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*Federal Democratic Republic of Ethiopia
Permanent Mission to the United Nations
Geneva*

122/2014-A

9 December 2014

The Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and other International Organisations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the latter's Note, No. ETH/7/2014, concerning joint urgent appeal from Special Procedures on the case of Mr. Bekele Gerba and Olbana Lelrsa, has enclosed herewith the reply from the Government of the Federal Democratic Republic of Ethiopia to the aforementioned case.

The Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and other International Organisations in Switzerland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure



The Office of the United Nations High
Commissioner for Human Rights
Geneva

**Response of the Ethiopian Government concerning allegations by the Special
Rapporteurs on Bekele Gerba and Olbana Lelisa**

This reply covers the allegations concerning Mr. Olbana Lelisa and Mr. Bekele Gerba, as contained in the summery attached to the letter by Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and association; Special Rapporteur on the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the independence of judges and Lawyers dated 23 July 2014.

The allegations made need to be seen in the context of the following basic facts.

1. Protection of basic rights

The convicted individuals, Mr. Bekele Gerba and Mr. Olbana Lelisa, were suspected and charged for committing a crime to attack political and territorial integrity of Ethiopia in violation of the Federal Democratic Republic of Ethiopia (FDRE) Criminal Code. They were arrested by Court warrant and informed with sufficient particulars of the charge brought against them in a language they understand and were provided with the charges in writing. They were brought before the Federal Court Criminal Bench to a public trial within a reasonable period of time in accordance with the Federal Constitution, the Criminal Code and Criminal Procedure Code of Ethiopia.

Mr. Olbana Lelisa and Mr. Bekele Gerba were represented by legal counsel of their choice in all times of proceedings. Their rights not to be compelled to testify against themselves were duly respected. Accordingly, all testimony by the convicted individuals was examined by the Court before being considered as evidence for a crime. The convicted individuals' rights to communicate with, and be visited by, their families or partners, close relatives, friends, religious counselors, medical doctors and their legal counsel in accordance with their preference has been fully observed before, after and during the trial in accordance with Article 22(2) of the FDRE Constitution and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

2. Charge brought against the Convicted and Court proceedings

The conviction of Mr. Bekele Gerba and Mr. Olbana Lelisa has nothing to do with their communication with NGOs or being a member of legally registered political groups in Ethiopia. Mr. Olbana Lelisa and Mr. Bekele Gerba were convicted for committing a criminal offence of attacking the political and territorial integrity of the Ethiopia by intending to destroy the unity of the people and the federation which is a crime under Ethiopian Criminal Code. In addition Mr. Bekele Gerba was convicted for additional crime of provoking and preparation for the crime against the constitutional order and internal security of the state in accordance with the FDRE Criminal Code Article 241 and 257.

Mr. Olbana Lelisa and Mr. Bekele Gerba were arrested after the prosecutor has collected sufficient evidence and secured court warrant. The Prosecutor proved with substantive evidence on the involvement of Mr. Olbana Lelisa and Mr. Bekele Gerba in a criminal act with full knowledge and intent to achieve the intended goal. The prosecutor presented oral testimonies of witnesses, documents, and other relevant evidences to prove the case beyond reasonable doubt. Two prosecutor witnesses testified under oath and in the presence of the defendants and their legal representatives. They have testified that Mr. Bekele Gerba was working with Oromo Liberation Front (OLF), a clandestine group designated by the House of People's Representative of Ethiopia as a terrorist group, to overthrow the constitutionally elected Government through violence. The witnesses further elaborated the mechanisms and methods used by the convicted individuals to achieve their objectives, *inter alia*, by planning, organizing and inciting the youth and other segments of the society to violence. Prosecutor witnesses also testified that Mr. Olbana Lelisa engaged with undercover operation of OLF and by giving order to the members of the Oromo National Congress Political Party to work with OLF.

The Convicted were present during the whole trial period in person and have been able to cross-examine all the testimonies, documentary and other evidences brought against them by themselves and through their legal representatives in accordance with Article 20(4) of the FDRE Constitution and Article 14(e) of the International Covenant on Civil and Political Rights.

After meticulously examining the evidence supporting the charges brought by the prosecution, the Court ordered the convicted individuals to defend themselves with respect to the

charges brought against them. They were given enough time to prepare evidences to defend all the charges and evidences brought against them. They were also able to produce documentary and other demonstrative evidences and heard before the Court on their defence. Accordingly, the defense lawyers presented their arguments and the defense witnesses gave their testimony based on their professional expertise in support of the defendants. The defendants made statements in reply to the charges and called witnesses in their defense in accordance with Article 142 Sub-Article 1 of the Criminal Procedure Code of Ethiopia. However, the convicted individuals failed to create reasonable doubt by providing counter evidence to the Court.

