

Date: 1<sup>st</sup> October 2007

File No. 43246

**To The Federal High Court**

**2<sup>nd</sup> Criminal Division**

**Addis Ababa**

Accuser: The Federal Prosecutor  
Accused: Engineer Hailu Shawel and Others(131 accused)

94<sup>th</sup> Accused Daniel Bekele  
Action Aid Ethiopia, Policy department manager

95<sup>th</sup> Accused Netsanet Demissie  
Organisation for Social Justice in Ethiopia, General Manager

**A Closing Statement Submitted by the 94<sup>th</sup> & 95<sup>th</sup> accused in accordance with Art.**

**148 of Criminal Procedure Code**

### **Introduction**

The accused hereby submit our closing statement as per Art 148 Criminal Procedure Code as follows.

To the extent necessary for this final address we will first state the content of the charge and the prosecutor's evidences as well as the process of the proceedings. Then we will show that the prosecutor's charge and evidence are fully disproved by the defense and that the prosecutor's charge and evidence are unacceptable and hence we have to be acquitted.

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## 1. The Prosecutor's charge

- 1.1. We, the accused, are members of Civil Society and are included as the 94<sup>th</sup> and 95<sup>th</sup> accused in the charge of “attempt to overthrow the constitutional order” brought by the prosecutor against Engineer Hailu Shawle and others (the leaders of the opposition Coalition for Unity and Democracy party, journalists and other accused, all together 131 persons).
- 1.2 The content of the charge is “Crime of outrage against the Constitution and the constitutional order through conspiracy in violation of the provisions of articles 27(1), 32(1) (a) and (b), 34, 38 and 238 (2)/258 of the 2005 Criminal Code of the Federal Democratic Republic of Ethiopia.” In part 4 of the charge where it is claimed to indicate our activity and participation, it is stated “..... taking the illegal actions of the accused listed from number 1 to number 39 as their own; 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 When the prosecutor brought the charge before the lower court it submitted documentary evidence referring to different accused. However, regarding us, the two accused, it was put on record that the prosecutor had not submitted any documentary evidence and had asserted that it would prove the charge against us by means of witnesses.
- 1.4 After the proceedings continued on this basis, on 3<sup>rd</sup> July 2000, the prosecutor asked to submit documentary evidence against us. We the accused objected to the prosecutor's request as it is against the procedure. The court in its ruling rendered on 4<sup>th</sup> July 2006 rejected the request of the prosecutor stating that the prosecutor has not submitted any documentary evidence against the two accused at the time it instituted the proceedings, that the prosecutor rather claimed to prove the charge against the accused through witnesses and that it is against the procedural laws to request to submit evidence in the middle of the trial.
- 1.5 The trial continued and on 13 July 2006 the prosecutor, after completing the presentation of documentary evidence submitted against the other defendants, requested to submit additional documentary evidence.

We the two accused petitioned to the Court that the request to submit additional documentary evidence should not include us, since as described above no documentary evidence was submitted against us and since the request of the

prosecutor to submit documentary evidence in the middle of the trial was already rejected.

- 1.6 However in its order given on 14<sup>th</sup> July 2006, the court permitted the prosecutor to submit additional documentary evidence including against us. Accordingly the prosecutor has brought additional documentary evidence against us and the other defendants.

## **2. Evidences of the Prosecutor**

As described above the prosecutor submitted documentary evidence and witnesses against us. The contents of these two types of evidence are summarized as follows

### **2.1. Documentary Evidence of the Prosecutor**

- 2.1.1 The prosecutor has submitted various documents as evidence against us and the other defendants. Out of these there are only 4 (four) documents which the prosecutor claimed prove the charge against us and for which it has submitted a description. These are additional documentary evidence numbers 3, 52, 62 and 66 (Description of the prosecutor's documentary evidence written on 24 July, 2006)
- 2.1.2 It is our wish to give descriptions of all of the documentary evidence so that we can show that the documents brought by the prosecutor as "additional evidence" are inappropriate and that the whole action of the prosecutor lacks legality as well as good faith. However in order to save the court from wasting its time on evidence and facts that were not the basis of its ruling we focus on five pieces of documentary evidence on which the court has based its ruling. These are:
  - a) Additional documentary evidence number 2:- a document officially presented by the opposition party Kinijit for public discussion with the title "the process of the May election and the impasse our country is in".
  - b) Additional documentary evidence numbers 3 and 62:- a report written on 8 August 2005 about the half day meeting of civil society organizations, and the peace call of the civil society concerning the political tension which occurred following the May / 2005 election (8 August 2005)
  - c) Additional documentary evidence number 52:- a letter allegedly written by a person named Elias Kifle to Frezer Negash and Birhane Haile

- d) Additional documentary evidence No. 65 :- The leaflet allegedly given by Netsanet Demissie to Adane Bekele

(We will show the content of those documents in detail).

2.1.3 We have forwarded various legal arguments to the court objecting the admissibility of all these documentary evidences. The main points of the objection were :

- a) The documents submitted as evidence were obtained by unlawful means (Evidence Numbers 2, 3, 52 and 62 were seized by unlawful search using arms and carried out without a court order. These are the fruits of an illegal act which cannot be brought as legal evidence)
- b) The documents submitted as evidence are not authentic or genuine. They are without their original documents but submitted inappropriately as if they are verified against their original copy and are clearly manufactured evidences (Refers to evidence Nos. 52 and 65);
- c) The documents submitted as evidence are hearsay evidence which cannot be brought before a court (Refers to evidence Nos. 52 and 65);
- d) The documents submitted as evidence have no relevance to the facts and issues before the court (Refers to all additional evidences); and
- e) The documents submitted as evidence without description about the facts they are going to show are inadmissible. (Refers to evidence Nos. 2 and 65)

(In our application written on 31 July, 2006 we detailed legal and factual points about the inadmissibility of the documentary evidences of the prosecutor)

2.1.4 Regarding the objection described above the court in its ruling given on 13 October 2006 rejected the arguments of the accused and stated that the relevance of the evidence will be seen through the proceedings and allowed the prosecutor's documentary evidences to be annexed with the file.

The above brief description relates to the documentary evidence brought by the prosecutor against the accused and to the process in which the evidence has been submitted. Following this we provide a brief description about the process in which the prosecutor's witnesses have been called and the testimony they have given.

## **2.2. Witnesses of the Prosecutor**

2.2.1. The prosecutor, at the time of instituting the charge against the accused, has requested the court that the identity of the witnesses be concealed and be kept secret from the accused alleging that the security of the witnesses would be endangered. On the grounds that the accused have the right to examine the charge and evidence brought against us; that we have the right to know in advance the identify of the prosecutor's witnesses and get prepared for cross-examination; that the case is before a public trial; that every accused has a constitutional right to examine the charge and evidence brought against him; that it is the right of the accused and not the prosecutor to keep the identity of witnesses secret and that the request is not supported by evidence, we have objected to the request made by the prosecutor. However the court rejected our objection and hence the process of hearing witnesses started without their identity being disclosed to us in advance.

2.2.2. Even after the witnesses appeared before the court and gave their testimonies, the prosecutor requested the court to give an order so that the identities of the witnesses not to be disclosed by the media. On the grounds that the request of the prosecutor is against the principle of the right to fair and public trial; that the prosecutor has not provided evidence or shown convincing circumstances about the security risk; that even if such risks exist it should be seen case by case on valid request by the concerned individual but not as general prohibition made in a public trial as well as on the basis of the rights of the accused to be tried and defend before public trial, we have objected to the request of the public prosecutor.

However, the court rejected the objection made by the accused and ordered that even after they gave their testimonies to the court the identities of the prosecutor's witnesses should not be disclosed by the media (The order given by the High Court on 25 and 17 October/2006)

2.2.3. Under the circumstances described above the prosecutor first brought four witnesses, then after requesting to call additional witnesses, brought three witnesses; in total the prosecutor has called seven witnesses against us. The testimony of the witnesses is briefly as follows:

2.2.4. The prosecutor's witnesses, W/ro Meseret Worku, who is a member of the executive committee of the Addis Ababa Women's Association, gave the following testimony on 3 November 2006.

