

PRE-TRIAL PROCEEDINGS OF POST-HACHALU DETENTIONS

(ANALYSIS OF SELECTED CASES)



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I. BACKGROUND

1. Following the assassination of a prominent Ethiopian Singer, Hachalu Hundessa, on June 29, 2020, there was unrest and, communal and religious violence in parts of the Oromia Region and the capital Addis Ababa. Following this tragic incident, arrests including prominent politicians and journalists took place for their alleged involvement/association in the violence. According to the Attorney General, the violence that erupted following the news of the assassination of Hachalu Hundessa, 167 individuals lost their lives, more than 360 individuals sustained bodily injury, and an estimated 4.6 billion Ethiopian Birr worth of properties are destroyed[2].

This legal analysis will evaluate the pre-trial proceedings including the remand Court procedure and preliminary inquiry of selected cases. The proceedings, claims and counter-claims, court rulings and actions and omissions of different state institutions will be scrutinized vis-à-vis multilateral and regional human rights instruments which Ethiopia is party, the Federal Democratic Republic of Ethiopia Constitution[3] (hereafter, FDRE Constitution) and administrative and procedural laws of the country. It has to be noted that all remand proceedings and preliminary inquiry files that are included in this report are closed. The trial phase, i.e. the proceedings after charges that have been filed is not covered.

2. Eight remand Court proceedings and two preliminary inquiry hearings are selected for the legal analysis. Cases that are selected are those which involve journalists and politicians. The cases to be evaluated are: **from remand court proceedings** - 1) Eskinder Nega, 2) Sintayeu Chekol 3) Keleb Seyoum, 4) Belay Manaye, Mesganaw Kefelengh, Yonathan Mulugeta, Mulugeta Anbeber (hereafter, Belay Manaye et al), 4) Jawar Siraj Mohammed, 5) Bekele Gerba 6) Guyo Wariyo 7) Lidetu Ayalew, 8) Yilkal Getnet, Wondale Asnake and Tewodros Tesfaye (hereafter, Yilkal Getnet et al), 9) Chibsa Abdulkerim, Meles Deribsa, Yasin Tifa, Hassen Jima, Feyesa Basa (hereafter, Chibsa Abdulkerim et al); and from the **Preliminary Inquiry Files** - 1) Jawar Siraj Mohammed, Bekele Gerba, Hamza Adana Yalemwork Asa, Getu Tuda, Tamrat Hussein, Suboka Safu, Keni Umeta, Gari Abdela, Bogale Diribssa, Shemsedin Taha, Bonn, Melese Diribsa (hereafter Jawar Mohammed et al preliminary inquiry file); and 2) Eskinder Nega, Sentayehu Chekol and Keleb Seyom (hereafter, Eskinder Nega et al preliminary inquiry file).

II. RIGHT TO LIBERTY AND ITS RESTRICTIONS

3. In accordance with article 9 of International Covenant on Civil and Political Rights[4] (hereafter, ICCPR); *"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and by such procedure as are established by law."* By the same notion, Article 6 of the African Charter on Human and Peoples' Right[5] (hereafter, ACHPR) also denotes that *"No one may be deprived of his freedom except for reasons and conditions previously laid down by law."*

4. Right to Liberty could be restricted by law. Article 19 Para 4 of the FDRE Constitution denotes *"where the interest of justice requires, the Court may order the arrested person to remain in custody or, when requested, remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for the investigation, the Court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person's right to a speedy trial."* Of the domestic laws in which the right to liberty of citizens could be restricted, the major legal text is the Criminal Procedure Code of 1960 (hereafter, CPC).[6] The CPC governs nearly all of the criminal proceedings in Ethiopia.

5. According to CPC, a police officer could either summon the suspect or arrest him when *"he has reason to believe that a person has committed an offense."*[7] Arrests in principle should be made with a court warrant.[8] Arrest without a warrant could only be made in exceptional circumstances. The CPC lists the reasons in which an arrest without a warrant could be made. Primarily, police could arrest suspects who are caught red-handed in committing crimes that are punishable with less than 3 months. The other exceptions are if an individual;

... is suspected of having committed or about to commit a crime punishable with less than one year, is in the act of committing the crime of breach of peace, has escaped or has attempted to escape from custody, is suspected of invading police supervision, is suspected of deserted from armed or police force, has possessed an illegal weapon, is suspected of possession of stolen property or property obtained by criminal activity and/or is suspected to be a dangerous vagrant.

6. Most of the suspects involved within the cases that are evaluated under this analysis were arrested without Court warrants lacking justification per the exceptions listed above. The police arrested Eskinder Nega from his office without showing an arrest warrant. It was the same for Sentayehu Chekol. The arrest of Keleb Seyom, however, is dissimilar with her co-suspects that she has been called by phone that she has a package delivered with postal service, and arrested by the police officers who showed her their Identification Cards but no arrest warrant. Belay Manaye and Mesganaw Kefelegn were arrested from Belay's resident where the police have shown up without a court warrant. Yonatan Mulugeta, a suspect within the Belay Manaye et al remand proceeding was also arrested without a court warrant. Jawar Mohammed and Bekele Gerba have been arrested on the spot where one of the offenses that they are suspected of was committed, i.e. killing one guard of the Oromia Prosperity Party Office. However, an arrest warrant which is issued on July 10, 2020, was provided for the arrest of Lidetu Ayalew.

7. Arrest should be made and an investigation file should be opened if the police *"...has reason to believe that a person has committed an offense."* In other words, police before arresting any individual should have a probable cause.

