

**Legal Analysis for *FDRE Public Prosecutor Vs Soleyana Shimeles et al*
(*Ten Individuals*) Criminal Case**

(Phase 1)

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Executive Summary

This legal analysis focuses on the legality of *FDRE Public Prosecutor Vs Soleyana Shimeles et al* criminal case in light of the basic human rights principles. Relevant human rights principles under the FDRE Constitution and other multilateral and regional treaties in which Ethiopia is party are scrutinized. Ethiopia charged six bloggers and three journalists who were under custody and one blogger in absentia. The defendants were charged with an act of terrorism under two degrees of participation, as of principal offender and conspiracy. After lengthy trial, the charge against five of defendants was dropped by the decision of the Prosecutor and the rest of five defendants, are acquitted from by a verdict rendered by the Court. The 2nd defendant, Befekadu Hailu is ordered to defend a case in accordance with the criminal code.

Since the charge failed to fulfill constitutional and procedural requirement, the Court, upon the request of the defendants ordered the Prosecutor to amend the charge for two times. An 'amended' charge, failing to amend most of the points in accordance with the order of court, made only a single substantial difference from the previous charge i.e. incorporating a terror act, creating serious risk to the safety or health of the public and section of the public. In addition to not fulfilling procedural requirements, the trial continues with a charge that incorporates acts, which do not constitute as of crimes. Regardless of the failure of the Court to be abide with its own order, the defendants request for the resignation of the presiding judge were refused by the other two judges. In the course of plea, some of the defendants denied their request for clarifications of the charge. The Court further failed to record the statements of the defendants while they plead not guilty.

The Prosecutor produced documentary evidences, 'confessions', exhibits and witnesses. The manner in which the documentary evidences were annexed to and listed under the charge is complicated. In spite of the basic legal principle that criminal law has no retrospective effect, some the documentary evidences aim to prove an act committed

before the enactment of the Anti-Terrorism Proclamation. Most of the confessions were provided under duress and without access to legal counseling. Despite the defendants' claim to the lower Court and Human Rights Commission that their confessions were given under torture; defendants' legal entitlement not to be compelled to make self-incrimination; and clear evidentiary law that confessions under duress are inadmissible, all the confessions were admitted and counted as evidence. Subject to bias and contrary to clear indication of the procedural law, exhibits were kept at the police but not the Registrar of the Court. Despite the mere fact that the content of the CD rather than the object itself could be counted as evidence, the defendants were denied access to the 12 CDs adduced against them. Regardless of any denial by the defendants, the Prosecutor presented lists of witnesses who had testified on the belongingness of the exhibits and that of printed documentary evidences.

The Court, hearing witnesses on undisputed facts and making repetitive adjournments without good causes, had failed to protect the defendants' right to have a speedy trial. In the due course of the trial, quotations from the charge and statements made by high-ranking state officials had referred to the defendants as terrorists and members of terror organizations. Addis Ababa Remand Prisoners Center (*Kilinto* prison) at different occasions failed to keep the defendants' right of being respected and treated with human dignity. Addis Ababa Female Remand Prisoners Center (*Kality* prison) failed to protect the female defendants' human right to be visited, that there were limitations on the period of time and family members who could visit. Both prison administrations prohibited the defendants from collecting books brought to them and to make written correspondences with the outside.

Considering procedural law requirements on deciding the amount of bail, the amount of bail bond granted to the 2nd defendant is excessive. Despite any legal stipulation, the bail includes a ban on the 2nd defendant from going abroad. Irrespective of any legal stipulation or Court order, the government of Ethiopia violated the right to movement of one of the defendants, Zelalem Kibret.

I. Introduction

1. Ethiopian authorities, on April 25, and 26, 2015 arrested six of the "Zone 9"¹ bloggers and three independent journalists. Police took the arrestees to their residents and offices where they had confiscated and seized laptops, books, articles etc. The arrested individuals are Befekadu Hailu Techanie (later 2nd defendant), Natnael Feleke Abera (later 3rd defendant), Mahlet Fantahun Tefera (later 4th defendant), Atnaf Berahane Ayalew (later 5th defendant), Zelalem Kibret Beza (later 6th defendant), Abel Wabela Sugebo (later 7th defendant), Asmamaw Hailegeorgis Gizaw (later 8th defendant), Edom Kassaye Gelan (later 9th defendant) and Tesfalem Waldyes Erago (later 10th defendant). After two months and twenty-four days, the FDRE Ministry of Justice with a charge pleaded on July 15, 2015 accused the above-mentioned detainees and Soleyana Shimeles Gebremariam (*sic*) (1st defendant) in absentia. The allegation constituted two counts of charges; under the FDRE Criminal Code² and the FDRE Anti-Terrorism Proclamation.³ The defendants were charged with two degrees of participation, as of principal offender and conspiracy.⁴ However, upon the compliant of the defendants, the Court dropped the count under the criminal code and the trial continues with the crime under Anti-Terrorism Proclamation. Suddenly, the Prosecutor, without specifying any reason, dropped the charges against five of the defendants (4th defendant, 6th defendant, 8th defendant, 9th

¹ Zone 9 is an independent blog that identifies itself as "an informal group of young Ethiopian bloggers working together to create an alternative independent narration of the socio-political conditions in Ethiopia". Its motto is 'We Blog Because We Care'. See: <http://zone9ethio.blogspot.com/> (accessed on September, 2015)

² Article 238 paragraph 1 (Outrages against the Constitution or the Constitutional Order) of Proclamation No. 414/2004, The Criminal Code of The Federal Democratic Republic of Ethiopia (Criminal Code) (May 2005).