“.....I know Daniel and Netsanet during the 2005 elections. Training for election observers of the civil society was prepared. They arranged the training. The theme of the lesson was that EPRDF is dishonest and is going to rig the election. So watch carefully. It was also said that as EPRDF will interrupt the electric power we would get torchlight ready. They conducted the training not like a civil society but just like an opposition. I was confused. This is my personal opinion. After that we were given orientation at CRDA hall. Daniel and Netsanet were there. The situation was not good here too. When we assign election observers they assigned us to places they like. They assigned me to a place far away from my home. We were provided with torchlight so that our work would not be hindered in the event electric power interruption. We were given a code of conduct. I do not remember what it says. I did not recall the code of conduct when I performed the task of election monitoring. I confuse Daniel and Netsanet with one another. I do not identify who is Daniel and who is Netsanet. But one of them was present. There is no difference between the two. Both have identical ideas. My main complaint was that I was assigned to a place far from my home. I have no complaint other than that. Indeed it was their responsibility to assign observers. I thought they would assign me to a nearby place. But they assigned me to a faraway place. My home is at Akaki Kalit. They assigned me to Lideta. I was expected to travel to Lideta late in the night..... ”

- 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, gave the following testimony on November 3, 2006:-

"... I was present in the Civil Society meeting held on 5 August 2005 at the Red Cross auditorium. I arrived late. There were discussions on whether opposition parties should or should not join Parliament and on what our role [as civil society] should be. What was being said by the participants was ' the government is repressive, the results of the election have been defrauded and the election should be repeated in 299 voting stations, the media should not deafen us. It will be difficult whether we join Parliament or not since the outgoing parliament has put in place restrictive laws'. Daniel [and Netsanet] have said that the elections have been defrauded in 299 voting stations and that the government is repressive. They were also saying that a transitional government should be established ... On another occasion, in the meeting of election observers at the Ethiopia Hotel, we were accused of planning to conduct a rally in support of the EPRDF and argued whether this is within our rights or not. Daniel has strongly argued with me on the issue. He had accused us of being members of the EPRDF. In the Red Cross meeting both Daniel and Netsanet were saying the same things. There was also talk about the Electoral Board not being impartial

and that an impartial electoral board should be established. There were no threats or anything about taking action ..."

- 2.2.6. The prosecution witness named Ato Adane Bekele, who gave his occupation as a local independent commission agent, gave the following testimony on November 3, 2006:-

"... I know Netsanet Demissie; we live in the same neighborhood. I have worked to organize the youth in our neighborhood for mutiny and rioting under his instructions after he told me that the EPRDF has defrauded the elections. I have accordingly mobilized youth and engaged in taking out fences and burning tires ... He has given me fliers to distribute ... Daniel has also told me the same things when we met a few times ... Daniel was introduced to me by Netsanet. We have also met on the road on another date. He told me to prepare, coordinate and organize the youth for mutiny to remove the government from power. I acted accordingly ... I do not know the names of the persons I coordinated and organized. Not one of them ... I have coordinated people from our neighborhood and from outside. I coordinated those I met in bars and on the road. I have also coordinated people I only met once ... I approach people drinking coffee or tea, convince them, and make them ready for mutiny. I can mobilize one, two, fifteen or more persons in one bar. I did all of this alone. I mobilized the residents of our neighborhood and we stopped taxis and buses and took out fences put by investors. I do not remember the name of even one person among those I mobilized. I have not told anyone among my family members or friends about these things and they have never asked me about this. I gave the fliers I received from Netsanet to people I did not know. I gave [the fliers] to people I met in a taxi. I gauged the situation and initiated discussions. I talked to people I met in a taxi about the defrauding of election results and overthrowing the government through mutiny and gave them the fliers. I was formerly a member of the Kebele administration ... Later, I regretted [my involvement in the mutiny] and gave myself up to the Police. I do not remember the name of the officer. He told me that I would be called upon when needed ... Then, I was called from my home by the Police. There was no one at home and I did not tell anyone. I did not even tell my mother. I told the Police about what I had done. I do not remember the date. The Police came to my home to call me for a second time. I was the one who opened the door when they knocked. I do not know the name of the police officer. No one from my home or the neighborhood saw the Police coming. I was told by the officer to go to an office where another police officer talked to me. I remember neither the office number nor the name of the officer ..."

2.2.7. The prosecution witness named Ato Wondosen Seyoum Dadi, who stated that he is unemployed, gave the following testimony on November 9, 2006:-

"... I know Daniel Bekele. I met him incidentally while I was having a cup of tea with another person. He overheard our conversation and encouraged me. He gave me his telephone number and we met one or two times. He told me about how to coordinate and organize the youth, distribute fliers, engage in mutiny, mobilizing the public, overthrowing the government ... He gave me two hundred birr. I organized the youth accordingly. I have mobilized and coordinated everyone I incidentally met on the road ... I do not know the names of these people I organized; not even one of them. I met Daniel for the first time while he was leaving a cafe. He was alone. I was also leaving the same cafe. I did not know him before. He asked me what the youth were doing and what activities we were engaged in. I was alone. We spoke for about two minutes. He gave me all the above mentioned instructions in those two minutes. I met him for the second time after about fifteen days. I went to his office to meet him. I met him incidentally. I went to the office and asked if Ato Daniel worked there and they said yes. Then Daniel came to meet me. I met him while he was leaving the office. He came after I called him on the phone. I left a missed call on his phone from a retail shop and came to the area where he has his office. I did not enter the office compound. I waited for him on the road around the Chinese Restaurant. I was alone. I told him where I was and he came to meet me. I haven't called him except on this date and we never met on any other day. He gave me two hundred birr for organizing expenses and I used the money to organize [the youth]. I organized whoever I met incidentally. I do not know the names of the persons I organized. I organized them around and outside my neighborhood. I stop them on the road and organize them. I stop them and ask them if they want change. Since most of the passersby want change they say yes. I give them the fliers. I do not know the contents of the fliers. Then, I arrange appointments and meet them. I have met them a number of times. I do not remember the names of the people I met. We meet and talk on the roadside. Later, I went into hiding. I went to a remote place called Salo. It is within Addis Ababa. I do not know the address. I stayed in a person's house for the duration of my hiding. I do not know the person. I was in hiding in the house of a person I do not know. Then, I went to the Police Station and gave myself up. I do not know the name of the officer. He talked to me alone. I was taken into an office and gave my statement. I do not remember the name of the officer who took my statement. He told me that I would be called when needed by the Court and I left. I was a member of EDUP. I have once seen Daniel talking with Tamirat on the

road. I haven't told my organization or anyone else that I have met Daniel and the things we talked about, ..."

- 2.2.8. The Public Prosecutor was also granted a request to call additional witnesses. Accordingly, the Public Prosecutor called three witnesses in addition to those mentioned above.

The prosecution called these three additional witnesses to show that one of the documents submitted by the Public Prosecutor, documentary evidence number 52, was found during the search of the residences of persons named Frezer Negash and Berhane Haile.

This document is a letter allegedly written by a person named Elias Kifle to persons named Frezer Negash and Berhane Haile. In the last paragraph on the second page of this document there is a statement which reads "... Since Ato Hailu Shawl has communicated to us that Daniel Bekele and Netsanet Demissie are contact persons for the coalition [the opposition party Kinijit], you should contact them and do what is necessary ..." As per the description of evidence submitted by the Public Prosecutor, the document is intended to prove that we the two accused are contact persons for the opposition party Kinijit.

- 2.2.9. The letter allegedly written by a person named Elias Kifle which we had no knowledge of:-

- Is not signed by the person who allegedly wrote it and does not contain any other authentication;
- Is not authenticated by the alleged recipients of the letter;
- As we have indicated under 2.1.5, this letter is a photocopy inappropriately submitted without presenting the original to the Court with a statement "compared with the original" as if the original has been examined;
- The accused do not know who the alleged writer or recipients of the letter are.

The prosecution witnesses called to prove that this paper was found in the residences of persons named Frezer Negash and Berhane Haile testified as follows:-

- 2.2.10 The prosecution witness named Ato Teferi Hailu has testified as follows:-

"... On 28/01/2006, while I was walking to my home from Piazza, a uniformed police officer and a man in civilian clothes stepped out of a car and asked me to witness the search of a house. I expressed my willingness and we entered the car. A man in handcuffs was brought by a police officer. He was Berhane Haile. He said that it was not his house but a place he sometimes stays in and asked for the owner to be called. The man in civilian clothes made a phone call. I do not know what he said on the phone. As I heard him say later, the owner told him that he is too far away and to get somebody else to open the house. Thus, a girl was called and we entered the house. There was a court order but I didn't read it. After we entered the house various documents were taken. I remember the letter from Elias Kifle to Berhane Haile. The documents were then signed. Berhane Haile simply signed the documents. He was not asked who gave them to him or why they were in his possession. He was asked nothing. The only thing he said at the time was that it is not his house and it is a place where he stays sometimes. I saw him write something before signing the letter said to be from Elias Kifle but I didn't read what he wrote"

2.2.11 The prosecution witness named Ato Adamu Legesse, who stated that he is employed at the Kebele, has testified as follows:-

"... I was present when Frezer's residence was searched on orders from the Kebele administration. I did not see whether the Police had a court order at the time ..." Having said this, a request was submitted to have the witness examine the letter allegedly written by Elias Kifle to Frezer Negash and submitted by the Public Prosecutor as additional documentary evidence number 52 and authenticate his signature. Accordingly, the Court had the document presented to the witness. The witness gave the following testimony after examining the document.

"... My signature is only on the first page of the document. It is not there on the second page [as we have indicated under items numbered 2.2.8 and 2.2.9, the second page is where the fictitious statement about us the two accused is written] I remember the first page. But, I do not remember whether or not the second page was found in that house. I have not signed this second page. I only signed on the first page. I also do not remember if the letter had a next page. Frezer didn't sign on this document [Frezer Negash has not confirmed that this document was in her possession]."

