

7 June 2007

To: The Federal Supreme Court
Addis Ababa

Appellants: 1. Daniel Bekele
Action Aid Ethiopia, Policy Department Head
2. Netsanet Demissie
Social Justice in Ethiopia, Executive Director
Current Address:- Kaliti Prison

Respondent: Federal Public Prosecutor
Address:- Addis Ababa

Application of Appeal

Introduction

This appeal is lodged against the majority ruling given by the 2nd Criminal Bench of the Federal High Court against the appellants under Criminal File No. 43246.

The Chief Justice of the bench has given his dissenting opinion stating that all charges against the appellants should be dismissed and they should be released.

The ruling was read out in Court in the five days between the 30th of March and the 5th of April 2007. Having declared our intention to appeal on the ruling at the time, the appellants were provided with a copy of the ruling on the 15th of May 2007.

Thus, this application of appeal has been submitted within the period prescribed under article 187 of the Criminal Procedure Code. We submit our applications as follows.

1. The Prosecution's Charges and the Trial Process

1.1. The appellants are members of civil society organizations who have been charged by the public prosecutor for the alleged crime of attempting to forcefully change the constitutional order along with Engineer Hailu Shawl and others (the leadership of the political party Kinijit Le Andinet ena Le Democracy, journalists and other accused totally numbering 131).

1.2. The charges state "... the accused, in violation of criminal code articles 27/1, 32/1/a & b, 34, 38, and 238 (2)/ 258, and committing crimes against the

Constitution and the constitutional order, and attempting to remove the constitutionally established system, have committed an attempted crime of criminal conspiracy...” The fourth part of the statement of charges, which has been prepared to indicate the level of participation of the appellants states: “... the accused operated the associations they represent beyond their objectives and functions and used them for the implementation of this crime; mobilized and provided leadership to members of their associations in support of mutinous acts by passing decisions in the name of the associations, press releases and agitation; and instigated and supported the youth to participate in mutinous acts”.

- 1.3. The prosecution, upon instituting the charges before the lower court, has submitted documentary evidence against the other accused. It was then recorded that the prosecution did not submit any documentary evidence against the two [now] appellants and will prove the charges against us based [solely] on the testimony of witnesses.
- 1.4. Since only one of the seven charges brought against the 131 accused relates to the now appellants and since no documentary evidence has been submitted against the now appellants, we petitioned [the Court] to try our case separately so as to facilitate the protection of the rights of the now appellants. The Public Prosecutor objected to the petition for a separate trial. The Court having ruled against the petition, the trial proceeded according to the charges.
- 1.5. At a later stage in the trial, the prosecution requested permission to submit documentary evidence against the now appellants on 3 July 2006. The now appellants objected to the petition submitted by the Public Prosecutor contrary to the procedural laws. Having noted that the prosecution did not submit any documentary evidence against the two [now] appellants at the time the charges were instituted, and stated that he will prove the charges based [solely] on the testimony of witnesses, ruled against the prosecution’s petition as contrary to the procedural laws on 4 July 2006.
- 1.6. After the trial proceeded accordingly and the prosecution having completed presenting documentary evidence against the other accused, the Public Prosecutor requested [the Court] permission to submit additional documentary evidence on 13 July 2006.

Since no documentary evidence has been submitted against us as indicated above and the prosecution’s request to submit documentary evidence against us after the trial has commenced, we submitted to the Court that the prosecution’s request to submit additional evidence does not affect our case.

- 1.7. However, in its order given on 14 July 2006 the Court ordered that the prosecution can submit additional documentary evidence [against all the accused] including ourselves.

Accordingly, the prosecution submitted additional documentary evidence against the now appellants and other accused.

2. The Prosecution's Evidence

As indicated above, the Public Prosecutor has submitted documentary evidence and the testimony of witnesses against the two now appellants. The content of both forms of evidence is as follows.

2.1. The Prosecution's Documentary Evidence

2.1.1. The Public Prosecutor submitted 88 pieces of documentary evidence against all the accused. From among these, the prosecution's record of evidence shows that only 4 (four) documents were submitted to prove the charges against the two appellants. These are additional documentary evidence numbers 3, 52, 62, and 66. (The prosecution's record of evidence dated 24 July 2006)

The [Federal] High Court mentioned five pieces of documentary evidence as a basis for its majority ruling against the two now appellants. These are documentary evidence numbers 2, 3, 52, 62, and 65. (part of the ruling read on 5 April 2005, pages 9 - 12)

2.1.2. With a view to showing that the documents submitted by the Public Prosecutor as "additional documentary evidence" are not relevant and the whole process lacked good faith, we would have preferred to elaborate upon all of the documentary evidence. Yet, not to waste the Appellate Court's valuable time on documents and issues not used by the lower court as a basis for its decision, we will focus only on the five documents on which the [Lower] Court based its decision in this application of appeal.

These are:

- (a) Additional documentary evidence number 2: - The document entitled "The Process of the May Elections and the Impasse Our Country Now Faces" which has been officially presented for public discussion by the opposition political party 'Kinijit';
- (b) Additional documentary evidence number 3: - A report of the half-day civil society meeting dated 8 August 2005;
- (c) Additional documentary evidence number 52: - A letter allegedly written by a person named Elias Kifle to individuals named as Firezer Negash and Berhane Haile;
- (d) Additional documentary evidence number 62: - The call for peace issued by the civil society [sector]; and

- (e) Additional documentary evidence number 65: - Pamphlets alleged by a person named Adane Bekele to have been given to him by Netsanet Demissie. (We will elaborate on the contents of these documents stage by stage in this application of appeal.)

2.1.3. The now appellants have submitted many arguments of law to the [lower] court on the inadmissibility all of the prosecution's additional documentary evidence. The following is a summary of the major points in the objections:

- (a) The documents submitted as evidence have been acquired illegally (Evidence numbers 2, 3, 52 and 62 have been seized through search conducted by force of arms without a valid court order and the fruits of an illegal act could not be submitted as legitimate evidence).
- (b) The documents submitted as evidence are not authentic or genuine; they constitute manufactured evidence inappropriately submitted as 'compared with the original' without the originals (this applies to evidence numbers 52 and 65).
- (c) The documents submitted as evidence are hearsay evidence that is not admissible in court (applies to all the additional evidence), and
- (d) Documents submitted as evidence without elaboration as to which issue they will prove are not admissible (applies to evidence numbers 2 and 65).

The appellants have elaborated in detail the issues of law and fact on the inadmissibility of the additional documentary evidence submitted by the Public Prosecutor in our petition to the lower court on 31 July 2006. We will submit the copy upon permission by the appellate court.

