

Mandates of 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

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as 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 Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 34/18, 42/22, 34/5 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention under the Hate Speech and Disinformation Prevention and Suppression Proclamation, adopted in February 2020, of journalist Yayesew Shimelis and lawyer Elizabeth Kebede for posts related to the Government's response to the COVID-19 pandemic they published on social media.

Mr. Yayesew Shimelis is a journalist and has a program called Ethio Forum that is aired on Tigray TV. He also has a YouTube channel named "Ethio Forum" where he releases his programs.

Ms. Elizabeth Kebede is a women's rights advocate and a volunteer lawyer with the Ethiopian Women's Lawyers Association (EWLA).

According to the information received:

On 26 March 2020, journalist Yayesew Shimelis released a video on Facebook in which it was said that the Ethiopian Government had told religious leaders to prepare 200,000 graves to accommodate deaths from the COVID-19 virus. On the same day, Ethiopia's Ministry of Health said in a Facebook post that the report was false, and condemned it as a deliberate attempt to confuse the public. On the following day, the Federal police arrested Mr. Shimelis at a relative's home in the town of Legetafo. His family was not informed about where he was being taken. His family was able to visit him at the police station where he was being detained on the following day.

Mr. Shimelis was first brought to Court on 3 April 2020. While remaining in detention, on 15 April 2020, Mr. Shimelis was granted bail amounting to 25,000 birr by the Federal First Instance Court Arada branch. However, on the following day and before his release, the police appealed the order, accusing him of

violating anti-terror laws. On 20 April, the court granted Mr. Shimelis yet another bail, this time 30,000 birr, after the judges overruled the Federal police's intent to indict him with terrorism-related offenses. Despite posting bail, he remained in custody. On 21 April 2020, the Federal police took Mr. Shimelis to reappear in court. The Attorney General announced that Mr. Shimelis had been charged under articles 5 and 7.4 of the Hate Speech and Disinformation Prevention and Suppression Proclamation for a post about the COVID-19 pandemic he had published on social media. The law carries penalties up to 100,000 birr and imprisonment for up to three years. Mr. Shimelis was granted bail again on 22 April and yet, on the order of the police, was not immediately released.

On 1st of April 2020, Ms. Elizabeth Kebede posted on her Facebook page a comment in which she reportedly named and identified the ethnicity of individuals who had reportedly been infected with the COVID-19 virus. She added that the regional officials had met with the alleged patients and recommended that all those that had been in contact with them should be quarantined.

On 3 April, she was arrested as officials found that her post could “instigate violence”. She was later transferred to the custody of Harar regional authorities, 400km away from her residence. Reportedly, she was subject to threats and intimidation by local authorities. On 6 April, she appeared before the Harar court, but the police requested additional time to gather evidence on the case. On 30 April, she was granted bail amounting to 20,000 birr, though she refused the bail in protest against the decision that had been made on her absentia. She was reportedly released from prison on 6 May, and she has yet to be formally charged.

Without prejudice to the accuracy of these allegations, we express serious concern at the arrest and detention of Mr. Shimelis on one hand, and Ms. Kebede on the other, which appears to be related to the exercise of their right to freedom of expression. If found to be connected to the exercise of that right, the detention of Mr. Shimelis and Ms. Kebede would be inconsistent with international human rights law and standards related to freedom of opinion and expression.

We are further concerned at the use of the Hate Speech and Disinformation Prevention and Suppression Proclamation and potentially the Anti-Terrorism Proclamation to criminalise expression, in a context where the free and unhindered reporting on public health is vital. As expressed by the Special Rapporteur on the right to freedom of opinion and expression at the end of his recent official visit to Ethiopia, we are concerned that such legislation may undermine public debate and the free flow of information in the country.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal basis for the arrest and the detention of Mr. Yayesew Shimelis. Please explain how this is compatible with articles 9 and 19 of the International Covenant on Civil and Political Rights. In the absence of such a legal basis, please provide information about the date of his release. Please also explain why Mr. Shimelis was not immediately released after being granted bail.
3. Please provide detailed information about the factual and legal basis for the arrest of Ms. Elizabeth Kebede and for her detention 400 km away from her residence. Please explain how this is compatible with articles 9 and 19 of the International Covenant on Civil and Political Rights.
4. Please provide information about whether any charges have been brought against Ms. Elizabeth Kebede. Please provide information about her conditions of detention, including measures to transfer her case to Addis Ababa, her access to a lawyer, access to information about the case against her, access to visits by her family members and access to women services.
5. Please provide information about how your Excellency's Government ensures that the Hate Speech and Disinformation Prevention and Suppression Proclamation does not prevent journalists and human rights defenders from reporting on public affairs. Please provide information about measures taken to ensure that the Proclamation is implemented in a manner that is compliant with your obligations under international human rights law.
6. Please provide information about how your Excellency's Government ensures the respect for the free flow information, unhindered by threats, intimidation, and penalties, during the COVID-19 pandemic.

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an

opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Meskerem Techane
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would also like to remind your Excellency's Government of its obligations under articles 9, 10, 14, and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Ethiopia on 11 June 1993, which guarantee the right not to be deprived arbitrarily of one's liberty and to fair proceedings before an independent and impartial tribunal, the right to be treated with humanity and respect for the inherent dignity of the human person, and the right to freedom of opinion and expression.

Article 19 of the ICCPR provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

Furthermore, we also wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups. Freedom of expression must be guaranteed online as well as offline.

With regard to conditions of detention we wish to recall the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) which provide guidance for specific characteristics and needs for women in prison in particular Rules 10, 11, 12 and 13.

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.