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

071/2020-A

10 July 2020

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 United Nations Office of the High Commissioner for Human Rights, and has the honour to refer to the latter's Note, no. AL ETH 1/2020, dated 12 May 2020, regarding the joint communication from the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Working Group on Arbitrary Detention, Special Rapporteur on the Situation of Human Rights Defenders and the Working Group on Discrimination against Women and Girls.

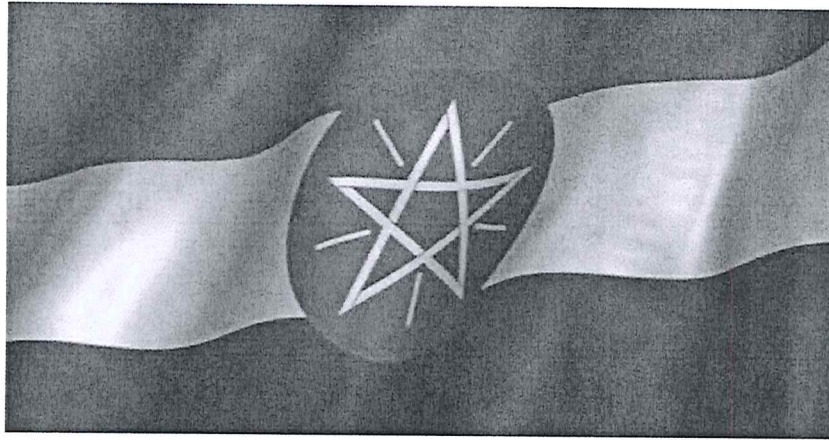
In this regard, the Permanent Mission transmits herewith the response by the Federal Democratic Republic of Ethiopia on the alleged issues and requests the esteemed Office to convey it to the mandate holders concerned.

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 Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration. *ZK*

Enclosure: 11 Pages



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



***THE GOVERNMENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF
ETHIOPIA***

**REPLY TO THE ALLEGATIONS OF THE JOINT COMMUNICATION SENT BY
SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE
RIGHT TO FREEDOM OF OPINION AND EXPRESSION; THE WORKING GROUP
ON ARBITRARY DETENTION; THE SPECIAL RAPPORTEUR ON THE SITUATION
OF HUMAN RIGHTS DEFENDERS; AND THE WORKING GROUP ON
DISCRIMINATION AGAINST WOMEN AND GIRLS.**

JUNE 2020

REPLY OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
REGARDING THE JOINT COMMUNICATION FROM UN SPECIAL PROCEDURES

Introduction

1. The Government of the Federal Democratic Republic of Ethiopia (“Government of Ethiopia” or “Ethiopia”) hereby submits its reply to the joint Communication by the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the Situation of Human Rights Defenders; and the Working Group on Discrimination against Women and Girls dated 12 May 2020 Ref. AL ETH1/2020, concerning the arrest and detention of Mr. Yayesew Shimelis and Ms. Elizabeth Kebede, which has been submitted pursuant to Human Rights Council Resolutions 34/18, 42/22, 34/5 and 41/6 and called for Ethiopia to provide a response within 60 days.
2. Ethiopia has the honour to present its response containing the facts surrounding the cases of Mr. Yayesew and Ms. Elizabeth, the current status of their cases and the legal grounds for the arrest and detention of the individuals. The response explains the compatibility of the measures with international human rights standards accepted by Ethiopia. We have also included, as per the request, the measures taken by Ethiopia to ensure that the new Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185/2020 is implemented in accordance with the standards set under international human rights instruments which Ethiopia has acceded to.
3. Ethiopia is currently going through deep-rooted reforms. Popular demands for human rights and democracy have culminated in the Government’s undertaking of the most meaningful series of political reforms in Ethiopia’s recent history. These reforms are centered on enhancing the protection and promotion of human rights as well as widening the democratic space. As part of the ongoing reforms aimed at widening the political space and ensuring better protection of human rights, among others, a new law on civil societies organizations has been enacted through the participation of civil society, the academia and all political parties in the country and the Anti-Terrorism Proclamation

652/2009 has been replaced to bring it into compliance with all international human rights instruments. Ethiopia's legal framework for guaranteeing freedom of expression which used to draw repeated criticisms both locally and internationally for being repressive is also long under review following the commencement of the political reforms and the amendment will not only address the shortcomings but also, coupled with the overall political reforms, will significantly contribute to the better protection and exercise of the freedom of opinion and expression in the Country.