2.1.4. In its ruling on 13 October 2006 on the above noted petition by the now appellants the High Court rejected the objections of now appellants and accepted the prosecution's additional documentary evidence.

The above is a brief description of the context in which the Public Prosecutor submitted documentary evidence against the now appellants. Next, we will briefly describe the calling of prosecution witnesses and their testimony.

2.2. The Prosecution's Witnesses

2.2.1. Upon instituting the charges, the Public Prosecutor has petitioned the Court to keep the identity of prosecution witnesses in secret without disclosing their identity being disclosed to the accused claiming that the prosecution is concerned about the safety of its witnesses. The now appellants had at the time objected to the Public Prosecutor's petitions on the basis of our right to know and examine the charges and all the evidence

against us, our right to know the identity of prosecution witnesses and prepare for cross-examination, that the trial should be public and the rights of the accused to defend themselves [in a court of law]. We [moreover] indicated that the petition is not supported by evidence. However, the Court has accepted the Public Prosecutor's petition, rejected the objections of the now appellants, and the trial proceeded without the identity of prosecution witnesses being disclosed to us.

- 2.2.2. After the prosecution witnesses have been called and gave their testimony, the Public Prosecutor had requested the Court to issue an order that the identity of the witnesses not be disclosed in the media. The now appellants have again objected to the petition as contrary to the principles of fair and public trial, indicating that the Public Prosecutor has not submitted any evidence to show that the alleged concern exists; explaining that, even if such a concern exists, it is to be examined on the basis of credible request by the person concerned; that free and public trial should not be precluded in a nutshell; and based on the rights of the accused to public trial and to defend ourselves.

However, the Court has accepted the Public Prosecutor's petition, rejected the objections of the now appellants, and ordered that the identity of prosecution witnesses not be disclosed in the media. (Orders of the High Court given on October 25 and October 27, 2006)

- 2.2.3. Under the circumstances described above the Public Prosecutor has first called four witnesses against the now appellants. Later, having requested to call additional witnesses and having been granted permission, the Public Prosecutor has called three corroborating witnesses. The prosecution has called and presented the testimony of seven witnesses [against the now appellants].

Since the request by the Public Prosecutor to call additional witnesses was not in accordance with the criminal procedure laws and was not submitted based on legitimate cause, the now appellants have submitted our objections.

- 2.2.4. The prosecution witness named Wro Meseret, who is a member of the Executive Committee of the Addis Ababa Women's Association, have on 3rd of November said the following:

She has testified: "... I know Daniel and Netsanet around the time of the 2005 elections, a training workshop was organized for election observers representing civil society organizations, they were the ones who organized the training, what was being said during the training was: the EPRDF is deceitful and will attempt to win the elections through fraud, will disrupt power in the evening; thus, you will be provided with electric torches. They were giving the training more as opposition members rather than civil

society, I was confused, and this is my personal opinion. An orientation session was later organized at the CRDA auditorium. The situation was also not good there. They assigned us as they preferred during the deployment of monitors. I was assigned far from my home. The torches were provided to avoid disruptions in our activities in case the power was disrupted. We were provided with a code of conduct; I do not remember the code of conduct. I do not remember the code of conduct while I was engaged in election monitoring activities. I confuse Daniel and Netsanet. But, I am sure one of them was there. They do not have any difference; they have the same opinions. My major complaint is that I have been assigned far from my home. I expected them to assign me near my home; they didn't. I live around Akaki. They assigned me to Lideta. So that I would go to Lideta early in the morning ...”

- 2.2.5. The prosecution witness named Wro Nigist Mekuanent, who is a member of the Executive Committee of the Addis Ababa Women's Association, have on 3rd of November said the following:

She testified: “... I have participated in the civil society meeting held at the Red Cross auditorium on the 5th of August 2005. I arrived late. The discussion was on whether or not opposition parties should join the Parliament and on what the role of civil society should be. However, the participants were saying the government is repressive, the results of the election have been defrauded, and the election should be repeated in 299 voting stations where fraud has occurred, the media should not deafen us. The opposition parties are saying that it would be problematic whether we join [the Parliament] or not since the out-going parliament has put in place restrictive laws. What shall we do? Daniel [and Netsanet] were saying election fraud occurred in 299 voting stations and a transitional government should be established... At another time, in a meeting at the Ethiopia Hotel, arguments were raised claiming that the Addis Ababa Women's Association is planning to attend a rally in support of the EPRDF. We have argued and discussed extensively. Daniel has [in particular] argued with me objecting [to our alleged participation in the rally]. He accused us of being EPRDF sympathizers. In the meeting at the Red Cross auditorium, both Daniel and Netsanet had the same manner of speaking. The Election Board is not impartial, an independent Electoral Board should be established. There was nothing that could be construed as threat or about taking action.”

- 2.2.6. An individual named Ato Adane Bekele, who is a resident around Gullele, engaged in [informal] brokerage for a living, who is a neighbor of the second appellant but whom the first appellant has never seen [before], was called as a prosecution witness. The person has testified to the following on November 3, 2006:

He testified: “... I know Netsanet Demissie. We live in the same neighborhood. Because the EPRDF had defrauded the elections, I have

worked to organize the youth in our area for mutiny and disturbances according to his instructions. I have accordingly organized youth and we have taken out fences and burned tires... He has given me pamphlets to distribute... I have met Daniel a few times and he told me the same things. It was Netsanet who introduced me to Daniel. We met again on the road. He told me to prepare, coordinate and organize the youth for mutinous activities to remove the government. I operated accordingly ... I do not know the names of the persons I organized; not a single one of them ... I have organized people from my neighborhood and others, I have coordinated people I met in bars or on the road, I also coordinated people I only met for one day ... I approach people sitting in bars, I convince them and prepare them for mutiny. I can coordinate one, two or even fifteen persons in a single bar. I do all of these alone. I coordinated the residents and we stopped buses, and took out and destroyed the fences erected by investors. I do not remember the names of any one of these persons I coordinated. I haven't told about this to anyone including family members or friends. They have never asked me. I gave the pamphlets Netanet gave me to some people I did not know. I give it to people I met on a taxi. I observe the situation and try to engage them in discussion. Then, I talk to the people I met in a taxi about fraud having been committed and removing the EPRDF through mutiny. I give them [the pamphlets]. I was previously in the Keble leadership... I later regretted [what I had done] and gave myself up to the Police. The police officer took my statement and let me go. I do not know his name. He told me I would be called when needed... Then, the Police came to my house and called me. No one from my house saw or heard. I didn't tell anyone. I didn't even tell my mother. I told the Police what I have done. I don't remember the date. The Police came to my house when they called me again. Coincidentally, I opened the door when they knocked. I do not know the name of the police officer. No body from the house or the neighborhood saw him coming. I went to the Central Police Station for interrogation as the police officer told me. I don't remember the date. I went into one office and spoke with a police officer. I don't remember the office number or the name of the officer."