³ The prosecutor on the first charge incorporated only Article 4 (degree of participating in act terrorism). However after an order by the Court, the prosecutor incorporate Articles 3(2) of the Anti terrorism proclamation. Proclamation number 652/2009 (hereafter, Anti- Terrorism Proclamation) (August, 2009)

⁴ As per Article 32 paragraph 1(a) (b) and article 38 paragraphs 1 and 2 of the Criminal Code respectively.

defendant, 10th defendant) and release them on July 8 and 9, 2015. The trial for the rest of five defendants continued. On October 16, 2015, the Court stressing that Prosecutors' evidences did not prove the alleged crime that the defendants said to have committed, had acquitted the rest of the five defendants, the 1st defendant, 2nd defendant, 3rd defendant, 5th defendant and 7th defendants from the terrorist charge. However, the Court gave an order for the 2nd defendant, Befekadu Hailu to defend his case in accordance with article 257 paragraph 'a' of the FDRE Criminal Code.⁵

2. This legal analysis will scrutinize the legality of the proceeding of *Public Prosecutor Vs Soleyana Shimeles et al* trial after the amended charge is filled up to the verdict of the Court on the subject of either the defendants need to enter upon defense or not. The objective of this legal analysis is to examine the legal proceeding vis-à-vis the FDRE Constitution and procedural laws of Ethiopia as well as international treaties in which Ethiopia is a party.

II. The Charge

3. Ahead of written compliant made by the defendants (pleaded on August 18, 2015), the Court ordered (on November 12, 2014) the Prosecutor to amend the first charge that has been pleaded on July 18, 2015. Orders of the Court among other things include; a) To specifically incorporate an act of terrorism in which the defendants have planned, prepared, conspired, incited or attempted⁶, b) To name the name of

⁵ Article 257 paragraph 'a' reads, "[w]hoever, with the object of committing or supporting any of the acts provided under Articles 238-242, 246-252...publicly provokes them by word of mouth, images or writings..."

⁶ Regarding Acts of terrorism, Article 3 of the Anti- Terrorism Proclamation stipulates:

Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country:- 1) causes a person's death or serious bodily injury; 2) creates serious risk to the safety or health of the public or section of the public; 3) commits kidnapping or hostage taking; 4) causes serious damage to property; 5) causes damage to natural resource, environment, historical or cultural heritages; 6) endangers, seizes or puts under control, causes serious interference or disruption of

the 'group' referred in the charge, c) Further clarifications on duties and responsibilities of each of the defendants, d) To indicate the place, time, content, and the identity of the trainer of the trainings that the defendants were said to be taking part of, e) Clarifications on connections of the defendants with terrorist groups mentioned in the charge, namely *Ginbot 7 Movement for Justice, Freedom and Democracy* (hereafter *Ginbot 7*)⁷ and *Oromo Liberation Front* (hereafter, OLF)⁸ and f) To indicate the identity of the sender of ETB 48,000 which is said to be collected by the 3rd defendant.

4. The Prosecutor, failing to amend most pieces of the Court order, had submitted its 'amended' charge on December 3, 2014. The Court after collecting the comment of the defendants on the 'amended' charge, ordered the Prosecutor for the second time to amend those issues, which are not amended in accordance with the previous order of the Court (the second order was made on January 5, 2014). However, on January 14, 2015 the Prosecutor submitted an 'amended' charge without making substantial changes with the previous charge. Substantial difference between the first charge and the amended charge is only on one point i.e. the latter consists an act of terrorism, creating serious risk to the safety or health of the public and section of the public.⁹ The defendants, on written compliant have claimed that the Prosecutor is unable to amend the charge as per the order of the Court, and accordingly request for a relief that the Court should either delete those points that are not amended in accordance with the order of the Court or to drop all the charges and acquit the defendants. Despite the fact that the defendants submitted detailed objection

any public service; or 7) threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article.

⁷ For more information, see <http://ginbot7.org> (accessed on September, 2015)

⁸ For more information, see <http://oromoliberationfront.org> (accessed on September, 2015)

⁹ Article 3 paragraph 2 of the Anti- Terrorism Proclamation

(written on December 16, 2014) regarding those un-amended points of the charge, the Prosecutor denied the entire complaint with general terms. Apparently, despite the Prosecutors' failure to act in accordance with its' (the Court) order, the Court decided to accept the 'amended' charge.