2.2.12 The prosecution witness named Wt Mersha Teshome, who stated that he is employed at the Kebele, has testified as follows:-

"... I was told that they suspect the presence of some items at Frezer's residence and asked me to be a witness if they seize anything. They took me by car. She [Frezer Negash] was also brought in a car. When we arrived the place 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 that they had found the document they were looking for and asked us to sign it. We signed. I do not remember the details ..." Then, the witness examined the document submitted as additional documentary evidence number 52 and proceeded to testify.

"... my signature is on both pages of this document. There were many documents at the time. I do not remember the contents of the document. Frezer refused to sign one of the documents at the time; I do not remember which. She was saying that that particular document was not hers. It was the investigators who were collecting the documents from all over the house. The Police were within the compound when we arrived. I do not remember if the house was locked ..."

### **3. The Ruling of the High Court**

3.1 The High Court, in its majority decision against us the two accused, has stated the following:-

- The 94th and 95th accused agreed with full intent 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;
- Intending to use the civil society organizations they represent for political purposes outside their establishment objectives;
- Stating that the EPRDF will defraud the elections before the elections and persisting with their belief after the elections claiming that they suffer from fraud;
- Promoting the illegal establishment of a coalition government while the normal procedures for the establishment of government are known;
- Since, despite the fact that one of the items stated in the press release entitled "let's 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 their oral communications as established by witnesses are predominated by claims of election fraud and partiality of the Electoral Board;

- Since this, rather than a constructive press release issued by civil society organizations to create better relations between the government and opposition groups, reflects the stand [taken by the opposition] claiming that the elections suffer from fraud;
- Since the documentary evidence submitted by the Public Prosecutor examined together, except for the letter written by Elias Kifle to Frezer Negash and others which could be considered circumstantial evidence, indicate that the accused have committed the criminal actions testified on by the witnesses;
- Since the testimony of the witnesses was clearly not 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 that the accused present evidence in their defense under criminal code articles 32/1/a & b, 38, 27/1 and 238/1/2.

(Part of the ruling read on 5 April 2007; pp. 9 - 12)

3.2 The presiding judge who dissented from the majority decision explained above stated his dissenting opinion as briefly outlined below:-

- Convincing evidence to prove the charge of attempting to forcefully abolish the constitutional order has not been presented;
- The testimonies of the prosecution witnesses named Adane Bekele and Wondosen Seyoum especially lack credibility;
- The opinions of the accused in the civil society meeting is to be considered in terms of freely expressing opinions during a discussion and does not show that the accused have mobilized towards the forceful establishment of a coalition government or any other end;
- As long as it is not associated with acts of force, mutiny or uprising, the mere discussion of the establishment of a coalition government amounts to 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 9<sup>th</sup> of August 2005 relates to the alternatives peacefully presented by the accused and others rather than having criminal content;

- Thus, he stated his dissent to the majority decision saying that the accused should have been released since the charges instituted against them have not been proved.

(Part of the ruling read by the presiding judge on 5 April 2007; pp. 13 - 18)

#### **4. General Description of Defense Arguments**

The charges brought by the Public Prosecutor allegedly showing our participation in the crime reads: "... using the association they represent [for the crime] outside its establishment objectives; issuing decisions, giving press releases and mobilizing in the name of the associations; instigating and providing leadership to members of the association to support the act of mutiny; instigating and supporting the youth to engage in acts of mutiny ..." The alleged crime is attempting to forcefully abolish the government.

As such, what the Public Prosecutor is expected to prove beyond reasonable doubt is that the accused have directly or indirectly or participated in the criminal act and its results with their full intent and actions, have attempted to abolish the constitutional order through the use of force, threats, mutiny or any other illegal means.

However, we will subsequently show that the evidence presented by the prosecution contradicts the charges rather than prove them and that the totality of the prosecution evidence has been rebutted by the defense arguments.

Since we are expected to present our defense in light of the ruling of the Court, we will especially show that the documentary evidence and testimony on which the ruling is based have sufficiently been rebutted by the evidence submitted by the accused. Thus, we will show that the prosecution evidence lacks competence and credibility.

##### **4.1. As concerns the Prosecution's Documentary Evidence Number 2**

The document submitted by the Public Prosecutor under additional documentary evidence number 2 is a document officially presented by the opposition party Kinijit for public discussion. In addition to being available on the party's website, the document was distributed to participants during a series of meetings organized by the party in the different woredas of Addis Ababa. The 153rd defense witness Dr Berhanu Nega, who is among the leadership of the Kinijit party, has testified that he prepared the document in the name of the opposition party Kinijit as a basis for public discussion, that the document has been presented for public discussion and is available on the party's website. This document has been submitted as prosecution evidence simply because it was found in the office of the 94th accused Daniel Bekele. Unless we have slid back

to the time when people were prohibited from reading opposition party documents, this document is found in the hands of millions of other people. For that matter even the Public Prosecutor simply attached this document among the other pieces of documentary evidence without elaborating on the facts intended to be proved through this document.

#### **4.2. Regarding the Prosecution's Documentary Evidence Numbers 3 & 62 and the Prosecution Witness Nigist Mekuanent**

4.2.1 The documents submitted by the Public Prosecutor under additional documentary evidence numbers 3 and 62 relate to the report of the civil society meeting and call for peace. What these documents show is:-

- a) Civil society organizations concerned by the political tensions and impasse that emerged following the May 2005 elections came together on August 9, 2005 and discussed the current situation in the country and the role of civil society;
- b) The three major issues raised at this meeting were:-
  - the political impasse on the issue of whether opposition political parties should join the Parliament and what the perspective of civil society should be;
  - the role of civil society in strengthening a sustainable democratic process in Ethiopia and ensuring peace in the country; and
  - what should be the role of civil society in this ongoing process.
- c) That a call for peace was made public on 9 August 2005 after [representatives of] the civil society deliberated at length on this issue. The major points communicated in this call for peace were:-
  - for all competing political parties to take up the parliamentary seats they have won according to the final results issued by the Electoral Board and establish the government that would assume power as per the constitutional system;
  - for the results in constituencies disputed by competing political parties to be determined by the courts;
  - for the establishment of an independent body to investigate the disturbances following disputes after the elections and subsequent loss of life;

- for measures necessary for democratic system building (fair use of the media, amendment of parliamentary procedures, ...) to be taken.

4.2.2 The prosecution witness named Wro Nigist Mekuanent, who arrived late and attended one of the civil society meetings held on 5 August 2005, has testified that the accused have said "the results of the election have been defrauded, the government is repressive, a transitional government should be established, the Election Board is not impartial, and an independent electoral board should be established" (See item number 2.2.5)

4.2.3 However, the four defense witnesses called by the accused (27th, 123rd, 134th and 155th), who were present in the meeting at the Red Cross auditorium on 5 August 2005 and at the Ghion Hotel on 9 August 2005 as organizers and participants, have consistently testified to the following:-

- a) that both of us the accused have tirelessly worked to find peaceful solutions for the political impasse at the time in both civil society meetings;
- b) that the opinion we presented and promoted at the meeting was for opposition parties to legally and peacefully join the Parliament and for disputed results to be decided upon by the courts; and
- c) that both of us have worked impartially and professionally with dedication towards lawful and peaceful solutions rather than uttering anti-peace, illegal or partial statements.

Thus, we have shown that the testimony of this prosecution witness is completely false.

4.2.4 In addition to the testimony of witnesses for the defense, the pieces of documentary evidence submitted by the accused prove this.

- a) The documents submitted by the accused under defense documentary evidence number 17 prove that the civil society call for peace was conducted in a manner that was completely peaceful and lawful and that the call for peace has been officially made public;
- b) The reports of interviews given by to different newspapers submitted under defense documentary evidence numbers 1 and 2 show the efforts of both of us the accused towards peaceful and lawful solutions as consistently testified to by witnesses for the defense. These reports particularly show that:
  - we have stressed the need for opposition parties to legally and peacefully join the Parliament and for disputed results to be decided upon by the

courts to resolve the political impasse at the time in a peaceful and lawful manner;

- we have repeatedly reminded competing political parties to operate legally, properly, in good faith and truthfully now that they have completed their campaigns, and on the need for joint deliberations, planning and operation to resolve the political tensions arising out of the competitions during the elections;
- In particular, defense documentary evidence number 2.2, which relates to a news report and interview on the meeting held at the Red Cross auditorium on 5 August 2005, corroborates the facts stated in the testimony of defense witnesses;
- In general, these documents show that both of us the accused have consistently underlined ways for the peaceful and lawful resolution of the political tensions at the time and given balanced opinions on the issue in general and have never done anything to suggest that we have engaged in illegal, anti-peace or any similar aims or activities.

(A detailed description of the issues proved by the documentary evidence is given on the description of documentary evidence submitted on 2 August 2007)

4.2.5 In addition, the 153rd defense witness Dr Berhanu Nega and the 70th defense witness Ato Derbew Temesgen, who are both among the leadership of the Kinijit party, have consistently testified that both of the accused have presented and elaborated the above described lawful and peaceful solutions in the meeting organized by the Kinijit party at Ibex Hotel.