The cases analyzed under this report indicated that the police officers involved in the investigation of cases of the suspects have failed to clearly put the specific crimes and individual criminal responsibilities of the detainees after the arrest.

The police were in the difficulty of making their mind for which acts of the arrested suspects that it should conduct its investigation. The specific individual capacities of the suspects were arguable within all of the remand proceedings and the police have consistently changed the acts on which it is conducting its investigation. Primary, for all cases, the reasons that are posed by the investigating police officers to the remand courts were that they had arrested the individuals for their alleged participation in the loss of lives and destroyed properties that have had occurred following Hachalu's assassination.

8. The case of Lidetu Ayalew is a typical example where the police have consistently changed the offense on which it has arrested and conducted its investigation. At the first appearance of Lidetu Ayalew at Bishoftu Woreda Court, the police told the court that they had suspected him of financially supporting and organizing violence in the town of Bishoftu, a place where he lives and situated in the Oromia Region. However, later, the police told the court that they have found two illegal texts written by him in Amharic ("የኢትዮጵያ የሕዳሴ ዕርቅና አንድነት የሽግግር መንግሥት ማቋቋሚያ" and "ከለውጡ ወደ ማጡ") and unlicensed weapons in his residence. On a charge filed on September 19, 2020, he is accused neither for the violence in Bishoftu nor in relation to the documents that are found in his residence, but possession of an illegal weapon. On another charge filed on October 8, 2020, however, the attorney general pressed another charge against Lidetu of the public document which he wrote on the need for an inclusive transitional government.

9. The individual criminal responsibility of the suspects was contentious within all of the remand proceedings. As per the investigating police officer, Yilkal Getnet et al was suspected for their participation in the death and property destruction that took place in Addis Ababa. On July 18, 2020, when they attended to the remand court for the second time, Yilkal Getnet et al told the court that the police have not specifically mentioned in what capacity that they had participated in the act, for which the court ordered the police to differentiate their criminal capacity. The failure of the police to do so has led the court to order the release of Yilkal Getnet on bail eventually after 64 days of detention. The same is true for suspects included on the Eskinder Nega et al preliminary investigation file, on which they were suspected of their participation in the lives lost and property destruction in the capital Addis Ababa; however, police has failed to specifically differentiate their individual criminal responsibility despite repeated complaints made by the defense team.

On Bekele Gerba's remand file, on July 13, 2020, the suspect has told the Court that the police have not yet recorded his testimony; hence, he couldn't know the specific act and crime that he is suspected of.

On July 16, 2020, the defense team of Jawar Mohammed asked the Court to order the police to differentiate the personal participation of Jawar within the illegal acts posed against him. Meanwhile under Jawar Mohammed's file, on July 29, 2020 adjournment, the police come up with a new act, different from the initial act, claiming that the suspect gave the order for the return of Hachalu's body to the capital that caused death and destruction of property.

10. Despite the individual criminal responsibility, within some of the remand proceedings, the investigating police officers have failed to indicate the specific time and place that the offense has been committed as well as individual and properties on which the offenses have been committed against. Belay Manaye et al at their first

appearance to the remand court on August 6, 2020, police told the remand court that they are suspected of instigating violence on ASRAT TV[9] which has caused the loss of lives and property destruction. Police have claimed that they had produced and broadcasted contents starting from November 2019 and that the programs have portrayed the Amhara people as being targeted, and that the government has failed to protect them. However, the police have failed to differentiate the specific programs, amounts of damage it has caused, the victims, and/or causal-effect relations thereof.

11. The right to bail is of the fundamental human rights of any individual whose right to liberty is deprived. Article 19 Para 6 of the FDRE Constitution stipulated that *"Persons arrested have the right to be released on bail. In exceptional circumstances prescribed by law, the court may deny bail or demand adequate guarantee for the conditional release of the arrested person."* Exceptions on which bail could be denied are mostly found in procedural laws. On conditions in which an arrested person could be denied the right to bail and subject to further detention, a principle developed by the African Commission on Human and Peoples' Right (hereafter, AComHPR) underlines that *"unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial."*[10]

12. As per Article 63 Para 1 of the CPC, the right to bail should be granted *"[if charge] does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offense was committed dying."* On the exceptions in which the right to bail could be denied, Article 67 of the CPC lists three reasons; 1) if it is believed that the arrested individual will not comply with the condition of bail, 2) that if the applicant is released he will likely commit another offense and 3) and if the applicant is likely to interfere with witnesses or tamper with the evidence. The right to bail has been argued within all of the remand proceedings. Bail has been allowed in some of the cases, while it is denied in others. The rationales that have been presented by the investigating police officers differ from case to case, and from adjournment to adjournment, so do the reasoning of the courts while they rendered their rulings.

13. Eskinder Nega et al consistently asked for bail at the remand court hearings asserting that the detention of them has no value for the investigation. His defense team added that the suspects could in no way interfere with what the investigation team has claimed of doing or distort any evidence which is already secured in state institutions like National Intelligence and Security Service/NISS (where electronic materials are investigated), hospitals (where an autopsy is conducted), police (where forensic is taking place) and other state organs (where the loss of property is being investigated). Both on the remand and preliminary inquiry stage, the request for grant of right to bail of Eskinder Nega et al was denied for the mere reason that the offense they are suspected of is punishable.