4. Moreover, major initiatives have been launched after the reform to strengthen the legal framework and enhance the capacity and compliance of institutions for the protection of the rights of persons deprived of their liberty. The removal and replacement of senior management in police, prison and intelligence institutions with new management committed to the protection of human rights was the first step.
5. The Constitution of Ethiopia strictly prohibits deprivation of rights or liberty without due process of law except on such grounds and in accordance with clearly established law. This has been observed during the arrest and detention process of Mr. Yayasew Shimelis and Ms. Elizabeth Kebede.

Short Summary of the Case Concerning Mr. Yayasew Shimeles

6. Mr. Yayasew Shimeles was first arrested by Addis Ababa Police commission, incorrectly stated as the Federal Police Commission in the Communication, on 27 March 2020. He was suspected of deliberately disseminating false and dangerous information on 26 March 2012 in his youtube channel called "*Ethio forum*", which has more than 5000 followers.
7. Mr. Yayasew posted in his channel false and fabricated information stating that the Ethiopian Government has directed religious leaders to prepare 200,000 graves to accommodate deaths from Covid-19 pandemic. And this has been found unduly alarming and disturbing to the public during a time when panic about Covid-19 could have significant adverse economic, social and health impacts.

8. He was arrested and brought before Federal First Instance Court *Arada* Branch of the FDRE on the next day of his arrest, on 28 March 2020, and not on April 3 as stated in the allegation. After hearing both parties on the issue of his bail right, the court granted the request for remand by the police and adjourned the case for 3 April 2020.
9. On 3 April 2020, Mr. Yayeew was brought before the Court for the second time and the Court, after hearing the justifications for the extension provided by the police granted the remand again until 15 April 2020.
10. On 15 April 2020, he was brought before the court for the third time and the court ordered his release on bail to amount of 25, 000 Ethiopian Birr. The Addis Ababa Police Commission appealed to the Federal High Court on the decision of the First Instance Court. However, the High Court decided in favor of Mr. Yayeew and the appeal was dismissed.
11. On the same day, Addis Ababa Police Commission sent a letter to the Federal Police Commission reporting that they have collected evidence which indicates Mr. Yayeew's participation in the crime of terrorism. Copies of these evidences were also attached to the letter. The Federal Police Commission decided to look further into the information and started investigation. Consequently, Addis Ababa Police Commission transferred Mr. Yayeew to the Federal Police Commission. A new investigation file on the alleged involvement of the suspect in acts of terrorism has been opened and the Federal Police Commission brought him to the FDRE Federal High Court *Lideta* Branch requesting a remand to carry out the investigation further. The court, after hearing the justifications of the police officers, granted the remand till 21 April 2020.
12. On 22 April 2020, when the first hearing was conducted, the Federal public prosecutor did not oppose his bail right and the Court granted his release on bail for 15,000 Ethiopian Birr. When the warrant for his release was brought to the Police, as per the order of the Court. Mr. Yayeew was released immediately.

The Current Status of the Case of Mr. Yayeew

13. As stated above, Mr. Yayeew Shimeles is suspected on two crimes. Regarding the file investigated by Addis Ababa Police Commission, he is formally charged and the first hearing was conducted. He has been released on bail and the case is adjourned for trial.
14. Concerning the file investigated by the Federal Police Commission, the investigation has been suspended for the time being due to lack of sufficient evidence.