4.2.6 We have also shown the lawful and peaceful contributions of us the two accused in another peaceful effort of citizens we participated in through the testimony of witnesses and documentary evidence:-

- a) Among defense witnesses the 10th witness Prof. Shibru Tedla, the 12th witness Dr Konjit Fekade, the 141st witness Ato Tamirat Kebede, the 146th witness Prof. Bahiru Zewdie, and the 155th witness Wt Bezuwerk Ketete have consistently testified to our efforts and contributions towards the peaceful and lawful resolution of the political tensions and impasse that occurred following the elections and that we have never directly or indirectly promoted any illegal, anti-peace or any similar aims or activities.
- b) The documents submitted under defense documentary evidence number 18 also prove the efforts of the accused towards peaceful and lawful solutions.

(A detailed description of the issues proved by the documentary evidence is given on the description of documentary evidence submitted on 2 August 2007)

4.2.7 As indicated under defense documentary evidence numbers 20.2, 20.3 and 20.4, in an interview with "Eftin" newspaper, a member of the EPRDF Central Committee and senior government official commented on the beating and injury of Daniel Bekele by armed individuals saying "... It is known that Daniel Bekele is in favour of opposition parties joining the Parliament. He has officially promoted this stand. Thus, those who oppose the idea of opposition parties joining the Parliament may be the ones responsible for the incident ...". This shows that the peaceful and lawful ideas promoted by the accused were well known among the ruling party and the government and disproves the allegations in the charges and evidence submitted by the Public Prosecutor.

4.2.8 In general, the concrete fact proved by the defense witnesses and documentary evidence is that both of us the accused have tirelessly and consistently worked towards the lawful and peaceful resolution of the political crisis in our country rather than having been in any way involved in illegal and mutinous acts.

### **4.3. Regarding the Prosecution's Documentary Evidence Number 52 and the Prosecution Witnesses**

4.3.1 The document submitted by the Public Prosecutor as additional evidence number 52 is a letter allegedly written in private by an individual named Elias Kifle to individuals named Frezer Negash and Berhane Hailu. And, the documents submitted by the Public Prosecutor as additional evidence number 65 are fliers allegedly given by Netsanet Demissie to the prosecution witness Adane Bekele for distribution. We will subsequently show that these documents lay bare the elaborate drama staged to falsely accuse us the two accused rather than proving the charges.

4.3.2 We have briefly covered the issue of the letter allegedly written by Elias Kifle under items 2.2.8 and 2.2.9 of this final defense statement. This is a fictitious document fabricated with the hope of showing a link between the accused and the opposition political party. However, the baseless and fictitious nature of this document has been proved in many ways. Major among these are:

- a) This document was allegedly addressed to persons named Frezer Negash and Berhane Hailu and found in their residences. Yet, these two persons have not confirmed that the document was in their possession or that it is found in their residences. The statement 'found in the house where I was a guest by namesake' in the document allegedly found in the home of a person named Berhane Haile. The one allegedly found in Frezer Negash's home, on the other hand, has not been authenticated. The search said to have been conducted by

the Police on both places has been dealt with under items 2.2.10 - 2.2.12 of this concluding statement. No judge will fail to see the extent to which the process through which these documents were seized was contrary to lawful procedures and extremely doubtful. Moreover, the witness named Ato Adamu Legesse has testified that he has no knowledge of the second page of this document (the second page is the one containing statements relating to the accused) in his testimony to the Court.

- b) Though this document was allegedly found in two places, the one submitted to the Court as evidence is a photocopy. Though the document was submitted with the seal of the court registrar to make it appear that it has been compared with the original, the Court has noted the impropriety of the procedure after investigations by the accused identified the inappropriate process. This establishes that the document is not authentic and genuine.
- c) The two accused do not know the writer of the letters or the persons they are addressed to. No relationship has been shown between the accused and these persons and no such relationship could be shown. The document is a two page computer printout that has not been signed and lacking indication of ownership which could have been written by anyone.
- d) The statements in this document relate that Daniel Bekele and Netsanet Demissie are contact persons for Kinijit party as communicated to a person named Elias Kifle by Ato Hailu Shawl. Since the accused do not know the writer of the letters or the persons they are addressed to and it has not been shown that we have any relationship with these persons, the statements in a letter written by a person we do not know to other persons unknown to us about what a third person said about us is no more than hearsay. Thus, it is a piece of paper that cannot be given evidentiary value by any standard.
- e) In addition, the witnesses for the defense have confirmed that the contents of this documentary evidence submitted by the Public Prosecutor are totally false. That is:-
  - The chairman of the Kinijit party and 2nd defense witness Engineer Hailu Shawl who allegedly made the statements in the document has testified that he did not make such statement, that he did not have any organizational relationship with the person named Elias Kifle, that the reference to the two accused as contact persons for the Kinijit is erroneous and that he only came to know the accused after being charged jointly.
  - The other defense witnesses from among the high level leaders of the Kinijit party the 75th witness Dr Yaekob H/Mariam, the 118th witness Engineer Gizachew Shiferaw, the 151st witness Wt Birtukan Mideksa, and the 153rd witness Dr Berhanu Nega have also confirmed that the reference

to the two accused as contact persons for the Kinijit party is incorrect and that the accused are not in any way associated with the party.

- The opinions of the Public Prosecutor regarding the witnesses called by the defense on this issue lack any basis in law. The fact that these witnesses were defendants does not preclude them from giving testimony on matters within their knowledge. Their testimony was direct and clear. They have testified that the reference to the two accused as contact persons for the Kinijit is erroneous.

#### **4.4 Regarding the Prosecution's Documentary Evidence Number 65 and Witnesses (Adane Bekele and Wondosen Seyoum)**

4.4.1 The three pages allegedly given by Netsanet Demissie to the prosecution witness Adane Bekele and submitted by the Public Prosecutor as additional evidence number 65 are the other deplorable works of fiction. These are three pages of computer printout which contain gossip about the ruling party and its leadership from newspapers, internet sources and different radio stations. The prosecution witness named Adane Bekele is the sole witness claiming that he had received these papers from Netsanet Demissie for distribution to the public.

4.4.2 We have discussed the testimony of prosecution witnesses Adane Bekele and Wondosen Seyoum under items 2.2.6 and 2.2.7. The 94th accused Daniel Bekele have never seen these two prosecution witnesses. The 95th accused Netsanet Demissie is acquainted with the prosecution witness named Adane Bekele only as a neighbor. They have no relationship beyond being neighbors. We present the following statements from the testimony of these two witnesses as examples to show that their statements lack credibility and are falsehoods. We also implore the Court to assess their testimony in light of the testimony and documents presented on the activities and personalities of both of us the accused.

- a) Though both witnesses claim to have mobilized and organized the public for mutiny as directed by Daniel Bekele and Netsanet Demissie, both have stated that there is not even a single person who has knowledge of what they have said and claim to have done;
- b) While both claim to have mobilized and organized people in their own neighborhoods, both of them stated that they do not know the name of even a single person among those they allegedly mobilized or organized;
- c) They claim to have convinced, mobilized and organized strangers they met on the road, in taxis and in bars;

- d) The witness named Adane Bekele stated that he convinced fifteen or more persons in a single bar and made them ready for mutiny;
- e) The witness named Adane Bekele, who allegedly met Daniel Bekele only three times - first for 10-15 minutes and on the road side on two other occasions, claims that he gave him instructions on mobilizing and organizing the public within this time;
- f) The witness named Wondosen Seyoum, who allegedly met Daniel Bekele only two times - first for about 2 minutes and on the road side on the other occasion, claims that he gave him instructions on mobilizing and organizing the public within this time;
- g) Both witnesses, who claim to have been in hiding before giving themselves up to the Police, stated that no one in their families knows of this and do not know the names of police officers they talked to. In general, they stated that there is no one other than themselves who has knowledge of the facts they testified to.
- h) In particular, the witness named Adane Bekele, despite claiming to have mobilized and organized the residents of the area where he lived for 25 years and worked in the Kebele administration, stated that he does not know the name of even one person and that he did not tell anyone about his activities including his friends;
- i) When asked the identity of the persons to whom he distributed the fliers allegedly given him by Netsanet Demissie, the witness named Adane Bekele replied that he distributed the fliers to unknown people he met in a taxi;
- j) The witness named Wondosen Seyoum stated that Daniel Bekele approached him in a cafe after overhearing conversations with a third person, told me to mobilize and organize the public for mutiny and I acted accordingly;
- k) After stating that he did not know Daniel Bekele until meeting him for about two minutes while leaving a cafe, the witness named Wondosen Seyoum claimed that he received instructions from the accused on mobilizing and organizing the public within the two minutes;
- l) Asked how he met Daniel Bekele for the second time the witness named Wondosen Seyoum has given contradictory accounts saying: I went to his office and asked if Ato Daniel works there, I left a missed call on his mobile phone from a retail shop and met him, I only left a missed call but did not talk to him, I did not go to his office but met him on the road to the office, I called him and asked him to meet me on the road etc ...