5. A Criminal charge should give an accused person reasonable information of the offense he/she is suspected. The information should be explained with reasonable clearness. The International Covenant on Civil and Political Rights (hereafter, ICCPR) underlines an arrested person "...shall be promptly informed of any charges against him."¹⁰ The ICCPR also demands an accused person "[t]o be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him"¹¹ The fact that most of the material elements are not clearly expressed in charge violates the defendant's constitutional right of "...to be informed with sufficient particulars"¹² of criminal charge. The charge failed to incorporate particularities of different acts that are allegedly said to be committed by the defendants;

- The charge denotes that all of the defendants have participated in different positions of a covert group. However, it not clearly indicated which defendant is participated in what position.
- The charge asserted that the defendants had incorporated to and implemented the programs of *Ginbot 7* and OLF, an organizations labeled as terrorist

¹⁰ Article 9 paragraph 2 of the International Covenant on Civil and Political Rights, Adopted by the General Assembly of the United Nations on 19, December 1966. Ethiopia accede the ICCPR on June 11, 1993. See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (accessed on September, 2015)

¹¹ Article 3 paragraph 'a' of ICCPR

¹² Article 20 paragraph 2 of Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia (hereafter, FDRE Constitution) (August 1995).

organization by the House of Peoples' Representative (hereafter, HPR).¹³ Nevertheless, the fact that how the defendants incorporated or implemented the strategies/programs is not indicated.

- The defendants also are accused of having direct and indirect coordination with members of *Ginbot 7*. However, a single indication up to the time and place, means of communication, and identity of communicated *Ginbot 7* member is not constituted.
- The defendants are also accused of organizing, taking part, and facilitating various trainings under local and foreign supports. While the entire defendants - for concealing there relations from the security - are accused of participating in training of communication encryption tools called '*Security in [a] Box*'¹⁴ According to the charge, the trainings further is intended to initiate the public to incite violence. Furthermore, the 5th defendant individually is accused of participating in trainings on methodologies of inciting violence including using apparatuses like bomb, helmet, stone, and on creating tribal divisions between security officers and that of provoking security officers. However, the trainers, the place and time of trainings and those individuals for whom the defendants facilitated the trainings are not explained at all.
- The charge further notes that the defendants by using encrypted communication lines were reporting to ESAT (The Ethiopian Satellite Television)¹⁵ - media out let residing abroad - with an intention of bringing *Ginbot 7* public support. However, the time, specific occasion in which a report was made or content of the report is not specified at all.

¹³ On the organization and structure of HPR see Article 54 and the following of the FDRE Constitution. In accordance with article 25 of the Anti-Terrorism Proclamation the power to proscribe and de-proscribe an organization as terrorist organization is that of HPRs'. Those two political organizations are proscribed by the HPR as a 'terrorist organizations' on June 28, 2009 along with other three organizations.

¹⁴ For more information, see <https://securityinbox.org/en> (accessed on September, 2015)

¹⁵ For more information, see <http://ethsat.com/new/about-us/> (accessed on September, 2015)

- One of the defendants (3rd defendant) is accused of collecting ETB¹⁶ 48,000 and distributed to the group for the purpose of inciting violence. However, the Prosecutor has failed to indicate who send the money and how it is supplied for the purpose of violence.
6. In addition to the violation of the defendants' constitutional rights, the charge also failed to fulfilled formality requirement that is stipulated under the Ethiopian Criminal Procedure Code.¹⁷ Article 111 paragraph 1(c) clearly stipulates that a charge should include "...the time and place of the offence and, where appropriate, the person against whom or the property in respect of which the offence was committed..." However, as it is aforementioned, most of the incidents that are said to be performed by the defendants did not include the place, time, or that of property or person in which an alleged act/offence is said to be committed on.
 7. If a charge is not specific, it is difficult for a defendant to understand and defend the charge. The Prosecutor clearly violates article 112 of the Criminal Procedure Code in which "[the] charge [did not] describe the offence and its circumstances so as to enable the accused to know exactly what charge he has to answer..."
 8. The second sentence of article 112 of the Criminal Procedure Code denoted "...[s]uch description [factual descriptions under the charge] shall follow as closely as may be the words of the law creating the offence." However, the charge failed to bring causal-effect relation between the acts that are said to be performed (like participating in training of communication encryption tools, reporting to media outlets, and broadcasting) and allegedly violated provision(Article 3(2) of the Anti-

¹⁶ Ethiopian Dollar

¹⁷ Imperial Ethiopian Government, Proclamation No.185 of 1961, Criminal Procedure Code of Ethiopia, (1969 Edition), (hereinafter, Criminal Procedure Code)

Terrorism Proclamation, creates serious risk to the safety or health of the public or section of the public).

9. Furthermore, some of the acts that are included under the charge are not crimes but are constitutional rights of the defendants. The '*Security in [a] Box*' trainings which is said to be taken for the purpose of protecting ones communication could not constitute as a crime of terrorism. The right to privacy is a human right that is incorporated under article 26 paragraph 2 of the FDRE Constitution. The provision clearly stipulates, "[e]veryone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices". The UDHR and ICCPR with same notion underlines that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.¹⁸

III. Change of the Presiding Judge

10. Emphasizing reasons that the decision of the Court to proceed with the amended charge, that the Courts' failure to protect defendants' right of speedy trial and that of restrictions on the defendants right to express themselves are highly dependent on the decision of the presiding Judge (Judge Shelemew Bekele), the defendants claim (with a written compliant dated February 3, 2015) the removal of the presiding judge, according to the appropriate legal procedure.¹⁹ The other two judges, stressing that the decision to proceed with the amended charge is the decision of all of them and because the compliant is not supported with evidence, rejected the

¹⁸ Article 12 of UDHR, Universal Declaration of Human Right, adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. (could be found on <http://www.un.org/en/documents/udhr/> (accessed on September 2015)). It is not binding document but the principles are guidelines for National as well as International Human Rights Instruments. See also Article 17 paragraph 1 of ICCPR

¹⁹ Article 27 of Proclamation No. 25/1996, Federal Courts Proclamation (hereinafter, Federal Courts Proclamation) (February 1996)

compliant of the defendants on the change of the presiding judge. The presiding Judge however expresses his intention to resign from the case. Apparently, on the next trial he presided the bench and continues to do so for a reason that 'he cannot resign because there is no other judge to replace him'. What could constitute as of "sufficient reason...to conclude that injustice may be done"²⁰ other than a tribunal being not abided with its own verdict and denying defendants their own constitutional right?