Short Summary of the Case Concerning Ms. Elizabeth Kebede

15. Ms. Elizabeth Kebede was arrested by the police on 04 April 2020, incorrectly stated in the Communication as 03 April. On the following day, she was transferred to Harar upon the request of Harari Regional State Police by submitting a court arrest warrant, issued on 01 March 2020 by the Harari First Instance Court, since she was suspected of committing an offense that instigates violence among different ethnic and religious groups and disseminating dangerous information (that allegedly exposes minorities for public discrimination amid the Covid-19 Pandemic) in Harar through her posts in social media.
16. She was brought before the court in Harar on 06 April 2020, as rightly mentioned in the allegation, and was remanded for 14 days for further investigation upon the request of the police; and the case was adjourned for 20 April 2020 when the court granted the 14 days remand for further investigation.
17. Ms. Elizabeth Kebede was transferred to Harar upon the request of Harari Regional State Police. It has been stated by the Harari Regional State Police that the reason why she was transferred from Addis Ababa to Harar was that her posts were directly linked and intended to individuals and groups living in the Region. Moreover, there was an assumption on the side of regional authorities that Ms. Elizabeth could access her evidences (witness and other evidences) to refute the allegations brought against her and hence it would also be convenient for herself and her families in Harar even though she herself later submitted a petition for the transfer of her case to the federal jurisdiction. In addition, the police believed that the offence could be related to cyber related crimes

which are extra-local. In the process, the Federal Attorney General, after investigating the complaints which were submitted to it concerning her, requested for the return of the investigation report along with the suspect Ms. Elizabeth to the Federal Police Commission in Addis Ababa.

18. While Ms. Elizabeth was under detention in Harar, she submitted a petition to the court to be released on bail though the prosecution refused her release on bail. On 30 April 2020, the court granted her bail to the amount of 20, 000 ETB in absentia (the issue of bail was entertained in absentia not because of the failure of the police to bring her before the court but because she refused to appear before the court claiming that the court has no legal jurisdiction to hear her case). She also refused the bail claiming that the order of the court was given in her absentia and the court has no local jurisdiction to hear and try her case. On 04 May 2020, the suspect Ms. Elizabeth presented a complaint to the Supreme Court of the Harari Regional State objecting the jurisdiction of the court stating that the case should be entertained by federal courts in Addis Ababa. On the same day, the court ordered the prosecution to present its reply to her petition on 07 May 2020. However, before the date of the adjournment, on 05 May 2020, the Federal Attorney General officially requested the case to be transferred to Addis Ababa and the Harari Police transferred the case and on the next day (06 May 2020), Ms. Elizabeth was conditionally released pursuant to Article 28 of the Criminal Procedure Code of the Country. Both documentary evidences that the police collected from different institutions (Ethio-Telecom, Harari Bureau of Trade and Industry, Ministry of Health) and from Ms. Elizabeth's Facebook page; and testimonies of witnesses have been sent with the police investigation report.
19. Ms. Elizabeth has reportedly complained of mistreatment by the police officers and local authorities while she was in custody including intimidation by the local authorities. Consequently, investigation has been made on the subject since such acts are inconsistent with the constitutionally guaranteed rights and international standards of arrested or detained persons. However, the findings do not substantiate the allegations.

20. Regarding her access to family, Ms. Elizabeth was never, at any point, denied the right to communicate with, and be visited by her close relatives, friends, members of the clergy, all in accordance with Article 22(2) of the Constitution and Article 14(b) of the ICCPR.
21. Ms. Elizabeth was also provided access to legal counsel during the course of her pre-trial detention. However, Ethiopian Women Lawyers Association, a civil society organization working in Ethiopia, has reportedly complained difficulties in accessing her because of the geographical distance from Addis Ababa to Harar, the city where she was temporarily transferred and detained. Although there was inconvenience to access her because of distance, this was not in any way related to an act committed by the Government to intentionally deny access to her lawyer.
22. Regarding her access to get information about the case brought against her, she has been reportedly complaining that the allegation related to Covid-19 (regarding infected individuals and their contacts to authorities) is a private complaint issue and she had to be informed as to who brought the complaint against her. But the investigation report of the police shows that she was not suspected of defamation. Rather, the case has been investigated for instigating public violence through disseminating false information that is motivated by prejudice to certain religious and ethnic identities.