- 2.2.7. An individual named Ato Wondosen Seyum who stated he is unemployed, living in the Kera/Nefas Silk area, whom both of the now appellants have never seen before, was called as a prosecution witness. He testified to the following on 9 November 2006:

I know Daniel Bekele. I met him accidentally. I was drinking tea in a café with another person. After listening to what we were discussing, he told me to be firm as the youth I am. He gave me his number and I met him once or twice. He told me how to coordinate and organize the youth, about distributing pamphlets, conducting mutiny, coordinating the public and removing the government... He gave me two hundred Birr. I organized the youth accordingly. I organized everyone I accidentally met on the road... I do not know the name of even one person I organized. I met Daniel for the

first time while he was leaving a café. He was alone. I was also leaving the café. I did not know him before then. He asked me: what are you the youth doing? What activities are you undertaking? We spoke for approximately two minutes. He gave me all the above direction within the two minutes. I met him for the second time after fifteen days. I went to his office. It was accidentally. I went to the office and asked if it was Ato Daniel's office. They said yes. Then, Ato Daniel came and we met. I met him as he was leaving the office. He came after I made him a telephone call. I did not talk to him on the phone. I just gave him a missed call [on his mobile/cellular phone] from a retail shop. I gave him a missed call and went to the vicinity of his office. I did not go into the compound. I waited for him on the road near the Chinese restaurant. I was alone. I told him where I was and described myself to him. He came and found me. I have never called or met him other than that day. He gave me two hundred Birr to organize [the youth]. I used the money to organize [the youth]. I organize every body I accidentally met on the road. I do not know their names. I organize [the youth] both in my neighborhood and other areas. I stop people on the road and organize them. I stop passersby and ask them: Don't you want changes? And ask them to join me/us in bringing about the changes. Since they want change, they say yes [they agree]. Then, I give them the pamphlets. I do not know what the pamphlets say. Then, I give them an appointment and meet them. I have met them many times. I do not remember the names of the people I met. We often meet and talk on the road. I then went into hiding. I went far. During the time I was in hiding, I stayed in the house of one person. I do not know the person. I hid in the house of a person I don't know. I don't know how long I stayed in hiding. Then, I went to a police station and gave myself up. I went to the police station and asked for a civil police (plain clothes police). A civil police (plain clothes) police came. I don't remember his name. I told him about the matter and he took my statement. The police officer spoke to me alone. Then, he took me to the Central Police Station. I went into one of the offices and gave my statement. I don't remember the name of the police officer I gave my statement to. He told me I would be called and should come back when the Court calls me. Well, I was called and I am here now. I was a member of the 'Kinijit' party. First, I was a member of EDUP. I have seen Daniel one day standing on the road with Tamirat. I haven't told my organization or any other person about meeting Daniel and what we talked about. The Police came to my house using my address and called me. I went to the police station and gave my testimony as a witness.

- 2.2.8. In addition to the four witnesses [whose testimony is] described above, the Public Prosecutor has requested permission to call three additional witnesses. As per the permission granted [by the Court], the prosecution called the three additional witnesses.

The Public Prosecutor has called these three witnesses to prove that the document submitted by the prosecution as additional documentary evidence

number 52 was found through searches of the residences of Frezer Negash and Berhane Haile.

The document is a letter allegedly written by a person named Elias Kifle to other persons named Frezer Negash and Berhane Haile. After describing whatever he wanted, the person who prepared the letter with a view to using it as evidence against the now appellants states in the last paragraph of the second page: “Since Ato Hailu Shawl has told us that Daniel Bekele and Netsanet Demissie are the contact persons for the ‘Kinijit’, you should meet them and do what is necessary”.

2.2.9. This letter allegedly written by a person named Elias Kifle and which we the now appellants have no knowledge of: -

1. Does not contain the signature of the person who allegedly wrote the letter or does not have any other means of authentication;
2. The persons to whom the letter has allegedly been written did not admit that it was addressed to them;
3. As we have described under 2.1.5, this letter was submitted inappropriately as ‘compared with the original without the original being submitted’;
4. The appellants do not know the identity of either the alleged writer or addressees of the letter.

The three additional witnesses called by the Public Prosecutor to show that this letter was found in the residences of persons named Frezer Negash and Berhane Haile have testified as follows:

2.2.10. The prosecution witness named Ato Teferi Hailu has testified as described below:

“... On 13/01/06 I was traveling by foot from Piazza to my home. When I reached around St. John Church, one police officer and a civilian got out of a police car and asked me to be a witness in a house search. I was willing and we went into the car. A handcuffed person was brought by a police officer. He was Berhane Haile. He said the house was not his own but a place he stayed as a guest. He then asked for the owner to be called. The civilian made a phone call and talked [with someone]. I do not know what he talked about. As I heard later, the person was too far and said we could go into the house with someone else. Thus, a girl was called and we went into the house. There was a court order. I did not see what the order says. After we entered the house, a lot of documents were seized. I remember the letter claimed to have been written by Elias Kifle to Berhane Haile. Signatures were put on the documents taken from the house. Berhane Haile was simply signing on the documents. He was not asked who gave it to him

or why he kept it. He wasn't asked any questions. The only thing he said at the time was he stayed there as a guest. I have seen him writing something before signing on the letter claimed to have been written by Elias Kifle. I didn't however read what he wrote..."

2.2.11. The prosecution witness named Ato Adamu Legesse who stated that he works in the Keble has testified as follows:

"... I was present while Frezer's house was searched under orders from the Kebele Administration. I did not see whether the Police had a search warrant to search the house ..." Then, the witness was asked to look at the document and confirm that he has signed it as a witness and the Court caused the document to be given to the witness. The witness gave the following testimony after examining the document.

"... My signature is found only on the first page of this document. My signature is only on the first page of the document. It is not present on the second page. (As we have already described under 2.2.8 and 2.2.9, the second page is where the fictitious statement about the two now appellants is written.) I remember the first page. I do not remember whether or not the second page was found in that house. My signature is not there. I only signed on the first page. I do not remember if the letter had another page. Frezer has not signed on this document (Frezer Negash did not authenticate this letter as her own.)"