- m) The witness named Wondosen Seyoum claims to have received two hundred birr from Daniel Bekele to organize the public for mutiny and to have used the money to do accordingly by asking passersby if they want change;
- n) After claiming that he was in hiding this witness named Wondosen Seyoum failed to name the persons he was hiding with or the address of his hiding place;
- o) After claiming to be a member of the EDUP party this witness named Wondosen Seyoum stated that he did not inform anyone in his party of his dealings with Daniel Bekele and that there is no one besides himself whom he has told about his alleged relationship with Daniel Bekele;
- p) After stating that he has only seen Daniel Bekele on two occasions this witness named Wondosen Seyoum contradicted himself by saying 'I have seen Daniel once in Tamirat's office; I have seen him standing on the roadside with Tamirat after we were introduced, I saw Daniel standing on the roadside with Tamirat before I met him in the cafe, ...' (He was intended to testify that he has seen Daniel Bekele with the other accused Tamirat Tarekegn. Tamirat Tarekegn is one of the accused from the Kinijit party. I Daniel Bekele have never seen this person before being detained. The prosecution witness has failed to testify as coached and given conflicting testimony. Ato Tamirat Tarekegn was called by the accused as the 140th defense witness and testified that he has never laid eyes on Daniel Bekele before being arrested and charged together.) The Public Prosecutor has further added to the unreliable testimony stating that the witness may have confused their identity and thought that he has seen them together.
- q) This witness named Wondosen Seyoum, after repeatedly claiming that he has given his statement to the police as a suspect and as a witness, stated that he has given his statement only once;
- r) The admissions of the witness named Adane Bekele about accepting payment to engage in illegal activities indicates that he is the kind of person who would bear false testimony for consideration;
- s) The 15th defense witness Ato Tekalegn Tolosa, the 17th witness Ato Tesema Abate and the 90th witness Ato Seyoum Berhanu, who are long time neighbors of the 95th accused Netsanet Demissie have consistently testified that the accused Netsanet Demissie is known in his neighborhood for his good manners and upbringing, is not associated with any anti-social or anti-peace activities, and does not have any relationship with the person named Adane Bekele with whom he has nothing in common;

- t) The testimony of the prosecution witness named Adane Bekele claiming that Netsanet Demissie has given him directions from his family residence in the neighborhood to coordinate and lead the disturbances in Addis Ababa on the 1st and 2nd of November 2005 has been shown to be false through the testimony of the 132nd defense witness Ms Maria Hose. This defense witness has confirmed that Netsanet Demissie and other colleagues spent the days in question in her house and did not even go to their offices due to the disturbances in Addis Ababa. The remarks given by the Public Prosecutor misinterpreting the issues testified to by this witness is dismaying. The witness has testified clearly, without any contradictions and consistent with the issue at hand.
- u) As could be inferred from the sample news report submitted by the accused under documentary defense evidence number 20.1, the fliers which the prosecution witness named Adane Bekele falsely claims to have received from Netsanet Demissie were nothing more than gossip published on newspapers and internet websites at the time that could be written and distributed by anyone.

4.4.3 We have shown through the testimony of defense witnesses and documentary evidence that the accusations of instigating and supporting the youth to engage in mutinous activities are completely baseless, that our working relationship with the youth and youth associations has been completely lawful and peaceful, and that we have never directly or indirectly participated in any anti-peace or illegal activity.

More specifically, the following major facts have been proved by the testimonies of the 4th defense witness Kassahun Belete and the 79th defense witness Eyob Balcha, who had working relationships with the accused in their position among the leadership of youth associations, and their colleague the 123rd defense witness Ato Fikre Zewdie as well as through documentary evidence submitted by the accused:-

- a) That the accused had completely legitimate and peaceful working relationship with the youth organizations;
- b) They received financial and technical assistance for various projects from the 94th accused Daniel Bekele, who was the policy director with Action Aid, and that the youth associations never faced any direct or indirect pressure in connection with such support; that they have never been influenced to initiate the youth for illegal and anti-peace aims or otherwise engage in such activities; and that they have never observed such intentions or actions on the part of the accused;

- c) That the 94th accused Daniel Bekele had delivered a speech as an invited guest in a meeting organized for students of the Addis Ababa University by the youth association in which the 79th accused is a member and did not make any statements or act to instigate the youth for any anti-peace or illegal ends;
- d) That the activities of the two accused while working with the youth associations in the Global Call for Action against Poverty were completely lawful and peaceful and never engaged in anti-peace or illegal activities;
- e) The documents submitted as samples under defense documentary evidence number 19 demonstrate that the accused had a proper and legitimate relationship with the youth and youth associations

(A detailed description of the issues proved by the documentary evidence is given on the description of documentary evidence submitted on 2 August 2007)

In general, the testimonies of these two prosecution witnesses show that they have born false testimony and further lay bare the drama organized to falsely incriminate the two accused. As stated above, we implore the Court to examine the testimonies of these two prosecution witnesses in light of the more credible defense evidence on the actions and personalities of the accused.

#### **4.5 Regarding Prosecution Witnesses (Meseret Worku and Nigist Mekuanent)**

4.5.1 These two prosecution witnesses, Meseret Worku and Nigist Mekuanent, are members of the Addis Ababa Women's Association. In their membership in the Addis Ababa Women's Association the accused considered these witnesses to be colleagues and had good working relations with them. Though the accused have in good-faith believed so, they have given false testimony against us. Despite the attempts of these witnesses to present a demonized picture of the beneficial work we have been doing together, their testimony lacks credibility, is given in bad-faith and, as we have come to understand, amounts to nothing more than personal opinion based on personal hatred. We will subsequently show that the testimony of these witnesses does not relate to any concrete fact and lacks both competence and credibility in relation to the charges brought against us the two accused. We will present samples from their testimonies and describe the concrete facts proved by defense witnesses and documentary evidence. As stated above, we implore the Court to examine the testimonies of these two prosecution witnesses in light of the evidence on the actions and personalities of the accused.

- a) The prosecution witness named Wro Meseret Worku has admitted that her testimony is a personal opinion;
- b) Asked during cross examination to identify which one of the accused made the statements to which she testified to the same prosecution witness has given conflicting testimony and finally admitted to confusing the two accused;
- c) The same prosecution witness has stated that her complaints against the accused is for assigning her far from her home during election monitoring;
- d) In responding to clarification questions from the Court this witness repeatedly stated that her only grievance against the accused is for assigning her to the Lideta area while her home is in Akaki-Kality in their responsibility in assigning election monitors confirming her testimony to be based on personal grievances and hatred;
- e) The fact that this prosecution witness, while on the one hand criticizing the training organized by the civil society for election monitors, stated that she does not remember the Code of Conduct for Election Monitors on which she has been trained for two full days says a lot about her;
- f) The statements of the prosecution witness about her grievances on the 94th accused Daniel Bekele show that her testimony is based on personal grievances and hatred.

In general, the statements made by these two prosecution witnesses sufficiently demonstrate that they have testified in bad-faith, from personal hatred and falsely. The erroneous nature of the testimony given by the prosecution witness named Wro Nigist Mekuanent on the civil society meeting held on August 5, 2005 at the Red Cross auditorium has been sufficiently established under items numbered 4.2.2 - 4.2.8. We will now proceed to show that the testimonies of Wro Meseret Worku and Wro Nigist Mekuanent on the civil society election monitoring effort and the participation of the accused has been discredited by the testimony of defense witnesses.

- 4.5.2 The false testimony of these two witnesses on the civil society election monitoring effort and the participation of the accused is to be recalled. (Items numbered 2.2.4 - 2.2.5)

The testimonies of the 11th defense witness Mr Richard Chambers, the 59th witness Wt Eyerusalem Teshome, the 78th witness Ato Debebe H/Gebriel, the 89th witness Wro Saba G/Medhin, the 123rd witness Ato Fikre Zewdie, the 125th witness Dr Konjit Fekade, the 134th witness Ato Manyawkal Mekonnen and the 155th witness Wt Bezuwork Ketete who have intimate

knowledge of the civil society election monitoring initiative and participated in the process at various levels prove the following major facts:-

- a) The civil society election monitoring process in which the accused were involved was conducted in a fully lawful and peaceful manner;
- b) The participation of the accused in the working process was fully lawful and peaceful;
- c) The accused have not made statements or engaged in actions that are illegal, anti-peace or politically partial in any of the meetings conducted in connection with this process including the meetings held at the Global Hotel, the Ethiopia Hotel or the CRDA auditorium;
- d) More specifically, the testimony of the prosecution witness named Wro Meseret Worku in relation to statements made by the accused in the meetings held at the Global Hotel and CRDA auditorium is incorrect and the 94th accused Daniel Bekele was not even present in the meeting at the Global Hotel; the testimony of the prosecution witness named Wro Nigist Mekuanent on the meeting held at the Ethiopian Hotel has similarly been established to be incorrect;
- e) The civil society election monitoring process in which the accused were involved was conducted in a highly professional, politically impartial and transparent manner;
- f) The 11th witness Mr Richard Chambers, who was an advisor with the National Electoral Board and had worked closely with the 95th accused Netsanet Demissie during the elections, has established that the participation of Netsanet Demissie in the process was absolutely on a par with professional standards, consistent with legal procedures, conducted peacefully and free from political partiality;
- g) In general, credible testimonies of defense witnesses have proved that the participation of the two accused in the civil society meetings relating to the election monitoring process, including the meetings at the Global Hotel and the CRDA auditorium mentioned by the prosecution witness named Wro Meseret Worku and the meeting at the Ethiopia Hotel mentioned by the prosecution witness named Wro Nigist Mekuanent, were lawful and peaceful; that we have never made statements like those testified to by the prosecution witnesses and that we are responsible citizens who have properly fulfilled our responsibilities.