14. In some cases, the police have been observed in failing to execute the grant of bail rights that are ordered of the courts, while the prosecutor initiated different types of unbailable charges. At the remand proceeding of Lidetu Ayalew who was held at the Bishoftu Woreda Court, bail has been consistently requested, but the court sometimes has failed to give a ruling while on some occasions denied the right without plausible reasoning. On his first appearance to the Court on July 27, 2020, Lidetu requested for bail since he has heart health problems and asthma, hence feared that he could contract covid-19, where the police argued that he will destroy evidence. The Court accepted the reasoning of the investigating police officers, and grant additional 14 days of investigation without further investigation as to which evidence, how, and where Lidetu could possibly destroy. On the August 10, 2020, adjournment, Lidetu again asked for bail asserting that he needs medical attention, but Court has passed his request without ruling. On August 17, 2020, he again requested for bail bringing the fact that he has a health problem, that the court again denied his claim and ordered for additional 7 days of detention. On August 24, 2020, Lidetu again asked for bail since the police were asking for additional investigation days to investigate the same things that they claimed to investigate in the previous adjournments i.e. to recording witness testimonies and collecting investigation reports, but the court again granted the police additional 7 days and denied his right to bail, and adjourned the case for August 31, 2020. The remand file of Lidetu was closed on August 31, 2020. Although the Court ruled that the prosecutor should file a charge within 15 days, the charge was initiated after 17 days; hence Lidetu was illegally detained for 2 additional days. Lidetu secures his right to bail after the charge has been filed on September 18, 2020, at the

Mesrak Shoa Zonal High Court. The High Court, setting aside the argument of the prosecutor that, Lidetu if released on bail will threaten witnesses and will go abroad for medical treatment, has granted him ETB 100,000 of bail.

Unfortunately, the police station where Lidetu was detained has failed to execute the court order to release him on the processed-bail asserting that someone else "entrusted them with keeping him detained."

Following an appeal lodged by the prosecutor against the ruling of Regional High Court, asserting that Lidetu should not be released on bail since the crime he is charged with is punishable with 20 years, that he may leave the country for medical treatment and that he may threaten witnesses, the Oromia Supreme Court has issued an injunction on September 24, 2020, but later, on October 6, 2020, the court affirmed the ruling of the High Court and ordered for his release on ETB 100,000 bail as per the ruling of the High Court. However, the prosecutor has come up with a new charge, preparing to cause outrage against the constitution and the constitutional order which is punishable for up to 15 years,[11] leading for his primary bail to be set aside.

15. In one of the cases, the police rearrested and opened another similar investigation to keep a suspect whose right to bail is granted in detention. Belay Manaye et al, asserting that the investigating police officers are asking additional dates of investigations with similar reasons, i.e. to record witness testimony and arrest accomplices, have claimed for their right to bail. Furthermore, the defense attorney of Belay et al pointed out the other rationale posed by police, intimidating institutions that provide the evidence was unreasonable given the positions of the mentioned institutions and the suspects. Having this considered, the court ordered for 10,000 ETB bail bond for each of the suspects who have appealed to the Federal High Court which affirmed the ruling of the lower Court.

Surprisingly, Belay Manaye et al were rearrested at the gate of the prison, where another and new investigation file was initiated against them. The remand court, however, assessing the previous file, and asserting that it is similar to the new one has ordered for their release as per the bail-in which the suspects have already secured, and they were released on the 19th of September.

III. DUTY OF POLICE TO PROMPTLY INFORM REASON OF ARREST

16. Arrested individuals should immediately be informed of the reason for their arrest. Article 9 Para 2 of ICCPR denotes *"Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."* By the same notion Article 19, Para 1 of the FDRE constitution stipulates that *"Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them."* The right of a suspect to be promptly informed of the reasons for his/her arrest helps to avoid arbitrary detentions and give the suspect the potential to challenge his/her arrest. The information should be provided as soon as an individual is deprived of his/her liberty. The information provided should include the legal and factual components, however should be in simple terms so that the suspect could understand it. However, it has been observed that for most of the cases that are included in this legal analysis, the arrested suspects were not informed of the reason for their arrest at the moment when their liberty is deprived.

17. As per two of the defense attorneys of Jawar Mohammed and Bekele Gerba, police didn't inform them of the reason for their arrest that they have learned the rationale

for their arrest while they had attended to the nearby remand court within 48 hours of their arrest. Unlike previous practices in other police investigation procedures, the police even didn't interrogate and record the confessions of Jawar Mohammed and Bekele Gerba until the charge has been filed. The same is true for Eskinder Nega, Sintayehu Chekol, and Keleb Seyoum that the police had neither informed them of the reason for their arrest nor heard their confessions.

IV. RIGHT TO PRIVACY: SEARCH, INTERFERENCE WITH CORRESPONDENCE, AND SEIZURE OF PERSONAL PROPERTY AND BLOCKING OF BANK ACCOUNTS

17. Search and property seizure are limitations to the right to privacy. Article 17 of the ICCPR denotes that *"no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence"*. The FDRE constitution with further specificity asserted that:

"Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under/his personal possession [but be limited for] safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others."

18. Search of premises should in principle be made with a court warrant *"[that] specify the property to be searched and seized and no investigating police officer or member of the police may seize any property other than specified in such warrant."*[12] A search of a premise without a warrant could be made in exceptional circumstances where *"an offender is followed in hot pursuit and enters premises or disposes of articles ... [or]... if by reason of delay in obtaining a search warrant such article is likely to be removed."*[13] Seizure of properties that are found by the search should be observed by independent individuals who shall have checked and signed on the list of properties taken.[14]

19. As per the defense attorney of Eskinder Nega, the Office of Balderas for Genuine Democracy was searched without a warrant and without the presence of independent observers. With regard to the search of the residence of Eskinder, his defense attorney pointed out that there was no search warrant, where the police seized mobile phones

and different documents. In the case of Belay Manaye et al, a search of Belay Manaye's residence took place a day after his arrest, August 6, 2020. Belay Manaye asked the police officers if they have obtained a search warrant but failed to provide asserting that they have permission through the phone. His defense attorney has raised such an issue at one of the remand court adjournment, and surprisingly the judge has told the suspects that he, by phone has personally given authority to the police to conduct the searching. However, the police before conducting the search have orally told Belay Manaye what exactly they are looking for; weapons, electronic materials, and bank books, and only took phones and a laptop. Witnesses have been called from the neighborhood to observe when the resident is searched.