The Current Status of the Case on Ms. Elizabeth Kebede

23. After receiving the investigation file from the Harari Police, the Federal Attorney General has critically analyzed the case and ordered for further investigation.
24. Therefore, the investigation is still underway or pending and the Federal Attorney General of the FDRE is currently jointly investigating the case with the Federal Police.

The Compatibility of the Arrest and Detention of Mr. Yayasew Shimeles and Ms. Elizabeth Kebede with article 9 and 19 of ICCPR

25. Ethiopia is a party to the core international human rights instruments, including ICCPR, which incorporates standards on the promotion and protection of the rights of individuals.

These international human rights are part and parcel of the domestic laws of Ethiopia in accordance with Articles 9 (4) and 13 (2) of the Constitution.

26. All federal and state legislative, executive and judicial organs at all levels have the responsibility and duty to respect and enforce the fundamental rights and freedoms specified in the Constitution.¹ In addition, the supremacy clause of the Constitution imposes a duty to ensure observance of the Constitution up on all citizens, organs of state, political organizations, other associations as well as their officials.²
27. The Constitution further elevates the horizon of human rights through reference to international and regional human rights instruments as thresholds for the interpretation of its human rights provisions.³ It contains a laudable interpretation clause regarding the chapter dealing with human rights and fundamental freedoms. Article 13(2) requires that the bill of rights “shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (UDHR), International Covenants on Human Rights and international instruments adopted by Ethiopia”. The right to liberty and freedom of expression are among those rights explicitly recognized under article 17 and 29 of the FDRE Constitution.
28. However, both of these rights are not absolute rights under the international human right treaties as well as the FDRE Constitution. The right to liberty and security of a person can be restricted on such grounds and in accordance with such procedure as are established by law.⁴ On exceptional grounds persons awaiting trial may be detained for reasonable time by a decision of impartial and independent tribunals.⁵
29. Moreover, the FDRE Constitution guarantees freedom of opinion and expression and clearly specifies restrictions on this right for reasons of the well-being of the youth and the honor and reputation of individuals and human dignity,⁶ since the right to freedom of expression is not absolute and it can be restricted for necessary legitimate aims. Such

¹ The Constitution of the Federal Democratic Republic of Ethiopia 1995, Article 13 (1).

² Ibid, Art. 9(2).

³ See FDRE Constitution, Art. 13(2).

⁴ ICCPR article 9(1), FDRE constitution article 17(1)

⁵ ICCPR Article 9(3), FDRE constitution article 19(6), the criminal procedure code of Ethiopia article 63 and 67.

⁶ Ibid, Article 29 (6)

limitations are also recognized under subsequent legislations⁷, including the Hate Speech and Disinformation Prevention and Suppression Proclamation.⁸Freedom of expression is also not absolute right. It can be restricted on grounds provided by law and are necessary for respect of the rights and reputations of others and for the protection of national security or of public order or of public health or morals.⁹

30. As it is provided in the Constitution as well as ICCPR, any arrested person shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.¹⁰ They also shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.¹¹ The time for bringing arrested persons before a competent court is within 48 hours under the FDRE Constitution.¹²

31. Since hate speech and disinformation pose threat to social harmony, political stability, national unity, human dignity, diversity and equality, it has become necessary to prevent and suppress by law the deliberate dissemination of hate speech and disinformation.¹³ Hence, Ethiopia enacted Proclamation No. 1185 /2020 Hate speech and Disinformation Prevention and Suppression Proclamation. As per Article 5 of the Proclamation, disseminating dangerous disinformation that is highly likely to cause a public disturbance, riot, violence or conflict by means of broadcasting, print or social media using text, image, audio or video is a prohibited act. And if the offense has been committed through a social media account having more than 5,000 followers, the person responsible for the act shall be punished with simple imprisonment not exceeding three years or a fine not exceeding 100,000 birr.¹⁴

⁷ broadcasting service proclamation number 533/2007, Freedom of Mass Media and Access to Information Proclamation (proclamation No. 590/2008)

⁸ Hate Speech and Disinformation Prevention and Suppression Proclamation No.1185 /2020

⁹ ICCPR 19 (2), FDRE constitution article 29 (6) and (7)

¹⁰ ICCPR article 9(2), FDRE constitution article19(1)

¹¹ ICCPR 9(3), article 18 () of the FDRE constitution 19(3).