4.5.3 In addition, the documents submitted as defense documentary evidence numbers 3 to 16 give concrete proof that the civil society election monitoring process in

which the accused were involved was conducted in a lawful and peaceful, highly professional, politically impartial and transparent manner from its inception in the concept paper and the first consultation meeting to its final activity.

(A detailed description of the issues proved by the documentary evidence is given in the description of documentary evidence submitted on 2 August 2007)

4.5.4 As described above in much detail the evidence submitted by the Public Prosecutor, let alone proving the charges, indicates that the charges were instituted inappropriately. According to article 23 of the Criminal Code, a crime is said to have been committed when the legal element, material element and moral or state of mind element are cumulatively present. Thus, in the charges brought against the accused for allegedly conspiring to attempt to abolish the Constitution and the constitutional system in violation of articles 238 and 258 of the Criminal Code, the Public Prosecutor was expected to prove the existence of the material element and moral element as stipulated in the Criminal Code beyond reasonable doubt.

4.5.5 While the material elements constituting the crime alleged by the Public Prosecutor are those indicated in articles 238 and 258 of the Criminal Code, the moral element indicated under article 58 additionally requires the Public Prosecutor to prove that the crime has been committed intentionally. (Since the crime alleged by the Public Prosecutor to have been committed does not cover negligent acts, article 59 is not relevant in this case)

The defense evidence submitted by the accused has proved that the evidence submitted by the Public Prosecutor, taken separately or jointly, does not prove the existence of the elements constituting a crime in accordance with the above described mandatory provisions of law.

Both of the accused, let alone being considered to have intentionally and with full knowledge attempted to overthrow the Constitution and the constitutional order by violence, conspiracy or any other unlawful means, are individuals who have made significant contributions to constitutional processes as confirmed by concrete evidence.

4.5.6 How can citizens who have been working without rest taking up peaceful and democratic positions calling for all political parties to join parliament by accepting their uncontested seats on the basis of the results to be announced by the Electoral Board and to establish the government that would receive power as per the constitutional system, complaints to be resolved through judicial processes, and for competing political parties to operate legally, properly, in good faith and truthfully as indicated above be charged with attempting to

overthrow the Constitution and the constitutional order by violence, threats, conspiracy or unlawful means?

#### **4.6 Regarding the Civil Society Initiative and Freedom of Expression**

4.6.1 In the charges against the two accused the Public Prosecutor has stated that the accused have used the civil society organizations they represent for political purposes outside their established objectives.

4.6.2 The first of these activities is the Ethiopian Civil Society Election Monitoring while the second was the Ethiopian Civil Society Peace Plan Initiative. These are activities usually undertaken by civil society organizations all over the world. Though non-governmental organizations were widely associated with humanitarian assistance in the past few decades of our country's history, they have come to take up an active role in the social, economic and political life of the society.

4.6.3 Undeniably, civil society organizations are non-political in the sense that their objective is not assuming political power as is the case with political parties. However, civil society organizations all over the world are engaged in the following areas just to mention a few:-

- promotion of human rights and good governance;
- conflict prevention, resolution and peace building; and
- democracy building.

On the basis of constitutionally recognized rights and express provisions of policy documents issued by the government civil society organizations in Ethiopia participate in and are encouraged to engage in these and other legitimate and peaceful areas. In the context of this reality it is a mistake to consider the activities conducted by the civil society organizations as outside their objectives.

It is particularly a grave error to consider the engagement of civil society organizations in election monitoring as illegal while their right to monitor the elections has been affirmed by the Federal High Court and Supreme Court when it was challenged by the National Electoral Board.

It is also widely known that the historic debates among political parties that made the May 2005 elections unique in our history were organized and moderated by civil society organizations. This commendable undertaking alone is ample proof that electoral issues are within the purview of civil society engagement despite being political in nature.

- 4.6.5 Similarly, the efforts of the civil society towards the peaceful resolution of the political conflict and impasse that occurred following the May 2005 elections fall within the internationally accepted and encouraged areas of engagement for civil society.

The particulars of the civil society call for peace issued on 9 August 2005 have been described under item 4.1.5 of these concluding statements. Unless the civil society is expected to be partial to one side, the call for peace was obviously a lawful and peaceful recommendation. Moreover, many observers agree that the regrettable events following the May 2005 elections may not have come about had the civil society call for peace been accepted by all parties.

- 4.6.6 Similarly, the Carter Center which has been given special recognition by the government for its involvement in observing the elections, has stated the following in its report of September 2005:-

"... The criteria issued by the Electoral Board for local observers were unnecessarily stringent. They were able to monitor the elections only after the High Court ruled against the directive on the eve of the elections. However, this was done at the last hour when local observers could not deploy their observers and monitor the elections. Had more local observers participated [in the process], there would have been fewer complaints and the problems and confusions may have been avoided."

(Defense documentary evidence number 16.1, the Carter Center, September 2005, page 4 of the report)

- 4.6.7 In general, the civil society initiatives in which both the accused participated were lawful, peaceful and permitted activities with nothing to imply that the civil society has operated outside its objectives. Besides, the civil society call for peace is a document issued by the civil society in general rather than a personal document authored by Daniel and Netsanet. The initiative is one we participated in along with a large number of colleagues rather than our private undertaking.

In addition, even if anyone claims that the civil society call for peace has positive or negative implications, the idea represented in the document as well as any positive or negative opinions on the document are simply manifestations of the right to freely hold and express one's opinions. The existence of opinions on the negative implications of the idea represented in the document does not make it a crime or preclude the right to freely hold and express one's opinions.

- 4.6.8 Similarly, though the testimonies of Wro Meseret Worku and Wro Nigist Mekuanent on the statements allegedly made by Daniel Bekele and Netsanet Demissie are totally false, these alleged statements are to be seen under the right to freely hold and express one's opinions.

According to the testimonies of these prosecution witnesses, we are accused of saying "... the elections have been defrauded, the Electoral Board is not impartial, [and] a coalition government should be established". As we have described above and amply proved by defense witnesses the testimonies of these prosecution witnesses are completely false. However, pronouncing the statements allegedly made by the accused is basically not a crime.

Everyone has the right to hold any opinion on whether the elections have been defrauded or not, whether the Electoral Board is impartial or not, or whether a coalition government should or should not be established and express his views in a peaceful manner.

- 4.6.9 No one should be considered a criminal for holding and expressing an opinion on national issues unless the person has attempted to implement such opinion by violating the rights of others through mutiny, threats or similar illegal means.

Asked if the accused have made threats beyond the above statements, the prosecution witness named Wro Nigist Mekuanent has testified that they made no threats. As we have sufficiently proved with defense witnesses and documentary evidence, the accused have not been engaged in any criminal plans or actions. We have only endeavored towards the resolution of the political impasse in our country. The civil society meetings we participated in were democratic forums where concerned citizens feely discussed and consulted in an absolutely peaceful and lawful manner. The participants in these forums have only exercised their right to hold and express opinions and did not commit any crime. Even the prosecution witnesses have testified that there were no threats or illegal activities in these meetings.

- 4.6.10 As we have described above examination of the charges against the accused and the overall proceedings of the case indicate that the issues presented to the Court are:-

- freedom of conscience and expression;
- freedom of association and citizens' rights to participate in national affairs;  
and
- freedom of Ethiopian civil society organizations to participate in democratic system building.

We the two accused have only used these rights and freedoms responsibly and conducted beneficial activities and have not committed any crime.

#### **4.7 Testimonials to the Character and Contributions of the Accused**

4.7.1 The testimony of witnesses and documentary evidence described above have adequately established the absolutely peaceful and lawful participation and contributions of the accused in the activities relating to the charges. In addition, the character testimony of witnesses and documentary evidence bear witness to the peaceful and lawful character of the accused contrary to the anti-peace, mutinous and illegal character and actions alleged by the Public Prosecutor in the statement of charges.