Jawar Mohammed has been taken to his residence for search three times, according to his defense attorney, but police have never presented a search warrant. The observers, who are expected to independently observe the search, had also come with the police.

Given the fact that the observers have come with the police themselves rather than from the neighborhood, their credibility is also not warranted. As per one of the defense attorneys of Jawar Mohammed, there are some properties seized without being recorded.

20. Properties that should be seized and kept by the court registrar should be related to the suspected criminal act which will be presented as exhibits to the court. Other properties seized but not needed for the trial should be returned to the person from whom it was taken.[15] The exhibit could be a document or anything that could be produced for the inspection of the court.

21. Blocked bank accounts and seizure of personal properties was one of the contentious issues within some of the proceedings. On the Jawar Mohammed et al

preliminary examination case, as per the prosecutor, police have seized five cars registered by the names of the suspect, one car not registered by anyone, and blocked bank accounts of suspects and their family per an order issued by the court order. Yelkal Gentnet, on the other hand, learnt the fact that his bank account is blocked after he was released from detention with bail.

On July 13, 2020, Bekele Gerba told the Court that his car is taken away and his spouse is in transportation difficulty and asked for an order of release. The prosecutor argued that the property is investigated whether it is a fruit of crime or not.

On the Jawar Mohammed et al preliminary inquiry hearing, on August 13, 2020, one of the suspects, Bekele Gerba requested to the court to give an order for the release of his blocked bank accounts, where the court responded to him claiming that it is not the authority of the court to give that order as it was not the same court that gave the order to the blocking of the accounts.

On the same file, on the adjournment held on August 24, 2020, Jawar Mohammed asked the court to give an order on the blocked bank accounts of his supporters. The defense attorney has, in writing, asked for the release of seized properties and of the blocked bank accounts on September 8, 2020, where the prosecutor responded to their claim on September 9, 2020. The reasoning of the prosecutor to object to the request was that five of the cars are fruits of crime and the other one was used for contraband which would have the possibility of being confiscated by the state. On the bank accounts, the prosecutor has associated the accounts with money being used to support terrorism as per proclamation numbers 780/2013 (money launderings) and, 882/2015 and 434/2005 on counter-corruption. The seized cars are included as exhibits on the list of evidence attached to the charge that has been filed on Jawr Siraj et al.

V. PUBLIC HEARING

22. In principle trials should take place in public. A public hearing is of the main manifestations of a fair trial. Article 14, Para 1 of the ICCPR denotes:

"In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing [that the] press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

23. Since public hearing ensures transparency, it enhances the accountability of tribunals and the justice machinery as a whole, hence guarantees the interest of suspects. Furthermore, public hearings, by giving victims of crime the opportunity to follow the process, it could bestow them relief and enhance reconciliation between perpetrators and victims. Under its General Comment to interpret article 14 of the ICCPR, the Human Rights Committee asserted that *"[the] publicity of hearing ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of the society at large."*^[16]

24. The presence of family members, other interested individuals, and the media were issues of argument within some of the proceedings. As per one of the defense attorneys on Jawar Mohammed et al, at the remand proceeding, nobody was allowed to follow the court proceeding which was held at the office of the judge. On the Jawar Mohammed et al preliminary inquiry, the suspects asked the court on August 4, 2020, that the hearing should be in public, and on August 24, 2020, selected family members were allowed to follow the proceeding. Yet, per the defense attorney, only four individuals to be selected by fourteen suspects were allowed to enter and follow the preliminary hearing. Under both remand and preliminary inquiry hearings of Eskinder Nega et al, his defense attorney told that the hearings have taken place in a wide court room, however, neither family members nor other interested individuals were allowed to enter and follow the proceedings.

25. The suspects have complained about the selective media presence. For instance, on July 27, 2020 remand adjournment of Bekele Gerba, the suspect has asked the Court to allow Media to attend and follow the proceedings. Under Eskinder Nega et al remand proceeding also, the suspect, on July 29, 2020, adjournment has claimed for private media to follow their pretrial process.

As to the knowledge of the defense attorney of Eskinder Nega, there were five state and ruling party-affiliated Media that are listed and allowed by the president of the First Instance Court President to enter the courtroom and follow the proceedings.

They have complained to the court about three times, in which the court has ordered for the presence of any media but it was not executed. A principle developed by the AComHPR further asserted that *"representatives of the media shall be entitled to be present at and report on judicial proceedings except that a judge may restrict or limit the use of cameras during the hearings."*[17]

VI. OPPORTUNITY TO BE HEARD

26. Suspects in a criminal proceeding should access any claims against them and consequently respond accordingly. This relates to the basic principle of equality before the law. The Human Rights Committee asserted that *"the right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on the objective and reasonable grounds, not entailing actual disadvantage or the unfairness to the defendant. There is no equality of arms if, for instance, only the prosecutor, but not the defendant, is allowed to appeal a certain decision."*[18]

27. The need for preliminary inquiry of both cases that are analyzed under this report were contentions. In the Ethiopian legal system, preliminary inquiries take place to record and keep evidence of the prosecution, which will later be transferred to the High Court which has the jurisdiction to entertain the trial.[19] Although not denoted under the CPC, the rationales for conducting preliminary inquiry could be the fact that there are probabilities that evidence will be lost or if witnesses for some reason would be unable to testify to the trial court, for instance, if there is possible death or disappearances of witnesses or if the place between where the crime is committed (witness residence) and the trial court are far. Under both of the preliminary inquiry proceedings that are observed under this analysis, the need for conducting preliminary inquiry was contentious, where the suspects' opinion was neglected.