2.2.12. The prosecution witness named Wt Mersha Teshome who stated that he works in the Keble has testified as follows:

"... I was taken [to Frezer's house] told that I was to observe if they take anything from the house. The persons took me by car. They also brought her in another car. When we arrived, the house was surrounded by the Police. I do not remember if there was a court order. After the house was searched and a lot of documents were taken out, they told us 'this is the document we want; we will take it after you signed on it'. We signed. I do not remember the details..." Then, the Public Prosecutor requested that the witness look at the document the prosecution submitted as additional documentary evidence number 52. The witness looked at the document and proceeded to say the following:

She testified: "... My signature is on both pages of this document. There were a lot of documents at the time. I do not remember the contents. Frezer was adamantly refusing to sign on one document at the time. I do not remember which one it was. She was arguing that this document was not hers. It was the investigators [the police officers] who were gathering and picking the documents from everywhere in the house. The Police were already in the compound when we arrived. I do not remember if the house was locked..."

3. The High Court's Ruling

3.1. The High Court, in its majority ruling on the now appellants, has stated the following:

- While individuals who have come together as the leadership of Kinijit were attempting to forcefully abolish the constitutional order by instigating mutiny saying that the elections suffer from fraud, the Electoral Board is partial and a coalition government should be established, the 94th and 95th accused (the now appellants) having fully agreed with these criminal acts ...
- Intending civil society organizations to engage in political activities outside their establishment objectives;
- Having stated that the EPRDF will defraud the elections before the elections and persisting with their belief after the elections claiming that the election suffer from fraud;
- Promoting the establishment of a coalition government while the normal procedures for the establishment of government are known;
- Despite the fact that one of the items stated in the press release entitled lets put the interest of the country before the interest of political parties calls on political parties to join parliament accepting the seats they have officially won, the other items in the same press release as well as other documents and the oral communications of the accused (the now appellants) as established by witnesses are predominated by claims of election fraud and partiality of the Electoral Board;
- And since this, rather than a press release issued by civil society organizations to create better relations between the government and opposition groups, reflects the stand taken by the accused claiming that the elections suffer from fraud;
- Since, except for the private letters relating to the relationships the accused had with Kinijit which could be considered circumstantial, the documents submitted by the Public Prosecutor on the two accused (the now appellants) generally examined mutually support the contention that the accused have committed the alleged crimes;
- Since the testimony given by prosecution witnesses was not found to be conflicting as it relates to the major issue at hand.
- Thus, since the charges brought against the accused have been proved by the Public Prosecutor, the Court has ruled as per article 142/1 of the Criminal Procedure Code that the accused present evidence in their defense under Criminal Code articles 32/1/a & b, 38, 27/1 and 238/1/2.

(The section of the ruling read by Judge Leul G/Mariam and Judge Mohammed Sani on 5 April 2007, pages 9 – 12)

3.2. The presiding judge, who dissented with the majority ruling described above, has stated his dissenting opinion as briefly described below:

- The charges relate to attempting to forcefully demolish the constitutional order. Credible evidence has not been submitted to prove this charges;
- The testimony of prosecution witnesses Adane Bekele and Wondosen Seyum is especially doubtful and difficult to give credence to;
- The letter allegedly written by Elias Kifle to Frezer Negash and [Berhane Haile] is not competent evidence against the accused [the now appellants];
- The opinions allegedly expressed by the accused [the now appellants] in the civil society meeting does not show that the accused [the now appellants] have taken actions in relation to the establishment of a coalition government or any other [objective] through the use of force. It is only to be seen in relation to the free expression of opinions;
- As long as it is not associated with acts of force, mutiny or uprising, the mere discussion of the establishment of a coalition government or other threats are mere expressions of opinion that do not amount to a crime; It only becomes a crime when the person attempts to forcefully realize these opinions he has been expressing;
- The civil society press release on the 9th of August 2005 relates to the alternatives peacefully presented by the accused and others rather than having criminal content;
- Thus, [the presiding judge] has expressed dissent to the majority decision saying that, since the charges against them have not been proved with evidence, the two accused (the now appellants) should be released [without the need to present defense evidence].

(The section of the ruling read by Judge Adil Ahmed on 5 April 2007, pages 13 – 18)

4. General Description of the Grounds for Appeal

4.1. Discordance between the Charge and the Evidence

- 4.1.1. The statements submitted by the Public Prosecutor on the participation of the two now appellants read: "... operated the associations they represent beyond their objectives and functions and used them for the implementation of this crime; mobilized and provided leadership to members of their associations in support of mutinous acts by passing decisions in the name of

the associations, press releases and agitation; and instigated and supported the youth to participate in mutinous acts”. The crime was stated as attempting to forcefully remove the government.

4.1.2. Accordingly, the Public Prosecutor is required to prove beyond reasonable doubt that the accused, directly or indirectly with full intention and their actions, with intent to partake of the acts and results of the crime and accepting it as their own, have committed a crime by attempting to change or disrupt the Constitution and the constitutional order through the use of force, threats, mutiny or any other illegal means.

4.1.3. As described in the statement of charge, the Public Prosecutor should especially prove beyond reasonable doubt:

- By submitting the decisions and declarations we the now appellants have issued in the name of civil society associations we serve in;
- When? Where? What? We said to instigate members of our associations for the criminal objective of demolishing the government. And, When? Where? What? We did to instigate and supported the youth to participate in mutinous acts.

Nonetheless, we will show that the evidence submitted by the Public Prosecutor does not prove the charges as instituted as follows:

4.1.4. In relation to documentary evidence submitted by the Public Prosecutor, the majority ruling of the lower court merely states:

“... These documents generally examined mutually support the contention that the accused have committed the alleged crimes...”

Other than this [general statement], it does not say anything about which documentary evidence proves which acts or criminal issue of fact or criminal intention and aims.

4.1.5. On the contrary we will show below that all of the five documents submitted by the Public Prosecutor and used as a basis for the majority decision as described under paragraph number 2.1.4 of this application of appeal do not prove the charges:

4.1.6. The document submitted under additional documentary evidence number 2 is a document officially submitted by the ‘Kinijit’ party for public discussion. In addition to the fact that this document is available on the website of the organization, it was distributed to participants in the meetings organized by the party in different Woredas of Addis Ababa. Just because this document is found in the office of one of the appellants, it has been submitted as evidence. Unless we have reverted back to the backward times when it was a crime to look at or read opposition party documents, this

document is found not only in the office of one of the appellants but also in the hands of millions of people. For that matter, even the Public Prosecutor merely attached this document with the other pieces of documentary evidence without stating anything in the record of evidence as to what issue this document is to prove. Similarly, the majority ruling does not say anything as to what issue this document proves on the now appellants.