After a scrupulous examination of the oral, documentary and other evidence produced by the Federal Prosecutor and the Defense Counsel in accordance with relevant Criminal code and Criminal Procedure Code of Ethiopia, the Court found the defendants guilty of all charges.

Upon the request of defense attorney and in accordance with the relevant laws of Ethiopia, the Court took into consideration mitigating factors such as personal status of the accused and rendered its judgment. Accordingly, Mr. Bekele Gerba was sentenced to eight years rigorous imprisonment, later on reduced to three years and seven months rigorous imprisonment by Federal Supreme Court of Ethiopia following an appeal made by the convicted. Mr. Olbana Lelisa was sentenced for 12 years rigorous imprisonment by the Federal High Court and which was reduced to 11 years rigorous imprisonment by Federal Supreme Court following an appeal made by the convicted.

The case of violent attack on Mr. Olbana Lelisa by fellow prisoner was filed before competent Court. The Court summoned Officer in charge from Federal Prison Administration for clarification, and examined the case in accordance with Ethiopian Laws. The case was dismissed by the Court for insufficiency of evidence. In this regard, the Government of Ethiopia would like to assure Special Rapporteurs its firm commitment to bring any case supported by the required evidence under Ethiopian law to Administrative and Judicial mechanisms of the country.

3. Conditions under detention

The federal Prison Administration of Ethiopia handles inmates in accordance with Federal Prison Commission Establishment Proclamation, Council of Ministers Regulations on the

treatment of prisoners. The tasks undertaken by the Prison Administration are consistent with Ethiopia's obligation under international human rights law

4. Medical treatment

Mr. Olbana Lelisa's and Mr. Bekele Gerba's rights to highest attainable standard physical and mental health are observed by the Prison Administration. They were taken to medical centers for treatment upon their request and on referral bases. Denial of medical treatment in its totality is a crime under Ethiopian law. No one is denied medical treatment for committing specific crime. The level and specificity of treatment will be determined by physicians in accordance with medical ethics. The Government's role is to provide facilities and competent professionals.

The Government of Ethiopia respects equal treatment to all prisoners in correction centers. The Government has provided the convicted individuals equal access to health care and health-related services provided by the Prison Administration and any other health facilities in the country without any discrimination. The convicted individuals were treated by Medical Doctors, Specialists and Medical Professionals at different times upon their request or referral by medical doctors. **(Please see the annex for details)**

Finally, the Government of the Federal Democratic republic of Ethiopia would like to take this opportunity to inform the mandate holders that further information on details of the medical treatment given to the convicted can only be provided to the mandate holders on the clear consent of the convicted individuals and on the bases of relevant laws of Ethiopia.

Annex I

Unofficial translation

Number

Date

Federal Prison Administration
Director General
Addis Ababa

Mr. Bekele Gerba's medical check up

- 3 May 2013. seen by Health Officer
- 4 Nov 2013 was taken to prison
- 4 Nov 2013 seen by Health Officer
- 9 Nov 2013 seen by Health Officer
- 14 Dec 2013 seen by Specialist
- 20 Dec 2013 seen by Health Officer
- 21 Dec 2013 seen by Specialist
- 24 Dec 2013 seen by Health Officer
- 25 Dec 2013 seen by Specialist 14 Jan 2014
- 25 Jan 2014 took blood pressure check up
- 27Jan 2014 seen by Health Officer
- 6 Feb 2014 he was referred to Yekatit Hospital
- 10 Feb 2014 he was in Yekatit Hospital
- 12 Feb 2014 he was in Yekatit Hospital

- 25 Feb 2014 he was in Yekatit Hospital
- 27 Feb 2014 he was again referred to Yekatit Hospital
- 1 Apr 2014 was examined by X-ray Lab.
- 28 Apr 2014 took blood pressure check up

Mr. Olbana Lelisa's medical check up

- 17 Dec 2013 seen by Health Officer
- 17 Dec 2013 took Lab. Examination
- 30 Dec 2013 seen by Health Officer
- 13 Jan 2014 seen by Health Officer
- 27 Jan 2014 seen by Health Officer
- 24 Mar 2014 seen by Health Officer
- 24 Mar 2014 took Lab. Examination
- 14 Apr 2014 seen by Health Officer
- 17 Apr 2014 seen by Health Officer
- 18 Apr 2014 seen by Health Officer
- 26 Apr 2014 seen by Specialist
- 26 Apr 2014 seen by Specialist
- 3 May 2014 seen by Specialist
- 9 May 2014 took Ultra sound check up
- 10 May 2014 seen by Specialist
- 6 Jun 2014 seen by Specialist