IV. Plea of an Accused

11. The defendants' plea took place on February 18, 2015. All of the defendants pleaded not guilty. The 2nd defendant (Befekadu Hailu) and the 5th defendant (Zelalem Kibret) asked the Court for explanation of the charge. However, the Court denying to respond for the request of the two defendants violates article 132 paragraph 1 of the Criminal Procedure Code, which demands the charge be read out and explained to the accused before the defendant pleads guilty or not guilty. Given the charges generality and vagueness, it is anticipating for the defendants be confused of the criminal act they are accused. While the Court dictates the 2nd defendant just to say either he is guilty or not guilty, the Court simply recorded the request for explanation of the 6th defendant as of 'not guilty'.

12. While the defendants plead not guilty, they used different words and expressions. Article 132 paragraph 3 of the Criminal Procedure Code stipulates, "[t]he plea of the accused shall be recorded as nearly as possible in the words of the accused." Therefore, the Judge is duty bound to record the statement of the accused without constituting any word. The wording of the defendants were;²¹ 2nd defendant:- "*I did not commit any act of terrorism rather an act of terrorism is committed against me*", 3rd

²⁰ Article 27 paragraph 1 (b) of Federal Courts Proclamation

²¹ The statements are roughly translated.

defendant:- *"If it is a state [Ethiopia] where there is rule of law, my accusers should stand on my place"* and after the judge requests him to respond either he is guilty or not, the 4th defendant asserted *"I didn't commit any crime"*, 5th defendant:- *"I didn't commit any kind of terrorism act"*, 6th defendant:- his request for the judges for an explanation about the charge is recorded as not guilty, 7th defendant:- *"I did not disrupt the peace and security of the public. I did not conspire"*, 8th defendant:- *"let alone committing the act that is expressed under the charge, I didn't even thought of it"*, 9th defendant:-*"I did not commit the act. I am a free person"*, 10th defendant:- *"I am a journalist, Journalism is neither a crime nor terrorism. I am not guilty"*. This wordings of the defendants shows their perceptions of the crime they are suspected of. However, instead of giving the defendants explanation for their request and trying to respect their constitutional rights, the Court rather approached to record the plea of the accused as 'not guilty'.

V. Evidences of the Prosecutor

A. Documentary Evidences

13. The Prosecutor attached lists of documentary evidences. The documentary evidences include; 1) article wrote by the defendants, 2) bank documents, 3) Electronic exchanges in between the defendants, different civil societies and International Human Right groups, 4) training manual of security in a box, 5) letters (which is a copy of the defendants electronic exchanges or the 'transcribed' phone conversation of the defendants) sent from the National Intelligence, Security Service (NISS) to the Federal Police Crime Investigation Department Tactical Directorate regarding the engagements of the defendants and 6) that of defendants 'confessions' gave for the police.

14. The manner the lists of evidences are annexed with the charge fails to constitute the most important matters to indicate the nature of the documents, which helps to differentiate the documentary evidences. The dates when the documents were

wrote, who wrote the documents, the nature of the document, reference numbers (if any) and that of the number of pages of the documentary evidences are either not included or constituted in a controversial manner. Most of the titles of the documents do not show the nature of the document rather it endeavor to incriminate the defendants, which probably jeopardize the impartiality of Judges.

15. The lists of documentary evidences further do not indicate which evidence will explain which charge. From the list of evidences, it is difficult to identify which evidences are adduced for which defendant. The fact that most of the evidences are listed by bullets but not numbers complicates efforts of differentiating the evidences. Accordingly, the defendants are surely in difficulty of understanding what evidences are adduces against them.

16. A documentary evidence that was adduced against the 3rd defendant erodes basic legal principle, non-retroactivity of criminal law. The principle of non-retroactivity is incorporated under article 22 of the FDRE Constitution that, "[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed." However, the prosecutor adduced documentary evidence, a newsletter of *Ginbot 7* that is said to be found from the email of the 3rd defendant. The email was sent for the 3rd defendant on November 2, 2008. On the other hand, the Anti-Terrorism Proclamation came in to force on August 28, 2009²² and the group of *Ginbot 7* was proscribed as of a terrorist organization on June 28, 2011. Even if the act is not a criminal conduct, the Prosecutor endeavors to incriminate the 3rd defendant by producing an evidence for

²² See *Supra* 3

an act being performed before the enactment of the law in which the 3rd defendant is alleged of violation.