4.1.7. What have been submitted under additional documentary evidence numbers 3 and 62 are the proceedings of the civil society meeting and call for peace. What these documents describe is:

- (a) That civil society associations concerned by the political tensions and impasse following the May 2005 elections have met on 5 August 2005 and 9 August 2005 and deliberated upon the current situation of the country and the role of civil society associations;
- (b) That the three major issues raised in these meetings were:
 - The political impasse in relation to the question whether or not opposition parties should join Parliament and the question of what the opinion of civil society should be;
 - The role of the civil society in relation to sustainably strengthening the democratic process in Ethiopia and ensuring peace in the country; and
 - What should the role of civil society be in this on-going process?
- (c) That the civil society call for peace was issued on 9 August 2005 after deliberating on these issues. The major points communicated in this call for peace were:
 - All competing political parties should join parliament accepting the parliamentary seats they have won as ascertained by the Electoral Board and the in-coming government should be established as per the constitutional procedures;
 - The results for electoral constituencies on which opposition parties have raised complaints should be determined by the judiciary;
 - An independent body should be established to investigate the disturbances and loss of human life following the misunderstandings after the elections; and
 - Measures necessary for building a democratic system (fair use of the media, improving the rules of parliamentary procedure, etc ...) should be taken.

4.1.8. This shows the commendable efforts of the civil society of which the appellants are members towards the peaceful and legal resolution of the political tensions and impasse. It does not have [show] any criminal intent, aim or action.

4.1.9. In describing this call for peace by the civil society, the majority ruling of the lower court stated:

“...despite the fact that one of the items stated in the press release entitled lets put the interest of the country before the interest of political parties calls on political parties to join parliament accepting the seats they have officially won, the other items in the same press release as well as statements of the accused in other documents and their oral communications as established by witnesses were found to be predominated by claims of election fraud and partiality of the Electoral Board...”

4.1.10. This majority ruling by the lower court contains various fundamental errors. The major ones are:

- (a) Other than the broad statement “the other items in the same press release”, there is and there could be no elaboration on which content, sentence or word in the document is illegal. (The content of the documents has been described above.)
- (b) On the contrary, it is well known that the government has accepted three major issues from among the other items within the contents of these documents and measures are being taken on those issues. These are: improving the rules of parliamentary procedure, establishing an independent investigation commission, and improving the mode of operation of the media.
- (c) Similarly, what has been indicated as “statements of the accused in other documents” does not indicate in which document we did write or spoke anything illegal other than the vague reference in the phrase.
- (d) The document on the call for peace by the civil society is a voice of the civil society issued by many civil society organizations collectively and after deliberations. It is not and could not be a personal paper of Daniel and Netsanet.
- (e) This document on the call for peace only reiterates that complaints on electoral issues should be investigated and resolved by the courts and does not contain a single word falsely accusing any one.
- (f) Although the issue has not been raised in this documents, every one nevertheless has the fundamental right to hold and express any opinion he chooses on whether the elections have been defrauded or not,

whether the Electoral Board is impartial or not. (This freedom of thought and expression is a fundamental right constitutionally and internationally protected.) Thus, the conclusion reached by the majority ruling is totally erroneous.

4.1.11. The document submitted as additional documentary evidence number 52 is a letter allegedly written by an individual named Elias Kifle to other individuals named Frezer Negash and Berhane Haile. Moreover, the documents submitted as additional documentary evidence number 65 are pamphlets the prosecution witness named Adane Bekele claims were given to him by Netsanet Demissie for distribution. We will show that especially these documents and witnesses unveil the theatre orchestrated to falsely accuse the now appellants rather than proving the charges as follows:

4.1.12. The document allegedly written by Elias Kifle has been briefly described under paragraphs numbered 2.2.8 and 2.2.9 of this application of appeal. It is a fictitious document manufactured by its creators with the hope that it would help them establish a [non-existent] relationship between the now appellants and the opposition party. Nevertheless, it has been amply established that the document is baseless and fictitious.

- (a) The documents were allegedly addressed to and found in the houses of Frezer Negash and Berhane Haile. However, none of these two persons have confirmed that the document has been found in their houses. On the document alleged to have been found in the house of the person named Berhane Haile bears a statement saying: “found in the house where I stayed as a guest; due to namesake” while the one allegedly found at the home of Frezer Negash bears no authentication. The circumstances of the searches on both places have been described under paragraph numbers 2.2.10 – 2.2.12 of this application of appeal. No judge will fail to note that the overall process through which these documents have been seized is contrary to legitimate procedures and extremely doubtful. One of the witnesses, Ato Adamu Legesse, has testified that he does not know the second page (the second page is the one wherein the now appellants are mentioned) of this document.
- (b) Although this document has allegedly been found in two places, the one submitted to the Court as evidence is a photocopy rather than the original. Moreover, it was inappropriately presented as having been compared with the original and bearing the seal of the Registrar to make it appear that the original has been presented. After this inappropriate actions has been exposed through follow up by the now appellants, the Court has pointed out that it was wrong. This has shown the document not to be authentic and genuine.
- (c) We do not in any way know either the writer or addressees of the letter. Nothing has been and could be said about their relationship with

us. The document is a two-page computer printout, which could have been written by anyone. It is not signed and lacks anything to show who wrote it.

- (d) The document states that Daniel and Netsanet are contact persons for the 'Kinijit' party based on what Ato Hailu Shawl told a person named Elias Kifle. We do not in any way know either the writer or addressees of the letter. Nothing has been and could be said about their relationship with us. Thus, since the document is about what a third person has said that in a letter written by a person we do not know to other persons we do not know, it is more than hearsay. It is a piece of paper that could not be given value as evidence under any standard.

4.1.13. The three pages submitted as having been given to the prosecution witness by Netsanet Demissie are the other saddening works of fiction. These pieces of paper contain what was being gossiped about the ruling party and its leadership in the newspapers, through the Internet, and different radio stations. The person who came forward as the sole witness claiming Netsanet gave him the papers is Adane Bekele. We will see below that this prosecution witness has testified falsely.

4.1.14. From among the prosecution witnesses, we have described the testimony of the witnesses named Adane Bekele and Wondosen Seyum under paragraphs 2.2.6 and 2.2.7. Even if there is no way the judges of the Appellate Court will be able to see the witnesses face to face, we humbly beg the Appellate Court to review the audio recording of the testimony of these witnesses. We will indicate instances from the testimony of these two witnesses as follows to show that their testimony is difficult to believe and false.