4.7.2 The 10th defense witness Professor Shibru Tedla, the 11th witness Mr Richard Chambers, the 22nd witness Ato Wondosen Sentayehu, the 53rd witness Ato Abeber Worke, the 120th witness Professor Tilahun Teshome, the 123rd witness Ato Fikre Zewdie, the 125th witness Dr Konjit Fekade, the 136th witness Ato Mamo Wudeneh, the 141st witness Ato Tamirat Kebede, the 146th witness Professor Bahiru Zewdie, and the 155th witness Wt Bezuwork Ketete have consistently testified to the good character and peaceable nature of the accused.

4.7.3 Moreover, the documents submitted under documentary evidence number 21 show the peaceable nature, character and contributions of the accused. These items of character evidence especially establish the following facts:-

- a) Professor Guy Goodwin Gill has given his testimony on the 94th accused as indicated under evidence number 21.1. The Professor, who is a senior international law researcher and scholar with the renowned University of Oxford in England, has served as Director of the European Studies Institute with the University of Oxford (1997 - 2002), Chairman of Refugee Law Studies with the University of Amsterdam (1994 - 2000), Professor of Law at the Carlton University of Canada (1989 - 1994), and a legal advisor with the United Nations High Commissioner for Refugees.

In addition, the Professor is serving as an advisor to various governments and international organizations including the United Nations, the European Union and the International Parliamentary Union on matters of international law, human rights and the rights of refugees.

The Professor has authored a number of widely celebrated titles among which the books on International Law, Free and Fair Elections - International Law and Custom, Basic Human Rights Documents, Child Soldiers, and Trans-

boundary Movement of People under International Law have been published by the Oxford University Press.

After indicating that he had advised the 94th accused Daniel Bekele while he was conducting graduate studies at the University of Oxford through the Chevening scholarship program of the British Department of International Development, Professor Goodwin Gill testified to the following:-

- Daniel Bekele graduated with honors from the University of Oxford and transferred to the doctoral program for exceptional merits in his studies.
  - That the Professor had been impressed by Daniel Bekele's discipline, honesty, and reliability; his belief that Daniel would not entertain such ideas let alone instigate or encourage mutinous acts; that Daniel Bekele is a person who has a strong and fundamental belief in the rule of law and is committed to human rights, human freedom and lawful democratic change; that he is in short a person whose professional competence and integrity in the civil society sector is evident.
- b) Oxfam Canada, an international development and human rights organization with head office in the Canadian capital, Ottawa, has given the following testimony about the 94th accused Daniel Bekele as indicated under evidence number 21.2:-
- While serving as a member of the National Advisory Board in the Horn of Africa Capacity Building Program of Oxfam Canada, Daniel Bekele has made substantial contributions in making the program appropriate for the Horn of Africa.
  - About his contributions for projects in Ethiopia especially in relation to initiating community resource centers and community radio.
  - About his insightful contributions in designing the long term capacity building policy of Oxfam Canada in the Horn of Africa.
  - That they have found Daniel Bekele to be a peaceable person who respects people and their associations or organizations, and committed to resolving differences through discussion and negotiation in their long lasting working relationship. That they affirm that he is always committed to honest dialogue, has never had or promoted any hidden agenda, and does not support any idea, character, stand or action involving mutiny and confrontation.

- That Daniel Bekele is a peaceful man of principles who strives to enhance trust among people, is deeply concerned about his compatriots and is still seen as a good model among staff of Oxfam Canada.
- c) Ms Leslie Mishal who is head of Pact, an international development organization with head office in Washington, has given the following testimony about the 94th accused Daniel Bekele as indicated under evidence number 21.3:-
- His contributions to the Ethiopian civil society in the ten years she knew Daniel Bekele.
  - That Daniel Bekele is a highly disciplined, compassionate and impartial individual who works with commitment and fortitude for Ethiopia and its citizens, who strives to find solutions acceptable to all sides, is loyal to the legal system and processes, who persistently seeks knowledge and justice, is peaceable, who abhors confrontation, and believes in the resolution of differences through mutual understanding and respect.
- d) The 11th defense witness Mr Richard Chambers is an official of Electoral Reform International Services (ERIS), an international organization which played an important role in the May 2005 elections, and was an advisor to the National Electoral Board. He has testified about the 95th accused. Mr Richard Chambers has been a lawyer in England and Wales, was engaged in conflict resolution between 1995 and 1999, and has been working on election issues in more than 20 countries since 1995. He has also been an advisor on electoral issues for various governments. Indicating that he was closely following up the activities of the coalition of local civil society organizations for election monitoring coordinated by the organization which the 95th accused Netsanet Demissie led while working in Ethiopia during the May 2005 elections, Mr Richard Chambers has testified to the following:-
- He found Netsanet Demissie to be committed to conducting civil society activities impartially, in support of resolving disputes peacefully, and respect and recognition of legal procedures, constitutional processes and the rule of law.
  - In their relationship in connection with the electoral process, he has repeatedly ascertained the professional competence, impartiality and honesty of Netsanet Demissie and has specially been able to clearly observe that he has been conducting election related activities impartially.

- His deep felt appreciation for the commitment of Netsanet and the organization led by him to the law - by opting to defend their rights in Court rather than making a heated political issue of the situation when the National Electoral Board put restrictions on local observers; and for the respectful working relationship Netsanet maintained with staff of the National Electoral Board during the electoral process.
  - Having received beneficial ideas from Netsanet on the legitimate procedures for the investigation and determination of the numerous complaints lodged with the National Electoral Board while working with him in the post election period; that Netsanet Demissie supported the establishment of the investigation bodies; that the experiences of Netsanet Demissie and his colleagues in resolving disputes legally has been taken as a good practice during various meetings within the Electoral Board; and that Netsanet Demissie has been encouraging all parties to participate in the legal compliant investigation process.
  - That, based on his observation that Netsanet Demissie was deeply concerned about the worsening political crisis and believed that all parties need to resolve the crisis in a peaceful manner. As well as his participation in such peaceful efforts, Netsanet Demissie is a peaceful citizen who deeply believed in democracy, human rights and rule of law and worked in honesty and fairness.
- e) As indicated under documentary evidence number 21.6, the other witness who testified about the 94th accused Netsanet Demissie and the 95th accused Daniel Bekele is Mr Salil Shetty. The witness who is director of the Millennium Campaign with the United Nations has testified to the following:-
- Knowing Netsanet Demissie and Daniel Bekele for more than three years through their participation and contribution to the international anti-poverty campaign conducted by civil society; that both of the accused have been unswervingly working towards the millennium development goals; that they are highly competent individuals with high moral and disciplinary standards who believe in human rights and the rule of law; and, that the witness personally knows the two accused to be of tranquil and insightful character.
  - That, based on direct contact with Netsanet Demissie and Daniel Bekele as well as the opinions of other persons who know them, both of the accused are honorable citizens who untiringly endeavor and even sacrifice their personal interests for their country especially the poor social sections.

f) As indicated under documentary evidence number 21.7, the other witness who testified about the 94th accused Netsanet Demissie and the 95th accused Daniel Bekele is Dr Kumi Naidoo who is executive director of the international civil society organization named CIVICUS. Dr Kumi Naidoo, who received doctoral qualifications in political science from the University of Oxford in England, has served as the Executive Director of the coalition of South African civil society organizations, was director of the Election Commission during the first multi-party elections in South Africa, and was one of the key actors in the anti-apartheid struggle. The witness has also served as a university lecturer and researcher, has been nominated by the Secretary General of the United Nations to the civil society partnership forum and is a member of the advisory boards of UN organizations and the Clinton Foundation. In his testimony about Netsanet Demissie and Daniel Bekele, Dr Kumi Naidoo has testified to the following:-

- Based on close and direct knowledge of the accused while working together in the international campaign against poverty as well as from the accounts of colleagues, the witness believes that both Netsanet Demissie and Daniel Bekele are committed to peaceful civil society activities; and, that the witness was shocked upon hearing that they had been arrested.
- That both Netsanet Demissie and Daniel Bekele are renowned individuals appreciated and honored in the campaign against poverty not only in their own country but also internationally.
- That the witness has come to Ethiopia and spoke with Prime Minister Meles Zenawi with the honorable Archbishop of Cape Town, South Africa and the director of the Millennium Campaign with the United Nations and visited Netsanet Demissie and Daniel Bekele in prison with permission from the Prime Minister.
- That the witness does not believe that either Netsanet Demissie or Daniel Bekele would engage in illegal civil society activities and knows both the accused to be individuals of high moral caliber who would unwaveringly stand for their beliefs; that they believe in peaceful struggle as the only way to achieve justice, seek peace in their country and are always concerned about their country.
- That Netsanet Demissie and Daniel Bekele are among those select individuals committed to democracy and development whom the witness has come to know in nine years of service as the Director of CIVICUS and hopes that they will be released and continue their beneficial contributions to their country.

g) As indicated under documentary evidence number 21.8, the other witness who testified about the 95th accused Daniel Bekele is Ms Sophie Khan who was the Deputy Director in the Ethiopia office of the Carter Center which participated in the May 2005 elections as an international observer. Ms Sophie Khan, who received her first degree from the British Columbia University in Canada and graduate degree from the international training institute in the US, has been working on electoral issues with the United Nations, the Carter Center, the Canadian Relief and Development Agency (CRDA) and other organizations. The witness has been involved in election in Indonesia, East Timor, the West Bank in Palestine as well as the May 2005 elections in Ethiopia. Ms Sophie Khan has testified to the following:-

- The witness has on various occasions met and discussed with Netsanet Demissie while working in Ethiopia and the organization he led was among those noted for their competence and impartiality and consulted by the Carter Center.
- That the witness respected Netsanet Demissie's opinions since his privately and public given opinions were always balanced and since he never made confrontational statements or provided inaccurate information; that he was among the individuals contacted by Jimmy Carter when the President came to Ethiopia; and, the witness holds Netsanet Demissie in high regard for his professional and realistic opinions on the political situation in Ethiopia.