Although defense attorneys of Jawar Mohammed et al asked the court to have access to and give their opinion on the application of the prosecutor to hold a preliminary inquiry, the court has denied their request and opened the preliminary inquiry file. The defense attorney even went to apply, on August 9, 2020, for the removal of the judge[20] from the bench since he has denied their right to be heard. But, their application was overruled. Under Eskinder Nega et al's case, however, although the court denied their request to access the pleading that the prosecutor presented to initiate the preliminary inquiry, they had the opportunity to present their written pleading opposing the need for preliminary inquiry, in which the court has rejected.

28. Besides the need for the preliminary inquiry, the procedure in which the witness testimony hearing will be held was also contentious under both of the preliminary inquiry files. Access to evidence adduced against a suspect is of the main manifestations of a fair trial. Article 20 Para 4 of the FDRE Constitution gave an accused person "*...the right to full access to any evidence presented against them, to examine witnesses testifying against them...*" The AComHPR under its principle developed with regard to fair trial underlines; "*Nothing in these Guidelines shall permit the use of anonymous witnesses where the judge and the defense are unaware of the witnesses' identity at trial.*"[21]

29. On the Jawar Mohammed et al preliminary inquiry hearing, on August 4, 2020, the suspects asked for the name of witnesses and issues that the witnesses will testify on. However, the court asserting that it is not mandatory in case of the preliminary

inquiry had denied their request. Furthermore, the prosecutor asked 5 of its witnesses to be heard in closed court since their security is at stake, citing Proclamation 699/2010 as justification.[22] The defense attorneys objected to the claim that there is no need to hide the identity of the witnesses since; the witnesses have never asked for protection, that there is another option to keep their security and that there is other evidence to prove the facts in which these witnesses could provide in the course of their testimonies. The court overruled the objections of the suspects. On Eskinder Nega et al preliminary inquiry, after the prosecutor told the court that it wanted to present 4 of the witnesses without disclosing their identity and 3 of the witnesses in a closed trial for the reason of their security, oral argument has taken place on August 6, 2020. The defense team of Eskinder Nega et al asserted that hiding the identity of witnesses from them could infringe their right to defense, hence they should get a list of witnesses before their testimony is heard. The defense team further extended their argument that protection is not the request of the prosecutor, that there is no evidence on the fact that the witnesses have asked for security protection, that the court should investigate if there is a real security threat before its ruling and that if there is a threat, there are different means of protecting witnesses without infringing the right of the suspects per proclamation number 699/2010.

Eskinder Nega has personally told the Court that the crime he is being suspected of is related to the crime of genocide, hence the hearing should be open for the public, and identities of witnesses should be known. The court, however, accepted the argument of the prosecutor and adjourned the trial for August 14, 2020, to hold the witnesses' hearing.

Four of the witnesses testified without being known by the court and the suspects and the other three in closed courts. The suspects have told the court that they don't want to be part of a hearing where they couldn't defend themselves and had terminated their service contract with the defense attorneys for the preliminary inquiry phase hearing, hence witnesses have been heard without the suspects being represented by lawyer.

VII. PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY - STATEMENT OF PUBLIC OFFICES AND OFFICIALS

30. The presumption of innocence is the fundamental right of every individual. Until the prosecutor proves to the court the fact that an individual commits a crime with evidence beyond reasonable doubt and till the moment a court entails a verdict of guilt, every suspect should be considered innocent. Presumption of innocence is incorporated under international and regional instruments. The ICCPR under article 14 para 2 denotes *"everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law."* By the same notion Article 7 Para b of the AChHPR stipulated that *"every individual shall have [...] the right to be presumed innocent until proved guilty by a competent court or tribunal."* The FDRE Constitution entrusts an accused person *"[to] have the right to be presumed innocent until proved guilty according to law..."*[23]

31. Such right could be infringed upon by statements made by public officials, news broadcasted by the media, or by the very fact that how a suspect or an accused person has presented to the court. Under its General Comment 32 articulated to interpret article 14 Para 2 of the ICCPR, the Human Rights Committee underlines;

"It is the duty of public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the Court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence"[24]

32. On the responsible individuals and institutions for the death of Hachalu Hundessa and the violence that have followed it, statement of public officials including the premier Abiy Ahmed and Oromia National Regional State's President, Semeles Abdissa, have been observed in pointing fingers at political groups who claimed the term of the government will lapse after the end of Ethiopian month of Meskerem. It has to be recalled that a national election which was expected to be held in August 2020 has been postponed due to the Covid-19 upon the constitutional interpretation of the House of Federation, and the decision passed by the House of Peoples' Representatives. Furthermore, while updating the public on the progress of the investigation, officials from the Investigation Division of Federal Police have been

observed in asserting that they had concrete evidence that the suspects had committed the crimes that they are suspected of.

33. Statements of public officials and news and opinions of media were the point of complaints within different adjournments. On July 16, 2020, Jawar Mohammed told the Court that Media are influencing the opinion of the public.

