KONRAD ADENAUER STIFTUNG

A TRIAL MONITORING REPORT ON FAIR TRIAL STANDARDS IN CRIMES AGAINST CONSTITUTIONAL ORDER AND ANTI-TERRORISM CASES IN LIDETA FEDERAL HIGH COURT

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PART ONE

INTRODUCTION

1.1. Background

Every individual has the right to a fair trial in both civil and criminal proceedings, and the effective protection of all human rights is heavily reliant on the practical availability of competent, independent, and impartial courts of law that can and will administer justice properly at all times.[1] This right has been recognized under the various international instruments[2] in which Ethiopia is a state party and in its national normative frameworks, particularly, under the Federal Democratic Republic Ethiopia Constitution (FDRE Constitution)) and other legislations such as the Criminal Code, Criminal Procedure Code, the Civil Procedure Code and the like.

The Criminal Code defines a number of significant offenses under the topic of *Crimes against the Constitutional Order and the State's Internal Security*. Simply put, outrages against the constitution or the state are prohibited;[3] as are obstructions to the exercise of constitutional power;[4] armed uprising or civil war;[5] attacks on the political or territorial integrity of the state;[6] violations of territorial or political sovereignty;[7] unlawful departure, entry, or residence;[8] and the like. Besides, though it is for temporary purposes, the government has issued a various state of emergency proclamations to defend the Constitution and the constitutional order from threat.[9] Regarding the crimes of terrorism, acts of terrorism and related crimes

1 United Nations, Office of the High Commissioner for Human Rights, and International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, No. 9., 215 (2003).

2 See the Universal Declaration of Human Rights, (1948) [the UDHR]; The International Covenant on Civil and Political Rights, (1966) [the ICCPR]; The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984) [the CAT]; The African Charter on Human and Peoples' Rights, (1981) [AfCHPR].

3 *See* the Criminal Code of Ethiopia, Proclamation No. 414/2004, (9 May 2005), Article 238

4 *Id,* at Article 239.

5 *Id*, at Article 240.

6 *Id,* at Article 241.

7 *Id*, at Article 242.

8 *Id*, at Article 243.

9 *See*, e.g. A State of Emergency Proclamation Issued to Defend the Constitution and the Constitutional Order from Threat, Proclamation No.2/2018, *Federal Negarit Gazette*, 24th Year No.35 ADDIS ABABA 23rd March, 2018.

have been proclaimed under Proclamation No.1178/2020.[10] At the policy level, the Ethiopian Criminal Justice Policy, for instance, insists that the public prosecutor prioritize and prosecute crimes, *inter alia*, on grave crimes such as crimes of terrorism and crimes against the constitutional order.[11]

Cognizant of the availability of fair trial standards in both international and national legal frameworks on one hand and the existence of pending criminal cases on the crime of terrorism and crimes against the constitutional order, this research conducted a trial monitoring on *Fair Trial Standards in Crimes against Constitutional Order and Anti-terrorism Cases in Federal High Courts.*

1.2. The rationale of the Trail Monitoring

The protection of the right to fair trials and their corresponding threats are common in nations with the most modern criminal justice systems, let alone Ethiopia, which has a developing criminal justice system. However, in Ethiopia, the compliance of the trial processes on the suspects or accused of crimes of terrorism and crimes against the constitutional order with the right to fair trial standards has received little public attention. Examining the enforcement of fair trial rights of the arrested or accused individuals, in the Ethiopian courts, particularly, in the Federal High Courts entertaining the cases of terrorism crimes and crimes against constitutional order by considering both the international and national standards with scientific research is not sufficiently conducted to the best of the researchers' knowledge.

1.3. Objectives

This monitoring has both general and specific objectives designed to show the overall emphasis of the research.

1.3.1. General Objective

The general objective of the monitoring is to assess the compliance of the right to fair trials in federal high courts with international human rights standards through trial monitoring of people accused of terrorism and constitutional order.

10 *See* A Proclamation to Provide for the Prevention and Suppression of Terrorism Crimes, Proclamation No.1176/2020, *Federal Negarit Gazette*, 26th Year No.20 ADDIS ABABA 25th March, 2020.
11 *See* the Criminal Justice Policy, Ministry of Justice, 16 (2009).

