretations can be remedied and

bring about uniform interpretations to it. Besides, the grounds of adjournment stated under Art. 94(2) of the CPC must be broadened taking into account objective realities surrounding the parties to the case and if such grounds serve the interest of justice or not.

- The provisions of Art. 94(3) of the CPC that give courts discretionary power to allow further adjournment for unlimited terms and durations if the purpose for which adjournment was given is not accomplished must be amended and replaced by a provision that fixes a definite, reasonable and adequate period to accomplish the purpose for which adjournment is given.
- The laws in the CPC that give courts discretionary power to grant adjournments for indefinite period and also to decide the duration of each adjournment must be amended and regulated by law.

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