¹² FDRE constitution 19(3).

¹³ Paragraph one and two of the Preamble of proclamation No. 1185 /2020 Hate speech and dis information prevention and suppression proclamation of FDRE.

¹⁴ Article 7(4) of proclamation No. 1185 /2020 Hate speech and dis information prevention and suppression proclamation of FDRE

32. Mr. Yayesew Shimeles has disseminated information which he knew to be or and that was highly likely to cause a public disturbance during a time where panic about Covid 19 was a grave danger. The first Covid-19 confirmed case reported Ethiopia on 13 March 2020. There was a great deal of fear among the public at large at this time. Mr. Yayesew posted the information on 26 March 2020. It shocked the public. It would have most likely caused public disturbance, riot, violence or conflict had the Government failed to refute it in time. Therefore, he exercised his freedom of expression irresponsibly and committed a crime and, hence, was arrested as a result. Therefore, his arrest and detention are compatible with the above stated standards.
33. During the time of arrest, it has been confirmed that Mr. Yayesew was informed the reason of his arrest, his right to remain silent and his right to access a lawyer of his choice. His families were also informed where he was detained and they visited him.
34. He was brought before a court of law within 48 hours and he had the chance to request his right to bail though denied. His further detentions were also necessary and justified by for the proper investigation of the case.
35. Contrary to the allegation, Mr. Yayesew was immediately released after posting bail. Therefore, the arrest and detention of Mr. Yayesew is in accordance with international human rights standards and the applicable domestic laws of the Country.
36. Similarly, Ms. Elizabeth's posts severely undermined with the safety, equality and dignity of certain ethnic groups and it would likely incite violence and disturb public safety since, on her posts of 1st April 2020 and before, she named individuals and authorities whom she reportedly indicated to be infected with COVID -19. She also alleged in her posts that the measures taken by the regional authorities are discriminatory in the sense that the businesses of certain ethnic and religious groups have been targeted and affected disproportionately by the local authorities. This allegation which the state authorities deny was highly likely to instigate hatred and violence against different ethnic and religious groups that may fall under the relevant applicable criminal law of Ethiopia (Article 485), the newly promulgated hate speech and disinformation law (Articles 2 (2),

(3), Article 4, 5 and 7), and the current state of emergency laws.¹⁵In the context of the prevalent at the period in question, Ms. Elizabeth's allegations posed a grave danger of inciting attacks against a minority ethnic group.

Measures Taken to Ensure the Hate Speech and Disinformation Prevention and Suppression Proclamation is Implemented in Accordance with the Constitution and International Human Rights Law

37. To ensure that the Hate Speech and Disinformation Prevention and Suppression Proclamation is implemented in accordance with the Constitution and international human rights law, a series of trainings on the proclamation and how it should be applied in accordance with the Constitution and international human rights law are being organized for regional and federal police as well as prosecutors.
38. Furthermore, an investigation and prosecution manual is also being prepared with a view to ensure better compliance with the Constitution and pertinent international human rights instruments.
39. The ongoing revision of the Criminal Procedure Code is also expected to provide better guarantees of due processes and fair trial and as such ensure that the implementation of substantive criminal laws like the Hate Speech and Disinformation Prevention and Suppression Proclamation will be in an enhanced compliance with the Constitution and relevant international human rights standards.

RESPECTFULLY SUBMITTED

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

¹⁵ Council of Ministers Regulation No. 466/2020 to Implement State of Emergency Proclamation No. 3/2020, article 3 (27) and Articles 4(10).