B. 'Confession Statement' and Cruel, Inhuman and Degrading Treatments (CIDTs)

17. The Prosecutor attaches pages of confessions; 31 pages on the 2nd defendant, 27 pages against the 3rd defendant, 12 pages against the 4th defendant, 16 pages against the 5th defendant, 16 pages against the 6th defendant, 12 pages against 7th defendant, 13 pages against the 8th defendant, 9 pages against the 9th defendant, and 13 pages against 10th defendant. However, the defendants repeatedly indicated that their confessions at the police station were presented under coercion and duress. The 2nd, the 5th, the 7th and the 8th defendants were applying for the lower Court about the violation of their rights by the police during the time of interrogation. The FDRE constitution as well as international and regional treaties prohibits an act of torture in any condition. Article 6 of the Universal Declaration of Human Right (hereafter, UDHR) stipulates that "[n]o one shall be subjected to torture or to cruel, inhuman and degrading treatment or punishment." The ICCPR, with similar diction to the UDHR incorporates the right of an individual not to be tortured and treated inhumanly.²³ Furthermore, when the defendants gave the confessions, they were denied of their right to legal counseling. All the defendants wrote a complaint about CIDTs committed against them by the police and submit their complaint to Ethiopian Human Rights Commission.²⁴ Until this report is published, the

²³ Article 7 of ICCPR

²⁴ Proclamation number 210/2000, Ethiopian Human Rights Commission Establishment (hereafter, EHRC Proclamation), (July, 2000). The EHPC is established by the aforementioned EHRC proclamation. The mere objectives of EHRP are to give awareness to the public on human rights issues, to ensure human rights values are protected, respected and fully enforced, and have the necessary measure be taken where it is found that human rights are violated. After figures from the Legislatures, the Court and Religious Bodies nominate Commissioners of four categories, a Chief Commissioner; a Deputy Chief Commissioner; a Commissioner heading Children and Women affairs, and Others Commissioners with two third majority vote, they will be appointed by two third majority of the House of People Representative. The Commission is empowered to accept complaints, investigate the occurrence of Human Rights violation with due process and when the commission found Human rights violation, give remedies *intra alia* facilitate settlement of the issue amicably, write letter of discontinuity of the violation

commission did not begin investigation on such alleged human right violations (CIDTs) said to be committed by the Federal Police Crime Investigation Sector, aka *Maekelawi*.²⁵

18. It is well-established legal principle that an arrested and accused person should be privileged from self-incrimination. Article 27 paragraph 2 of Criminal Procedure Code clearly stipulate that "[an accused] shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence Any evidence obtained under coercion shall not be admissible." By the same notion, article 19 paragraph 5 and article 20 paragraph 3 of the FDRE Constitution respectively grants an arrested and accused person a right not to be compelled to make confessions. In this regard, the ICCPR underlines an accused "[n]ot to be compelled to testify against himself or to confess guilt."²⁶ The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly prohibits an act of Torture.²⁷ The evidentiary law is also apparent on this matter. Confessions gave under coercion are not admissible to the Court of law. However, in this case, despite complaints of the accused to the Court and EHRC, all lists of 'confessions' are admitted and counted as evidences against the defendants.

and/or other necessary measure to the head of the concerning organ. See Article 5, 8, 10, 11, and 23 of EHRC Proclamation.

²⁵ *Maekelawi* (meaning 'central' in Amharic) is known for torture and other ill-treatments. For instance see 70 pages report of Human Rights Watch, "'They Want a Confession': Torture and Ill-Treatment in Ethiopia's Maekelawi Police Station", (October 17, 2013), <https://www.hrw.org/report/2013/10/17/they-want-confession/torture-and-ill-treatment-ethiopia-maekelawi-police-station> (accessed on September, 2015)

²⁶ Article 3 'g' of ICCPR

²⁷ Convention against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the General Assembly of the United Nations on 10 December 1984. Ethiopian has ratified the Convention on March 13, 1994. See <http://www.achpr.org/instruments/uncat/ratification>

C. Exhibits

19. The Prosecutor adduced nineteen exhibits, all of which are material that are confiscated from the defendants. The exhibits include laptops, mobile phones, external hard disks, flash drives, training manual book and compact discs (hereafter, CDs). While all of the exhibits, in accordance with article 97 of the Criminal Procedure Code are numbered, recorded and kept at the police station, the twelve CDs are not numbers at all and presumably not recorded. Despite the defendants compliant to the Court and against the spirit of the Ethiopian criminal procedural law, all the exhibits are kept with the police but not at the Court Registrar. The fact that the exhibits are kept at the police station but not the Court Registrar exposes those evidences to be abused and presented with the interest of the Prosecutor. For instance, with this case, after the documentary evidences are printed, most of the confiscated personal computers of the defendants were formatted. Furthermore, the circumstance in which the exhibits were kept at the police station left the materials to be either spoiled or destroyed.
20. The defendants have raised a legitimate claim (orally on February 18 and in written on February 25, 2015) that they should get access to the twelve CDs. However, at the adjournment held on March 4, 2015, the Prosecutor had argued that the CDs are exhibits in which the defendants are not entitled to have access to the evidences. Exhibit is a document or a thing, which could be produced for the inspection of the Court. However, it is the content of the CD rather than the item itself that could be constituted as evidence. Therefore, the CDs could be documentary evidence but not Exhibit. However, the Court accepting the argument of the Prosecutor that the twelve CDs are exhibits, had denied the defendants their right to full access to any evidence presented against them.²⁸

²⁸ See article 20 paragraph 4 of the FDRE Constitution

21. In addition, it appears that the exhibits have no relation with the charges. Exhibits could better show the acts of the defendants plan, prepare, conspire or incite to create serious risk to the safety or health of the public or section of the public. However, it is not clear that how those laptops, mobile phones, external hard disks, flash drives, training manual book and CDs seized from the defendants could possibly cause the crime that has been under the charge.