On July 3, 2020, Bekele Gerba made a complaint saying that the public officials and the media are incriminating himself and other suspects against their right to presumption of innocence.

Bekele Gerba further on July 27, 2020, brought to the attention of the court that the media, by inviting different individuals is broadcasting opinions which asserted that they are criminals. On the adjournment of August 24, 2020, Jawar Mohammed et al complained that media are taking videos and pictures without their consent to incriminate them, and demanded the court to order this to be halted. Bekele Gerba, one of the suspects under the Jawar et al, preliminary inquiry case again demanded the court to order the media not to make incriminating reports.

34. According to one of the defense attorneys of Jawar Mohammed et al, in addition to media the federal prosecutor tends to refer the suspects like criminals while they address the court and submit prepare written pleadings. Similarly, Belay Manaye et al was treated and referred to as criminals by officers who guarded the prison cells.

VIII. CRUEL, INHUMAN, AND DEGRADING TREATMENTS (CIDTs)

35. Any arrested person should be treated in a humane condition. Article 7 of the ICCPR stipulates that *"no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation"* on arrested individuals the same legal instrument asserted that *"all persons deprived of their liberty shall be*

treated with humanity and with respect for the inherent dignity of the human person."[25] Furthermore, the FDRE Constitution, under article 21 para 1 denotes; *"all persons held in custody and persons detained upon conviction and sentencing have the right to treatments respecting their human dignity."*

36. From the cases that are analyzed under this report, there were two claims of physical tortures at the detention centers.

According to his lawyer, Eskinder Nega has been physically assaulted by the police upon his arrest and after he was taken to the Addis Ababa Police Commission in front of other detainees and a high-level police officer.

The assault was not intended to pressure him to confess or to incriminate himself. Eskinder told the Court this fact and declare his interest to press charges against the institution and those who gave the orders, but police have failed to take the victim's testimony and commence an investigation. The court ordered the police to take his testimony on July 16, 2020; however, the police tend to relate the assault with a single officer than the institution, in which Eskinder has rejected claiming this to be part of the whole process.

On the need for remedial measures for Torture, a principle developed by the AComHPR underlies the obligation of the State Parties of the ACHPR as;

"States shall ensure that effective mechanisms exist for the receipt and investigation of such [CIDTs] complaints. The right to lodge complaints and the existence of such mechanisms should be promptly made known to all arrested or detained persons [...] States shall ensure, including by the enactment of legal provisions, that officials or other persons who subject arrested or detained persons to torture or to cruel, inhuman or degrading treatment are brought to justice"[26]

37. One of the suspects within Jawar Mohammed et al file, Shimeles Taha on different occasions told the court that his one ear is in difficulty of hearing following a physical assault by the police officers, where he had asked for medical treatment. One of the defense attorneys of Jawar Mohammed et al confirmed that Shimeles was physically assaulted by the police. Furthermore, suspects under Belay Manaye et al's file have also claimed that they were psychologically pressured to self-incriminate, in which the investigating police officers have made verbal intimidations.

38. The suspects have also passed through circumstances that are related to inhuman conditions of the detention centers. The room where Belay Manaye et al were detained for the first 10 days was very confined and without adequate means of cleaning facility. Within eighteen rooms at the Addis Ababa Police Commission which has a single door to enter and primarily built for one detainee in each room, Belay Manaye et al were confined with up to six individuals in each room, with a total of about 62 individuals within the 18 rooms, they claimed. They have also asserted that there is only one toilet with poor sanitation for all these 62 individuals. There is no running water for the shower facility, that the detainees didn't take shower for 10 consecutive days. Sunlight doesn't go through the room. The detainees are only allowed to gain sunlight at mid-day for about 15/20 minutes. They were put in darkness for 7 consecutive days, given the fact that there was an electricity blackout.

With regard to the room where arrested individuals should be detained, a regulation on prison treatment stipulates; *"premises in which prisoners live or work shall have windows large enough to allow adequate light for reading and fresh air to circulate"*[27] And on sanitation the regulation denotes, *"prisoners shall be regularly provided with enough water and necessary materials for cleanliness' and with toilet facilities."*[28]

Belay Manaye, on his first appearance to the court on August 7, 2020, asserting that he has a problem relating to breathing and that the confined situation could expose them to Covid-19, asked the court to order the transfer of him to a better cell. Although the court has ordered accordingly, it was not executed by the detention center administration, leading the court to order the detention centers administrator to come and explain on the adjournment held on August 19, 2020. Unfortunately, the administrator came to the court and said that the written court order did not reach

him. After shocking results to the examination of Covid-19, where many individuals found to be positive, Belay Manaye et al had been transferred to a better cell ten days later. Yelkal Getnet was also detained in a small and confined room where three of the seven detainees were tested positive for Covid-19.

39. On July 16, 2020, Jawar Mohammed complained that he is being detained in the basement where there is no adequate sunlight and that he had access to the toilet only twice within 24 hours in which the court gave the order to be adjusted.

According to his defense attorney, Jawar Mohammed has been detained for the first two months after his detention in solitary confinement with little access to electric light.

Jawar was first detained at the Addis Ababa Police Commission Building. On September 4, 2020, the court, as per their request gave order for the detention center administrations to detain Bekele Gerba and Jawar Mohammed in the same room which was not executed, leading to another court order that the detention center's administrator should come and explain why they had failed to executed the order of the Court. The order was implemented after that. They have executed the order from then on.

40. With regard to the detention of Eskinder Nega, according to his defense attorney, Eskinder has been detained in a small room, alone for about one week at the Addis Ababa Police Station. Later, he has been transferred to a wider room and he has been joined with his colleague, Sintayehu Chekol. They can have access to toilet and sun light only once a day for about 15 minutes.