- (a) Although both of the witnesses claim they have instigated and organized the public for mutiny as per instructions by Daniel and Netsanet, both of them claim that there isn't a single person who knows about what they said and did;
- (b) Although they claim to have instigated and organized people in their own neighborhoods, they claim to know the name of not even one person they have instigated and organized;
- (c) Their claim of having instigated and organized anyone and everyone they met in a taxi and in a bar after talking to and convincing them on the road and in the bars;
- (d) The witness named Adane Bekele claiming to have talked to, convinced and prepared fifteen or more persons in one bar and in a single day;

- (e) The witness named Adane Bekele claims to have met Daniel Bekele on three days. While the first was for 10 – 15 minutes, the second and third times were on the road. He claims to have been given instructions on instigating and organizing [people] for mutiny within this time.
- (f) The witness named Wondosen Seyum claims to have met Daniel Bekele on two days. While the first was only for 2 (two) minutes, the second was on the road. He claims to have been given instructions on instigating and organizing [people] for mutiny within this time.
- (g) Both witnesses testified that they gave themselves up to the Police after staying in hiding. Both have stated that no one in their families has knowledge of this and they do not know the name of the police officers they spoke to. Generally, they both claim no one other than each of them knows of the matter they testified about.
- (h) Especially the witness named Adane Bekele, while claiming he has lived in the neighborhood for 25 years and that he has instigated and organized everyone in the neighborhood, testified that he does not know the name of even one person. He also claims he has told nothing to any one including the persons he calls his friends.
- (i) Asked to whom he gave the papers given him by Netsanet, the witness named Adane Bekele has stated that he gave it to persons unknown to him in a taxi.
- (j) The witness named Wondosen Seyum claimed that Daniel Bekele came to me and introduced himself having heard what I was discussing with another person; he [Daniel] told him [the witness] to instigate and organize the public for mutiny and he acted accordingly.
- (k) The witness named Wondosen Seyum stated: I did not previously know Daniel Bekele, I accidentally met him at a café and talked to him for approximately two minutes, he has given me instructions on organizing the public for mutiny and removing the government within these two minutes, we have also met for the second time and similarly talked [standing] by the road side.
- (l) Asked how he met Daniel for the second time, the witness named Wondosen Seyum gave conflicting testimony stating: I went to the office and asked if it was Ato Daniel's office'; I met him after I made a missed call [on his mobile/cellular phone] from a retail shop; I gave him a missed call but did not meet him; I met him in the vicinity of his office, I did not go to the office; I spoke to him on the phone and we met with an appointment on the road...
- (m) The witness named Wondosen Seyum has testified stating: Daniel gave me two hundred Birr to organize the public for mutiny and I used

the money to organize [the youth]. I do not know their names. I stop passersby and ask them: Don't you want changes? And ask them to join me/us in bringing about the changes. Since they want change, they say yes [they agree].

- (n) The witness named Wondosen Seyum, having claimed that he was in hiding in a person's house, stated he did not know the name of the persons in whose house he was hiding when asked about their names. And, asked to disclose the specific address [he was hiding at], he similarly stated he did not know the address.
- (o) The witness named Wondosen Seyum, has claimed he was first a member of EDUP and then a member of the 'Kinijit' party. Asked if he has notified his organization about the things he claims to have done after accidentally meeting Daniel Bekele, he stated that he didn't. Generally, [the witness has testified that] there is no one who knows or whom he has told about his alleged relationship with Daniel Bekle.
- (p) The witness named Wondosen Seyum has given conflicting testimony claiming to have seen Daniel in Tamirat's office after stating he has only seen Daniel Bekele only on two days; stating: I have seen him standing on the road side with Tamirat; that was before we met; we have been introduced then; I saw him with Tamirat before I met Daniel in the café... (He was expected to falsely testify to having seen Daniel Bekele with the other accused Tamirat. Tamirat Tarekegn is one of the accused from the 'Kinijit' party. I, Daniel Bekele, have never even seen this person before being detained. The prosecution witness has given conflicting testimony because he became confused on the story he was coached to testify to.)
- (q) This witness named Wondosen Seyum, after making conflicting statements about giving his statement once as a suspect and another time as a witness, has testified to giving his statement only once during redirect questions by the Public Prosecutor.
- (r) Since the witness named Adane Bekele has admitted to engaging in illegal activities for consideration, this shows that he may give false testimony for consideration. And, this has indeed been seen practically.

Generally, it is clear for any one, let alone a judge on the podium of justice, that the testimony of these two witnesses is false. It rather unveils the drama orchestrated to falsely accuse the now appellants.

4.1.15. The other witnesses for the prosecution are Wro Meseret Worku and Wro Nigist Mekuanent who are members of the Executive Committee of the Addis Ababa Women's Association. These two witnesses are individuals we considered as our colleagues and had good working relationships with in

their position as members of the Addis Ababa Women's Association. While we lived under this belief in good faith, they have falsely testified against us. These persons have vilified and misinterpreted the very important tasks we conducted with them and other members of their association and bore witness to what we haven't said. Even if they falsely testified to what we haven't done, we will show that their testimony is not believable, given in bad faith, based on personal hatred and vengeance, merely their personal opinion, lacking basis in fact and is not relevant to the charges against the now appellants. Humbly begging the judges in the Appellate Court to listen to the audio recording of the testimony of these witnesses, we will mention some examples from their testimony as follows:

- (a) The witness named Wro Meseret has herself stated that the testimony she gave is her personal opinion.
- (b) This witness, asked during cross-examination and clarification questions to clearly specify which one of us said what she claimed in her testimony, first claimed it was Daniel and then Netsanet. Finally, she stated: I confuse the two of them; but they are the same, their opinions are the same.
- (c) This witness has testified that her major complaint is being assigned to a place far from her home while the now appellants were assigning election monitors to voting stations.
- (d) This witness, in responding to the repeated clarification questions posed by the Court, has clearly stated that she was very much aggrieved by being assigned to Lideta while her home was in Akaki-Kaliti. She further said this was her only complaint against the now appellants who were responsible for deploying the monitors. This establishes that the testimony is based on personal complaints and hatred.
- (e) This witness, while criticizing the training organized by civil society for the monitors, has stated that she did not know the code of conduct on which she has been trained for two whole days so that she can carry out her monitoring tasks efficiently and impartially. The fact that she stated not remembering the code of conduct even while conducting monitoring activities says a lot about the witness.
- (f) The fact that the witness named Wro Nigist Mekuanent has stated her complaints and misgivings about the now appellants establishes that her testimony is based on personal complaints and hatred.
- (g) While the proceedings of the civil society meeting organized at the Red Cross auditorium on the 5th of August 2005 has been submitted by the prosecution as documentary evidence, the testimony given by the

prosecution witness named Wro Nigist is conflicting with what is stated in the proceedings.

In general, the testimony of these two witnesses proves that it was given in bad faith, based on personal hatred and falsely. Moreover, it has been noted under paragraph number 4.2 that the testimony of these witnesses is in no way related to the crime of attempting to abolish the government as stated in the statement of charges.

4.1.16. As indicated above the prosecution's evidence, let alone prove the charges as submitted, indicate that the charges have been unduly instituted. It is well known that a crime is deemed to have been committed under article 23 of the Criminal Code where the legal, material and moral elements constituting the offence are cumulatively present.