22. Despite the letter from the Ministry of Justice to the effect that the charge is dropped and an order of the Court to expel the exhibits, five of the defendants (4th defendant, 6th defendant, 8th defendant, 9th defendant, 10th defendant) were compelled to exhaust unnecessary bureaucracies for collecting their properties, which were confiscated and kept at the police. After passing through those unnecessary denials and official procedures, the defendants are forced to leave with formatted computers.

23. Furthermore, four of the defendants (2nd defendant, 3rd defendant, 5th defendant and 7th defendant) who are acquitted by the decision of the Court, despite their acquittal from the charge and an order of the Court for the release of their confiscated properties, the Federal Police Crime Investigation Sector, the place where the properties are confiscated failed to provide them their properties. According to the officers, they do not give the confiscated properties because the case is appealed to the Federal Supreme Court. However, there is neither an injunction order issued from the appellate Court, the Federal Supreme Court nor a legal ground for the deed of the police to keep the properties confiscated. Until the publication of this analysis, the acquitted defendants do not collect their confiscated properties.

D. Witnesses

24. The Prosecutor presented witnesses who could testify on the fact that confiscated materials are belonged to the defendants. In other words, the witnesses are individuals who were present at the residents and offices of defendants while materials are confiscated. The Prosecutor also presented witnesses who were present at the police station who saw documentary evidences printed from the laptops of the defendants. Since the Prosecutor did not bring the exhibits at the time of witness hearing, the Court upon the compliant of the defendants, emphasized the witnesses not to give testimonies on the exhibits.

25. The entire witness testimonies were on undisputable facts. Neither of the defendants has denied the attached documentary evidences are belonged to them. The attorneys of the defendants have raised this issue after the third witness was heard in which they had requested the Court to stop the witness hearing. The Court, however asserting that such power is vested to the Prosecutor, continued to hear all of the witnesses presented. In accordance to article 13 paragraph 1 cum article 20 paragraph 1 of the FDRE Constitution the Court "...at all levels shall have the responsibility and duty to respect and enforce..." defendants' right to have speedy trial. However, the Court allowing to hear twenty-one witness testimonies on similar and undeniable facts, had failed to insure the defendants' Constitutional right of Speedy Trial.

26. At the time of witness hearing, the witnesses were allowed to testify beyond points in which the Prosecutor has primary recorded. While the Prosecutor first indicated that his witness would testify on the belongingness of confiscated materials to the defendants, some of the witnesses were testifying on the contents of the documents. The Court over ruled objections from the defendants on this regard.

27. Surprisingly, any of the witness testimonies did not testify on the fact that the defendants are participated in crimes that are incorporated under the charge. Legally speaking, these witnesses were irrelevant for the case, because in spite of the very principle that evidence will be presented on facts that are not accepted by the two parties in the case, they testify on facts not denied by both parties.

VI. Rights of Person Accused vis-à-vis FDRE Public Prosecutor Vs Soliyana Shimeles et al case

A. Right to Speedy Trial

28. Until the verdict in which either the defendants need to enter upon defense or not, the trial took five hundred thirty nine days and has been adjourned for thirty eight times. The FDRE Constitution²⁹ and International and regional instruments in which Ethiopia is a party grant the right of speedy trial of an accused person. The ICCPR clearly dictates an accused should "... be tried without undue delay."³⁰ The African Charter on Human and Peoples' Rights (hereafter ACHPR) also protects the right of speedy trial in which an accused has "... [a] right to be tried within a reasonable time..."³¹

29. Article 19 paragraph 1 of the Criminal Procedure Code denotes adjournments should take place only "where the interests of justice so require." Reasons that constituted as of interest of justice are listed under the second paragraph of the same provisions. However, the Court had repeatedly adjourned hearings without

²⁹ See Article 20 paragraph 1 of the FDRE Constitution

³⁰ Article 3 paragraph 'c' of ICCPR

³¹ African Charter on Human and Peoples' Rights, Adopted on 27 June 1981, Entered into force on 21 October 1986, Article 7 paragraph 1(c) of the ACHPR. Ethiopia ratified the ACHPR on June 15, 1998 and deposited on June 22, 1998. <http://www.achpr.org/instruments/achpr/ratification/> (Accessed on September, 2015)

apparent reasons, like judges are absent without good cause, that there was no enough time for the judges to prepare verdicts and etc.

B. Presumption of Innocence until Proven Guilt

30. Pursuant to article 20 paragraph 3 of the FDRE Constitution, "[d]uring proceedings accused persons have the right to be presumed innocent until proved guilty..." This constitutional right should be seen in light with the basic principle of legal maxim, that the burden of proof rests on who asserts, not on who denies. Therefore the state should, with due process of law prove the guilt of an accused. Courts are the only competent organ to declare that an individual is guilty. To this end, the UDHR stipulates, "[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."³² Similarly, the ICCPR³³ and ACHPR³⁴ designates citizens of those state parties to the treaty be presumed innocent until proven guilty.