IX. RIGHT TO BE VISITED AND CORRESPOND WITH THE OUTSIDE: FREE AND PRIVATE COMMUNICATION

41. Detained individuals have the right to communicate with the outside. As per article 21 Para 2 of the ICCPR "*all 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 21 Para 2 of the FDRE Constitution also denotes *"all 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."* A principle that is developed by the ACoHPR further asserts that *"anyone who is arrested or detained shall be given reasonable facilities to receive visits from family and friends, subject to restriction and supervision only as are necessary in the interests of the administration of justice and of security of the institution."*[29]

42. A family visitation has been the point of dispute within most of the proceedings. On July 13, 2020, Bekele Gerba told the Court that he has never met with his family. On August 13, 2020, preliminary inquiry hearing, Jawar Mohammed et al claimed that they are not communicating with family members and have only been able to collect change of clothing from family after being jailed for a month. The court ordered that the prison administration should come and explain this to the court. As per one of the defense attorneys, at the Addis Ababa Police Commission where Jawar Mohammed was detained for the first two months, visitation by family members and religious fathers was not allowed. However, family members were allowed to deliver him food at any time. After two weeks of detention, Jawar Mohammed and Bekele Gereba were transferred to the Federal Police Compound, where an individual who has brought food was only allowed to visit, but could only communicate with them in distance. Recently, distance issues have been resolved. Furthermore, the court gave an order for Jawar Mohammed to communicate with his family living abroad with a video call, which is executed after repeated orders.

43. The right to family visit of Belay Manaye et al was worsening. Family members are allowed to visit only on Saturdays for half days. Even, while the family members came, they could only see them in distance, drop food and cloth, and leave. Family members, with the exception of Saturdays, were not allowed to bring food to the detention center; therefore, the detainees were pressured to have only the foods prepared in the detention center which is an unfavorable choice for most of them. There was a circumstance where the detainees were pressured to have only bread for 7 consecutive days, giving rationale that there is a blackout to bake *injera*, a common food of Ethiopians. Belay Manaye et al, on August 6, 2020 told the Court the fact that family

members are denied either to visit or to provide food, medicine and clothes. The reason posed by the detention center administrator was to prevent Covid-19. A regulation to implement the State of Emergency proclamation enacted to curb the pandemic restricted right to be visited, but not providing food.[30] Belay Manaye et al, upon the expiry of the State of Emergency on September 5, 2020, asked the detention center administrator to improve the situation, but the administrators have failed to act accordingly. On the contrary, a police station where Ledetu Ayalew is detained in the town of Bishoftu permits for any individuals to visit him.

44. Per his defense attorney, Eskinder Nega has uniform visitation schedule while he was both at the Addis Ababa Police Commission and the Federal Police Building. Three registered individuals were allowed to visit him on a daily basis. The same was true for Sintayehu Chekol that three registered individuals visit him daily. Keleb Seyoum, however, is only visited by her husband, and other family members were not allowed to deliver her food. Keleb was even unable to be visited by her children, one of whom is months old who require breastfeeding.

Keleb Seyoum's defense attorney has repeatedly asked the Court so that she is allowed to breastfeed her one-month old child for which the court has ordered prison administration to facilitate it, but failed to be executed for at least two months.

However, recently, after almost two months of detention, the prison administration allowed her to have access to her child for two days per week. A proclamation issued to establish and govern the Federal Prison Administration denotes "*where his interest so requires, a dependent infant not beyond eighteen months and that needs close maternal care may stay with his mother who is in custody [and also the] commission shall provide what is necessary to the health and care of the infant.*"[31]

45. Communication of some of the detainees with attorneys was also disputable. Legal representation is of the main manifestation of fair trial. So that the representation is effective, there should be regular access to and communication with the councilor. Article 61 of CPC denotes *"any person on arrest or on remand shall be permitted forthwith to call and interview his advocate and shall if he so requests, be provided with the means to write."* The suspects have repeatedly raised attorney visitation issues to Court. On the September 7th, 2020 adjournment at the remand court, defense attorneys of Jawar Mohammed claimed that they are unable to visit their client as they wished. Bekele Gerba also, July 27, 2020 asked the court to ensure his right to be visited by lawyers that the Court ordered the person in charge of their detention center should come and explain. As per the defense attorney of Jawar Mohammed et al, for the first month, there was surveillance camera where the suspects and the attorneys meet and converse, which was uninstalled after two court orders. Despite the resolution of the alleged 'surveillance camera' issue, according to the defense attorneys, the court ordered the attorneys to visit their clients three times per week, and this arrangement has been employed from there on. On the other hand, according to their defense attorney, he was able to meet Eskinder Nega and Sintayehu Checkol when required in a private manner; however, the case is different with Keleb Seyoum.

***According to her lawyer,
communication with Keleb Seyoum
during his visitation to her at the
detention center was under close
surveillance by an officer who stands in
the nearby and listens to their
conversation.***

As per article 9 of the Federal Prisoners Regulation, *"Conversations between a prisoner and his legal counselor or attorney or an official authorized to inspect the prison shall be conducted under the surveillance of wardens, but the conversation may not be listened to by same."*

46. Access to medical care has been denied in some circumstances. As per the defense attorney, Sintayehu Chekol, who has a health issue relating to his kidney has been constantly rejected to have medical care. Similarly, the defense attorney of Keleb Seyoum pointed out that, although she has a back pain issue, she is denied medical treatment.