Thus, on the charges of criminal conspiracy to abolish the Constitution and the constitutional order in contravention of article 238/258 instituted against the accused, the Public Prosecutor has to prove the charges as per the prescriptions of the law on the material and moral elements with undisputable evidence.

4.1.17. The material elements constituting the crime that the Public Prosecutor alleges to have been committed are indicated under article 238/258. In relation to the moral elements, it should be proved that the crime was committed intentionally as indicated under article 58. (Since the crime that the Public Prosecutor alleges to have been committed does not relate to negligence, article 59 is not applicable here.)

Taken either individually or cumulatively, the items of evidence submitted by the prosecution do not prove the existence of the elements constituting a crime under the mandatory provisions of the law described above.

Let alone being accused of intentionally attempting to abolish the Constitution and the constitutional order through force, threats or any other illegal means, even the prosecution's evidence shows that we are citizens who have made major contributions to constitutional processes.

4.1.18. We were citizens who have been working tirelessly with the peaceful and democratic aim of [ensuring that] all competing political parties join parliament accepting the parliamentary seats they have won and the incoming government is established as per the constitutional procedures; the results for electoral constituencies on which opposition parties have raised complaints be determined by the judiciary; etc ... How can we be charged with intentionally attempting to abolish the Constitution and the constitutional order through force, threats or any other illegal means?

4.2. In Relation to the Activities of the Civil Society and the Right to Freely Express Ones Opinions

4.2.1. The majority ruling of the High Court has indicated the following points as the basis for the majority decision. These are:

- The now appellants have caused the civil society organizations they represent to engage in political activities contrary to its fundamental objectives; and
- The press release issued by the civil society is predominated by opposition claims of election fraud rather than a constructive press release aimed at creating improved relationships between the government and opposition groups.

4.2.2. The majority ruling has committed grave error in its conclusions described above. These are: -

- (a) The activities conducted by the civil society and raised in the charges are election monitoring and the CSOs Peace Initiative. These activities are routinely undertaken by civil society not only in our country but also all over the world. Although civil society organizations were known for distributing edible oil and flour in the last few decades of our country's history, that is only history. Today, the civil society is an active participant in the social, economic and political life of the society.
- (b) Surely civil society organizations are non-political organizations. This means they do not have the objective of achieving government authority as political parties. Other than this, civil society organizations in our country and all over the world are participants in the following major objectives among others: -
 - Promotion of human rights and good governance;
 - Conflict prevention, resolution and peace building; and
 - Building a democratic system.
- (c) On the basis of a constitutionally protected right and what the government stated in its policy documents, civil society organizations in our country participate in these and other peaceful and legal activities. While this is the correct understanding, the majority ruling has erroneously understood the activities conducted by civil society organizations to be political activities that are not permitted.

It is especially a grave error when considered in light of the recent decisions of the Federal High Court and Supreme Court affirming the right of civil society organizations when their rights to monitor the elections was hampered by the Electoral Board.

It is also known that it is civil society organizations that organized and led the historical debates among political parties in the run up to the May 2005 elections. This is a substantially political activity that should be commended rather than being prohibited for civil society associations for its political nature.

- (d) The activities of the civil society towards peacefully and legally resolving the political conflict and impasse created following the May 2005 elections is also a recognized and usual role of civil society that is encouraged both in our country and the outside whole world.

The call for peace issued by the civil society on the 9th of August 2005 has been described under paragraph number 4.1.7 – 4.1.10 of this application of appeal. The majority ruling has erroneously stated that this call for peace is not a constructive press release. Truly it is enough to read the document. It is very clear that it was a legal and peaceful solution unless we want the civil society to put aside its impartiality and support one of the sides. As most observers agree, the saddening events following the May 2005 elections might not have occurred if all sides accepted the call for peace issued by the civil society.

- (e) Similarly, in the report it issued in September 2005, the Carter Center, which has been highly recognized by the government for, has this to say about the election monitoring activities conducted by the civil society: -

“... The Electoral Board has issued unnecessary criteria for local election observers. They were able to monitor the elections after the High Court overruled the directive in the eve of the elections. However, this was in the last hour when local observers cannot monitor the elections and cannot transport their observers. Had local observers been able to participate in large numbers, the complaints raised might have been fewer and the problems and confusions might not have occurred.” (The Carter Center, September 2005 Report, page 4)

- (f) In general, the activities the now appellants engaged within the civil society were all lawful, peaceful and permitted. There is nothing to show that the civil society has operated outside its objectives. On the other hand, the civil society call for peace was issued by the civil society and is not the personal writing of Daniel or Netsanet. It was a collective task in which we engaged along with many of our colleagues rather than the personal concern or private business of two individuals.

Moreover, if there is any opinion on whether the call for peace issued by the civil society has constructive or negative implications, the contents of the document and constructive or negative opinions

expressed therein are expressions of the right to freely hold and express ones opinions. The mere existence of an opinion claiming that the idea expressed in the document has negative inclinations does not make it a crime or curtail the right to freely hold and express ones opinions.

- (g) Similarly, though the testimony of the prosecution witnesses Wro Meseret Worku and Wro Nigist Mekuanent on what Daniel and Netsanet allegedly said in a meeting is false, it would have fallen under the right to freely hold and express ones opinions had we said the things alleged by the witnesses.
- (h) The majority ruling having stated that the testimony of the two prosecution witnesses proves that the accused have said: the elections suffer from fraud, the Electoral Board is not impartial and a coalition government should be established, and used it as a basis for its decision. While the witnesses have testified falsely as we described above, every one has the right to say the things attributed to us in the testimony. What the now appellants allegedly said and the charge of having been engaged in illegal activities to abolish the government through mutiny, threat or by force [as described] under article 238 are not related in any way.

Asked by the Court during clarification questions if the now appellants used words of threat other than the words detailed above, the prosecution's witness named Wro Nigist Mekuanent has specifically confirmed that no such words were used.

4.2.3. As indicated in detail above, it could be deduced from the charges and evidence against the now appellants as well as the circumstances of the case, the issues submitted for justice even more than the now appellants are:

- Freedom of thought and expression;
- Freedom of association and the rights of citizen's to participate in the affairs of their country; and
- The rights of civil society organizations to participate in building democratic system.

We the appellants, apart from using our rights with a sense of responsibility and performing useful activities, had no any participation in any criminal act.