31. However, the violation of such right of the defendants begins from the charge itself. The charge in different occasion has referred the cover group where the defendants participate as 'terrorist group', and the defendants as of 'terrorists' and 'members of terrorism groups'. Furthermore, statements made by governmental officials³⁵ and that of reports made by state media outlets asserted that the defendants are guilty of

³² Article 11 paragraph 1 of UDHR

³³ Article 14 paragraph 2 of ICCPR

³⁴ Article 7 paragraph 1(b) of ACHPR

³⁵ For instance Ethiopian Prime Minister Hailemariam Dessalegn, responded for a question of BBC interviewer as "If you have any connection with terrorists don't think that the Ethiopian government will let you [go] free" See <http://www.bbc.com/news/world-africa-28366841> (accessed on September 2015) Furthermore, PM Hailemariam address on the case at a Press Conference, said "I don't think becoming a blogger makes somebody immune if somebody involves into this terrorist network that destabilizes my country. This is a clear message" See http://www.nytimes.com/2014/07/19/world/africa/ethiopia-bloggers-and-journalists-are-charged-as-terrorists.html?_r=0 (accessed on September, 2015)

a terrorism act. The Ethiopian Prime Minister, after all the defendants are acquitted from the terrorism charges, had stated that "some bloggers and reporters arrested last year were not real journalists and had terror links." ³⁶

VII. Right of Person Held in Custody vis-à-vis FDRE Public Prosecutor Vs Soliyana Shimeles et al case

32. Abel Wabella (7th defendant) complained to the Court that he has been mistreated, harassed and threatened at the Addis Ababa Remand Prisoners Center (also known as *Kilinto* prison). According to Abel, after the police officers, on February 18, 2015 forget to handcuff him to his way from Court to the prison compound, the police officers had chained (with 'dog chains') him and live him handcuffed for consecutive eighteen hours. The officers further took the hearing aid of Abel. In accordance with Article 10 paragraph 1 of the ICCPR "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Abel made a complaint to the Court on the adjournment of February 4, 2007. Even though, the Court ordered the prison administration to submit written response to the compliant, the prison administration, on February 18, 2015 denied the occurrence of the mistreatment. Since it was only a onetime incident and that an argument on the issue could take much time, the defendants' attorney with the willingness of Abel managed to reach an agreement with the prison administration that such kind of mistreatment will never take place again. However, the right of Abel to be treated with respect and human dignity³⁷ is violated with that

³⁶ <http://www.bbc.co.uk/news/world-africa-34744282> (accessed on November 28, 2015)

³⁷ Article 21 paragraph 1 of the FDRE Constitution. The provision reads:

"[a]ll persons held in custody and persons imprisoned upon conviction and sentencing have the right to treatments respecting their human dignity."

incident. The Federal Prisons Commission Administration proclamation as of principle also incorporates the right of detainees to be treated with human dignity.³⁸

33. The Addis Ababa Female Remand Prisoners Center (also known as *Kality* prison) administration has denied the female defendants, Edom Kassaye and Mahlet Fantahun right to be visited. According to the statements of the 4th and 9th defendants, the prison administration limits individuals who visited them and restricts the period of time they are being visited on. Only few family members were allowed to visit them and even these few members are being harassed by officers of the prison administration. The attorneys bring those who have being denied from visiting as of evidence for the incident. Surprisingly, the Court dropped their compliant on the reason that the claim is not supported by evidence. The Court failed to protect the human rights of the defendants that is incorporated under article 21 paragraph 2 of FDRE Constitution. The provision stipulates, "[a]ll persons shall have the opportunity to communicate with, and to be visited by, their spouses or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel." Article 29 of the Federal Prison administration and article 13 of Regulations on the Treatment of Federal Prisoners (hereafter, Federal Prisoners Regulation)³⁹, with same expression also incorporates detainees' right to be visited.

34. Furthermore, the defendants were prohibited from activities in which a detainee or a prisoner is legally entailed to do so. For instance, despite the clear dictation of article 18 of the Federal Prisoners Regulation that the defendants "shall be allowed to correspond with persons outside of the prison...", both Prison Administrations

³⁸ See Article 22 of FDRE Federal Prisons Commission Establishment Proclamation, Proclamation No. 365/2003, (September 2003) (hereinafter, Federal Prisons Proclamation)

³⁹ Council of Ministers Regulations on the Treatment of Federal Prisoners, Council of Ministers, Regulations Number 138/2007, (June 2007). The Regulation is issues in accordance with article 39 paragraph 1 of the Federal Prisons Proclamation. It is issues to facilitate the implementation of the Federal Prisons Proclamation.

(*Kilinto* and *Kaliti*) denied the defendants right either to collect or issue any correspondent letters. Books, without apparent reason were repeatedly denied from entering for the defendants. The administration further goes in denying the defendants not to wear a specific kind of clothes while they are attending to Court adjournments. For instance, the *Kilinto* prison administration denied the male defendants not wear black shirts and suit at different occasions.