Court ordered for the detention center admins to facilitate access to medical care for Sintayehu Chekol and Keleb Seyoum; however, the administration has repeatedly failed to execute the court orders.

According to his attorney, Semeles Taha who has an ear health issue reported as caused by police's physical assault were reputedly denied to have medical care. On the other hand, Jawar Mohammed has managed to get private medical care after the court has ordered to this end.

47. The other manifestation of the right of detainees to have access to the outside is their access to the media. Belay Manaye et al, asserting that they have no access to media, either radio, TV or print magazines, asked the court to order the prison administration to fix the broken device of electronic media in the detention center and to allow their families to deliver print magazines. Surprisingly, the prison administration responded that their Chinese maintenance experts are not available. The court ordered the police but not family members to deliver print papers for the suspects; however, the detention center administration asserting that they have no budget didn't execute the order. Jawar Mohammed also claimed for access to media, books, paper and pen on the remand proceeding, that the court gave orders accordingly. Following this, per his defense attorney, he can access books to read and papers and pen to write, as well as to state-affiliated TV stations and print newspapers.

X. CONCLUSION

49. There are several irregularities in regard to pre-trial and preliminary inquiries of these selected court cases undergoing after violence followed artist Hachalu Hundessa's assassination in Addis Ababa. Police have failed to tell detainees the reasons for their arrest. It has also failed to either have or show an arrest and search warrant. Arrests have been made without probable cause and bail rights have been rejected without plausible explanations. Some hearings took place in closed courts. Under the preliminary inquiry, suspects have been denied their right to be heard and defend themselves. Physical assaults and inhumane detention conditions have been observed. The right to be visited and correspond with outside were undermined. However, major gaps have been observed was in that court orders on bail on detention-relating conditions have been ignored by officials of detention center admins, police officials involved in the investigation, state-run media, and others.

[1] Mikiyas Bekele is Lecturer of Law at Ambo University and attorney at law. Mikiyas developed this legal analysis as per the request of CARD.

[2] Fana Broadcasting Corporate, <https://www.fanabc.com/english/federal-oromia-attorney-bring-criminal-charges-against-5-728-individuals/> (accessed on 18 Oct. 2020)

[3] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia (hereafter, FDRE Constitution) (August 1995)

[4] 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/> (accessed on October, 2020)

[5] 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. See <https://au.int/en/treaties/african-charter-human-and-peoples-rights> (accessed on October, 2020)

[6] [6] Imperial Ethiopian Government, Proclamation No.185 of 1961, Criminal Procedure Code of Ethiopia, (1969 Edition)

[7] See Articles 25 and 26 of the CPC

[8] See Article 49 of CPC

[9] For more information see their You Tube Channel, <https://www.youtube.com/channel/UCzKNQPXq0xTisQtBi8MTZWA>, (accessed on October, 2020)

[10] Para M(1)(e) of Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, African Commission on Human and Peoples' Right (hereafter, AComHPR Principle on Fair Trial)

[11] Lidetu Ayalew is accused of violating article 238 Para 1(b) and 256 Para 'b' of The Criminal Code of The Federal Democratic Republic of Ethiopia (Criminal Code) (May 2005).

[12] See Article 32 Para 2 and 33 Para 2 CPC

[13] See Article 32 Para 2 of CPC

[14] See Article 33 Para 3 of CPC

[15] See Article 33 Para 3 of CPC

[16] Para 28 of General Comment 32, Article 14, Right to equality before Courts and tribunals and to fair trial (August 23, 2007), (Accessed on October, 2020), hereafter General Comment 32

[17] Para 3(e), AComHPR Principle on Fair Trial

[18] Para 13, General Comment Number 32

[19] Preliminary inquiry is governed by Article 80-93 of the CPC

[20] Judges could be removed for a beach as per Article 27 of Proclamation No. 25/1996, Federal Courts Proclamation, (February 1996), per Article 27, judges could be removed if his has family relationship with the parties, if he was/is tutor or advocate of the parties, if previously participate in the case, if he has dispute with parties or if there is "sufficient reason...to conclude that injustice may be done"

[21] Para 3(i), AComHPRs Principle on Fair Trial

[22] Proclamation No. 699/2010, A Proclamation to Provide for the Protection of Witnesses And Whistleblowers of Criminal Offences (February, 2011)

[23] See Article 20 Para 3 of FDRE Constitution

[24] Para 30 of General Comment 32

[25] See Article 10 Para 1 of ICCPR

[26] Para M(7)(i and j) of AComHPR Principle on Fair Trial

[27] Article 6 Para 1, Council of Ministers Regulations on the Treatment of Federal Prisoners, Council of Ministers, Regulations Number 138/2007, (June 2007). Hereafter, it is referred as Federal Prison

Regulation. The Regulation is issued in accordance with article 39 paragraph 1 of the Federal Prisons Proclamation. The proclamation uses the term prisoner to both convicted individuals and suspects under remand detention.

[28] *Article 9 of Federal Prison Regulation*

[29] *Para M (2) (g) of AComHPR Principle on Fair Trial*

[30] *Regulation No.466/2020, A Regulation Issued to Implement the State of Emergency Proclamation No. 3/2020 Enacted To Counter and Control the Spread of Covid-19 and Mitigate its Impact, Council of Ministers, (April, 2020), Article 3 Para 9 reads; "It is prohibited to visit any detainee in prisons or at a police station. However, delivery of provisions for suspects detained at police stations, without having any physical contact with the detainee is not prohibited."*

[31] *See articles 28 Para 1 and 2 of Proclamation No. 365/2003, A Proclamation to Provide for the Establishment of Federal Prisons Commission, (September 9, 2003)*