#### **4.8 On the Competence of Defense Evidence Submitted by the Accused**

4.8.1 In general, the defense witnesses and documents submitted by the accused to defend the charges against them are of high competence and weight.

The defense witnesses have educational qualifications ranging from first degree to doctoral degrees and professorships. Among them are individuals who have served holding senior positions in government agencies, non-government organizations, international organizations, universities, research establishments, and institutions for the administration of justice. Some have been judges from the first instance to the Supreme Court levels, prosecutors, university lecturers, as well as internationally recognized intellectuals in history, law, science, politics, journalism and the social sciences; Some of the witnesses are highly respected Ethiopians, prominent and internationally renowned scholars and leaders of international organizations.

4.8.2 In comparison the educational level among witnesses for the prosecution ranges between barely literate to high school graduate. Similarly, one of the prosecution witnesses has stated his status as unemployed while the other is a

local broker. Two prosecution witnesses have indicated that they are members of the Executive Committee of the Addis Ababa Women's Association.

4.8.3 The more than 300 participants of the meetings at the Ethiopia Hotel, Global Hotel, CRDA and the Red Cross auditoriums could have been called as defense witnesses and established the same facts testified to by the witnesses presented by the accused. The accused have chosen to submit the list of participants at these meetings so as not to take up the Court's time with repetitive testimony on the same issues. Similarly, hundreds of character witnesses could have been called to testify on the lawful and peaceful activities of the accused and their peaceable character.

4.8.4 In relation to documentary evidence documents showing the process of civil society activities in which the accused participated, copies of the numerous newspaper interviews with the accused, various documents pertaining to civil society activities in which the accused participated, samples of the contributions of the accused and testimonials to the character of the accused have been submitted.

4.8.5 The accused could have submitted much more numerous pieces of documentary evidence. However, as we have already informed this Court, we were forced to exclude some of the evidence since we could not collect documents from our computers due to various obstacles.

While we the accused have requested the Court to give us speedy justice with belief that the evidence we have submitted even under these difficult circumstances is sufficient, we also believe that the Court will take into consideration the difficulties we faced in defending the charges brought against us.

4.8.6 Concerning the character testimony we submitted to the Court, the statements of the Public Prosecutor on the inadmissibility of such evidence is grossly erroneous and divorced from the basic tenets of the law of evidence.

Although Ethiopia does not yet have a law of evidence, testimonials as to the good character of the accused are always relevant based on the basic principles of evidence, the draft law of evidence, the extensive judicial practice and principles of the administration of justice. (This has been indicated under Article 47 of the Draft Law of Evidence)

4.8.7 The admissibility of defense evidence on the character of the accused in criminal cases is the recognized and normal procedure in the criminal and evidence laws of all countries. The accused is especially permitted to prove his/her good character, reputation and contributions on matters relevant to the charges.

Accordingly, the accused have submitted worthy testimony on their peaceable nature, respect for the law and proper procedures, their good character and their national and international reputation on matters directly related to the charges against them. Those present within the country have testified before the Court while those abroad have sent written testimonials.

4.8.8 Had there been any such evidence, the Public Prosecutor could have submitted evidence on the bad character of the accused (as indicated under Article 47/2/ of the Draft Law of Evidence). Having failed to refute the facts proved by the accused, the Public Prosecutor has instead opted for unsubstantiated arguments on the admissibility of defense evidence. Instead of cross-examining the defense witnesses, the Public Prosecutor has objected to the admissibility of character witnesses for the sake of argument. In addition to the basic fallacy in the prosecution argument on the admissibility of the evidence, any objections on these grounds should have been raised when the witnesses were called rather than waiting until after their testimonies have been heard.

4.8.9 The Public Prosecutor has committed grievous error in relation to the defense documentary evidence especially as regards those related to the activities of the accused as members of civil society and the numerous newspaper interviews with the accused.

Since the primary duty of the Public Prosecutor is to ensure justice, the prosecution was expected to examine and comment on defense evidence with politeness, honesty and from the perspective of fairness as would a judge. It is a dereliction of duty and professional responsibility for a prosecutor to engage in hair splitting, twisting words, quibbling and misinterpretation just to criminalize the accused.

4.8.10 The purpose of evidence is basically to establish a fact. Thus, any mentally competent person let alone one knowledgeable in the law can judge the evidence in fairness. We give ourselves up for your judgment if there is any falsehood in the defense evidence.

4.8.11 In contrast, the evidence presented by the prosecution, especially the testimonies of prosecution witnesses Adane Bekele, Wondosen Seyum, Meseret Worku and Nigist Mekuanent as well as the letter allegedly written to Frezer Negash, clearly show the identity of the party arguing from truth.

## **5. Conclusion**

5.1. The provisions of criminal law indicate that a person is guilty only when the charges have been proved beyond reasonable doubt. As such, it is sufficient for

an accused ordered by a court of law to defend criminal charges to cast a shadow of doubt on the prosecution evidence.

- 5.2 The testimony of defense witnesses and documentary evidence submitted by the two accused go beyond creating reasonable doubt on the charges and prosecution evidence and prove our lawful and peaceful participation and contributions in the matters relating to the charges.

In other words, in addition to the Public Prosecutor failing to prove the charges beyond reasonable doubt, we the accused have disproved the charges beyond any reasonable doubt. The charges and prosecution evidence have been refuted in their totality by concrete evidence not only in relation to the meetings and situations specifically mentioned in the charges but also in relation to the actions and character of the accused outside these meetings and situations.

- 5.3 Both of the accused are persons who have been participating in peaceful and beneficial activities in good-faith, in the spirit of nationalism, belief in democracy, human rights and social justice as well as in a responsible manner. Let alone committing a crime, they do not even have criminal thoughts.

- 5.4. As presented in detail, the accused have refuted the charges and evidence submitted by the accused. That is:-

- a. In relation to allegations that the accused have participated in criminal action by taking the aims of a criminal conspiracy to overthrow the government, by showing that we have participated in entirely lawful and peaceful activities as members of civil society and strived towards peace, democracy and development in our country by working towards peaceful resolution of political conflicts;
- b. In relation to allegations of using civil society associations outside their objectives, by showing that the civil society activities the accused participated in were totally legitimate and permitted by courts of law and confirmed by participating civil society organizations as entirely transparent, lawful and peaceful as well as being a beneficial contribution worthy of praise;
- c. In relation to allegations of instigation and making illegal statements, by showing that there were no such actions in the four meetings and refuting the testimony of prosecution witnesses through the testimony of witnesses who attended the meetings; and proving that the accused have never engaged in such instigation, illegal statements or declarations in not only these four meetings but also in other related meetings through the testimony of witnesses who attended the meetings and relevant documents;

- d. In relation to allegations that the accused have instigated and supported the youth to engage in mutinous acts, by showing that the accused have never engaged in any illegal activities, instigation or support for mutiny, or any such act in our working relationship with youth associations and their leadership during the elections, in the positions we occupied in our organizations or through our participation in meetings and other activities around youth issues; and proving our entirely lawful, peaceful and beneficial contributions;
  - e. In relations to claims made by prosecution witnesses Adane Bekele and Wondosen Seyum of having been engaged in mobilizing and organizing people in their neighborhoods and on the roadside under the directions of the accused, by establishing that the 94th accused Daniel Bekele has never met these witnesses; that the 95th accused Netsanet Demissie has never laid eyes on the witness named Wondosen Seyoum; that the 95th accused had no relationship other than being neighbors with the prosecution witnesses named Adane Bekele; above all by showing that the testimonies of these witnesses are totally false; and, by establishing the nationally and internationally recognized good character and contributions of the accused before and during the elections;
  - f. In general, we have not only proved that the charges and evidence submitted by the Public Prosecutor are of doubtful nature by refuting each and every aspect of the issues raised in the charges and prosecution evidence but also proved our innocence from the charges beyond reasonable doubt.
- 5.5 If there be any falsehood or criminal intent in the defense argument and evidence, in any of the activities we engaged in as members of civil society, in our motives relating to the activities that led to these charges or in our honesty, we the accused place ourselves under your judgment.

Being confident of our innocence, we believe that you will grant us our freedom.