VIII. The Right to Bail and Freedom of Movement vis-à-vis *FDRE Public Prosecutor Vs Soliyana Shimeles et al* case

35. On an adjournment held on October 16, 2015, the Court acquitted the rest of the defendants who were not included under the July 8 and 9, 2015 release who were released upon the decision of the Prosecutor to drop their charge. Nevertheless, the Court ordered one of the defendants, the 2nd defendant, Befekadu Hailu to defend the case in accordance with article 257 paragraph 'a' of the FDRE Criminal Code.⁴⁰

36. Subject to exceptions prescribed under other laws, the right to bail is a constitutional right.⁴¹ One of the exceptions for the right to bail is accusation under the Anti-Terrorism Proclamation.⁴² Since the crime that the 2nd defendant is accused, article 257 paragraph 'a' of the criminal code is bail-able, the Court ordered the 2nd defendant to be released on ETB 20,000 bail bond. In accordance with article 69 of the criminal procedure code, the Court in deciding the amount of bail bond should consider "...the seriousness of the charge, the likelihood of the accused's appearance, the danger to public order which his release may occasion and the resources of the

⁴⁰ Article 257 paragraph 'a' reads "[w]hoever, with the object of committing or supporting any of the acts provided under Articles 238-242,246-252...publicly provokes them by word of mouth, images or writings..."

⁴¹ Article 20 paragraph 20 of the FDRE Constitution

⁴² Article 20 paragraph 5 of the Anti- Terrorism Proclamation

accused and his guarantors." However, irrespective of the lightness of the charge,⁴³ contrary proof on the future appearance and danger of the accused to the public and that of his limited resource to secure high amount of bail bond, ETB 20,000 bail bond, considering the living standard of the country is expensive.

37. Furthermore, despite an absence of any legal stipulation on travel ban of an accused, the bail includes an order for the relevant authorities to ban the 2nd defendant from traveling abroad. To this end, the constitutional right to freedom of movement is violated.⁴⁴ Furthermore, the right to movement is clearly stipulated under the UDHR⁴⁵ and the ICCPR.⁴⁶

38. The act of violating freedom to movement extends from the judiciary to the executive. The 6th defendant, Zelalem Kibret, who was released upon the decision of the Prosecutor had been hosted to the Reporters without Borders Press Freedom Prize ceremony held in Stratus berg, France.⁴⁷ However, after securing visa from the France embassy and bought his travel ticket, immigration authorities at Ethiopian

⁴³ In accordance with article 9 of the Revised Federal Supreme Court Sentencing Guideline Number 2/2013, crime under article 257 paragraph 'a' is punishable with simple imprisonment for at least 10 days and not exceeding six months. Revised Federal Supreme Court Sentencing Guideline Number 2/2013, October 12, 2013. Since Befekadu Hailu has already imprisoned for one year and six months, he has finalized the maximum possible sentence.

⁴⁴ Article 32 of the FDRE Constitution, The provision reads, "[a]ny Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to."

⁴⁵ Article 13 paragraph 2 of the UDHR states, "[e]veryone has the right to leave any country, including his own, and to return to his country. "

⁴⁶ Article 12 paragraph 2 of ICCPR denotes, "[e]very one shall be free to leave any country, including his own."

⁴⁷ Zone 9 bloggers awarded the 2015 Reporters without Borders Press Freedom Prize in the citizen-journalist category. To receive the award, Zelalem Kibret was intended to set off to Paris on November 16, 2015. See <http://en.rsf.org/ethiopia-zone9-blogger-banned-from-19-11-2015,48553.html> (accessed on November, 2015)

Airlines had confiscated his passport and denied him from boarding to the plane. Since the passport of Zelalem Kibret is confiscated, he is forced to cancel his trip to the Committee to Protect Journalists (hereafter, CPJ) International Press Freedom Award ceremony held in New York, USA.⁴⁸

IX. Conclusion

39. The case of *FDRE Public Prosecutor Vs Soliyana Shemeles et al* does not fulfill minimum international standards of fair trial. Ethiopia has ratified and domesticated international treaties that incorporate basic principles of fair trial. The charge failed to fulfill formalities of procedural law requirements. From the beginning of the case, the defendants were denied of their right to be informed with sufficient particulars. Some of the acts that are allegedly be committed by the defendants cannot constitute criminal acts. Evidences were presented without procedural necessities. Confessions that are recorded under duress are counted against the defendants. The Court has failed to protect the fundamental human rights of the defendants. In the due course of the trial, the defendants were denied their rights of not to be compelled to make confessions, full access to any evidence, speedy trial, to be treated with respect and human dignity, to be visited and to be presumed innocent until proved guilty. Even after the right to have a due process of law was violated, the prosecutor was unable to prove the defendants participation in any act that constitutes as criminal act. Neither the documentary evidences nor witnesses' testimonies proved that the defendants were participated in creating serious risk to the safety or health of the public or section of the public.

⁴⁸ The CPJ awarded the 2015 International Press Freedom Award to Zone 9 bloggers. The ceremony was held on November 24, 2015 at New York, USA. <https://www.cpj.org/awards/2015/zone-9-bloggers-ethiopia.php> (accessed on November, 2015)

40. To this end, the Court took the right step by acquitting the defendants from the terrorism charge. Nevertheless, the Prosecutor had speedily lodged an appeal to the Federal Supreme Court.⁴⁹ Until this report is finalized, the appeal is left in the shelf of the Registrar that motion from the Prosecutor to present the file to the Judges is not materialized.

⁴⁹ See <http://www.fanabc.com/english/index.php/news/item/4190-persecutor-appeals-against-acquittal-on-terrorism-charges-of-%E2%80%98zone9-bloggers%E2%80%99> (accessed on November, 2015)