4.3. Grounds of Appeal Presented in Accordance with Criminal Procedure Code Article 184/c/ on the Interlocutory Orders Given by the Lower Court

4.3.1. Concerning the Order Given Permitting the Public Prosecutor to Submit “Additional Evidence” against the Appellants

- (a) As we have stated previously in this application of appeal, the public prosecutor did not submit any documentary evidence against the appellants at the time of instituting the charge. The public prosecutor stated that he would prove the charge against the appellants through the testimony of witnesses.
- (b) After the trial continued in this manner, as we stated under number 1.3 – 1.5 of this application of appeal, the public prosecutor requested to submit documentary evidence against the appellant and his request was denied as it contravened the rules of procedure. (Order given on 4 July 2006)
- (c) However, as we stated under 1.6 - 1.7 above, the public prosecutor, after a week, requested again to submit additional documentary evidence against the appellants. Even though the appellants petitioned that the request of the public prosecutor was inappropriate and outside the rules of procedure, the Court overruled the objection of the appellants and permitted the public prosecutor to submit its alleged “additional documentary evidence.” (Order given on 14 July 2006)
- (d) This order given by the High Court on 14 July 2006 contradicts with and a reversal of the order given on 4 July 2006.

The public prosecutor did not submit any documentary evidence against the appellants; his request, after the trial was started, to submit documentary evidence against the appellants was rejected; and after a week from this order was given the public prosecutor petitioned to submit “additional documentary evidence” against the appellants against whom no documentary evidence was submitted. In such circumstances, the Court’s permission to this request is a grave error.

- (e) Besides the public prosecutors request to submit “additional documentary evidence” was not supported with acceptable and convincing legal ground. The parties to the case should be permitted to submit additional evidence when they did not get the evidence previously or could not have obtained with due diligence or if it is a new evidence or when there is another sufficient and convincing legal reason; and when it is appropriately proven that the submission of the additional evidence will not compromise speedy trial.
- (f) The public prosecutor’s request was not submitted in accordance with these requirements. There was not any legal reason as per the above stated factors not to submit previously even a single evidence among the alleged “additional documentary evidence.” Therefore, since the

order given in favor of the public prosecutor to submit documentary evidence against the appellants under the guise of additional documentary evidence without first submitting any documentary was incorrect, the appellate Court should reverse the order given by the Federal High Court on 14 July 2006.

- (g) Similarly as the request of the public prosecutor to submit additional witnesses as stated under (e) above, was not presented being supported by acceptable and convincing legal ground. However, when the public prosecutor requested to present additional witnesses in a similar manner after some time he made the request for submission of additional documentary evidence, the Court rejected the objection of the appellants and permitted the public prosecutor to present additional witnesses. Since the order given by the lower Court permitting the public prosecutor for the third time to present additional to additional to additional evidence without presenting any sufficient and proper legal ground was incorrect, the Appellate Court should reverse it.

4.3.2. Concerning the Objection Submitted as to the Inadmissibility of the Public Prosecutor's "Additional Documentary Evidence."

- (a) The appellants submitted a number of legal grounds of objection on the inadmissibility of the public prosecutor's "additional documentary evidence." We stated the main points of argument for the objection under 3.1.3 of this appeal.
- (b) The Higher Court rejected the appellant's arguments of objection and permitted the public prosecutor's documentary evidence to be attached with the file.

The arguments of objection presented by the appellants to the Lower Court were sufficient and legal objections on the admissibility or inadmissibility of the evidence. Since the order given by the Court rejecting all the objections is a grave error, the appellate Court, by considering the arguments of the appellants, should reverse the ruling given by the Higher Court.

4.3.3. Concerning the Order Given Not to Provide the Appellants with the List of Witnesses and Not to Disclose their Identity until the End

- (a) As described under paragraph numbers 2.2.1 and 2.2.2 of this application of appeal, the now appellants have been prevented from knowing the identity of the witnesses called against us. Even after the witnesses gave their testimony, prohibitions have been issued on the disclosure of their names to the public in the media. These two issues arose at the petition of the Public Prosecutor. Our objections were denied and the prosecution's petitions were granted.

- (b) Under article 20/4 of the Federal Constitution, every person accused of a crime has the right to examine evidence submitted against him. The now appellants have been prevented from examining the evidence against us in violation of this constitutionally protected right. As a result, the case was tried and the ruling to present our defense was given while our right to defend ourselves wasn't even respected since we did not know the identity of the witnesses and could not prepare for cross-examination.
- (c) The right of every accused person to defend himself includes the right to receive the evidence against him in advance, examine the evidence and prepare for his defense. This is also related to the principle of treating both parties equally (principle of equality of arms). However, since the order of the lower court preventing the now appellants from examining the witnesses called against us is a grave error, the Appellate Court should reverse the order.
- (d) The order against the disclosure of the identity of the witnesses in the media after they gave their testimony without sufficient legal basis is a violation of the right of the now appellants to a public trial. Under article 20 of the Federal Constitution everyone has the right to a public trial.

One of the means of ensuring the truthfulness and credibility of the trial process is being open to the view and hearing of the public. It is also known that the media is the appropriate mechanism for this purpose.

- (e) While the Public Prosecutor has not submitted any evidence to show that the alleged concern for the witnesses exists and especially where the request has not been presented by the persons concerned, the order against the disclosure of the identity of the witnesses in the media violates the now appellants' fundamental right to a fair, free and public trial. Even if such a concern exists, it is to be examined on the basis of credible request by the person concerned. Thus, the Appellate Court should reverse the order.

5. Conclusions

- 5.1. Let alone the prosecution proving a crime under article 238/258 in the manner of the charges brought against the now appellants, the lawful and peaceful activities of the now appellants have become notoriously obvious. The evidence submitted by the Public Prosecutor is not even sufficient to start criminal investigations, let alone proving an offence beyond reasonable doubt. In fact, the two current appellants have asked the investigating officers upon detention to tell us the crimes we are suspected for and requested to be given and respond to any evidence against us. The investigating officers themselves have at the time told

us that they have not seen or know of any evidence and that they have only been ordered to take our statements.

5.2. The now appellants are citizens who have been participating in lawful, peaceful and useful undertakings in good faith, with patriotism, democratically and with belief in human rights and social justice as well as with a high sense of responsibility. Let alone committing a crime, we are individuals with no criminal intentions.

5.3. The ruling of the High Court stating that the charges brought against the now appellants have been proved is a grave error of law and fact. On the other hand, the statement of the presiding judge saying that the now appellants should be released without the need to present defense evidence is correct. The sufferings caused on the now appellants and our families due to the charges unduly brought against us are grave. Since our and our families' suffering should not continue any longer, we believe that the Appellate Court to release us.

5.4. Thus, we respectfully petition the Appellate Court: -

- Reversing the majority ruling of the High Court and confirming the dissenting opinion; and
- Confirming that the rights of the now appellants to fair, free and public trial have been violated by the matters described under paragraph number 4.3 of this application of appeal;

To dismiss the charges against us and generally give us speedy justice taking the circumstances of the case into consideration.

Daniel Bekele

Netsanet Demissie