1.3.2. **Specific Objectives**

The specific objectives are:

- ✓ To explore the rights of suspected or accused persons and fair trial standards under the international instruments and national normative frameworks;
- ✓ To monitor the federal high courts level of protection of the right to fair trials to the persons suspected or accused of the crime of terrorism and crimes against the constitutional order;
- ✓ To examine the practical enforcement of fair trial rights in the Federal High Courts criminal benches that deal with crime against constitutional cases and anti-terrorism cases;

1.4. **Questions to be addressed**

The central question of this monitoring is how far the Ethiopian Federal High Courts ensure the rights of fair trials in the criminal proceedings on crimes of terrorism and crimes against constitutional order in compliance with the international standards and national normative frameworks. In addition, some more specific questions are:

1) What are the elements of the rights of fair trials and their level of protection and recognition under the international instruments and national normative frameworks?
2) To what extent are Ethiopian Federal High Courts protecting and respecting the fair trial rights of those persons suspected of the crime of terrorism and crimes against the constitutional order?
3) Which Federal High Courts benches are more suitable for handling crime against constitutional cases and anti-terrorism cases in accordance with the international and national standards?

1.5. **Significance**

This monitoring report has numerous significance. It helps to identify current practical gaps in ensuring the right to fair trials for the person suspected or accused of crimes of terrorism and crimes against the constitutional order. Based on the identified gaps, it proposes reformative recommendations on how Ethiopia as a state party to core human rights instruments and particularly, the Federal Courts and other criminal

justice actors to rectify the identified incompatibilities. Furthermore, since this kind of research, particularly, trail monitoring, is not common in Ethiopia, it can be used as a baseline for the country's overall legislative and policy reforms on the criminal justice system. Besides, it serves as an evidence-based input to any reform on criminal justice and human rights issues.

1.6. Scope

The right to a fair trial on a criminal charge is thought to begin not just upon the formal lodging of a charge, but rather on the date on which State actions seriously influence the individual concerned. Fair trial guarantees must be maintained from the start of the investigation against the suspect to the conclusion of the criminal proceedings, including any appeal. Often the distinction between pretrial, trial, and post-trial procedures is frequently blurred, and a violation of fair trial standards during one stage may have an impact on another. Though this is the case, due to the time frame issues (the time allotted to conduct this trial monitoring is comparatively shorter) this research only deals with the enforcement of fair trial rights of persons suspected of committing crimes against the constitutional order and crime of terrorism.

Geographically, this trial monitoring is exclusively designed for the federal high courts that have first instance jurisdiction over certain offenses (that are the subject matter of this research). Hence trials at the *Lideta* Federal High Court were the subject of this trial monitoring.

In terms of the scope of the normative standards on the right to a fair trial, the researcher investigates only the standards stipulated by the ICCPR, notwithstanding the availability of additional regional and international norms and principles on the subject as background material. The most significant legal and policy texts in terms of national normative frameworks are the FDRE Constitution, the FDRE Criminal Justice Policy, the FDRE Criminal Code, the Criminal Procedure Code, the Civil Procedure Code, the Federal Courts Proclamation, and others. The substantive and other issues concerning terrorism and crimes against the constitutional order are not the focus of this study. However, they may be mentioned elsewhere in this research for another reason.

1.7. Methodological Approach

1.7.1. Research Design and Rationale

Based on the purpose of the study and the research questions, multiple methodologies; that is, doctrinal and qualitative methodologies have been employed. The researchers have used consecutive methodologies: first, the doctrinal methodology (desk reviews) and then the qualitative methodology (particularly observations and interviews) follows.

Doctrinal research methodology provides "a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments."[12] Moreover, qualitative methodology, which provides a richer and more in-depth understanding of the issue, involves narrative or textual descriptions of the phenomena under study.[13] Since there is a research question that requires a description by understanding, in-depth, and the viewpoints of a research participant, qualitative methods are also necessary. Hence, the greater data gathering method has been trial monitoring or observation.

For trial monitoring, the researchers adopted a *hearing-based* monitoring methodology, i.e. observations drawn from attending single judicial hearings with a more focus on the trial observations. At the trial stage, the proceedings may consist of one or more hearings. The researchers attended the open and permitted court hearings regularly, randomly selecting days and cases to attend.

In addition, the researchers analyzed legislation and information from other official documents and reports. Since most cases are active, the researchers presumed the impossibility of accessing active court files including written judgments.

Throughout the trial observation process, the researchers are expected to observe the core principles of impartiality, objectivity, non-intervention/non-interference, accuracy, informed observation, and confidentiality as part of overall efforts to work constructively with concerned authorities. The monitoring conducted for this research is not to evaluate the innocence or guilt of individual defendants. Rather it intends to monitor general trends and patterns of trial compliance with the international and national legal frameworks stipulated to ensure the right to fair trials. In conclusion, the methodological approaches to conduct this research are a purposive selection of court trials, conducting desk review, and trial observation.

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12 Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17:1 DEAKIN LAW REVIEW, 83, 101 (2012).

13 SCOTT W. VANDERSTOEP & DEIRDRE D. JOHNSTON, RESEARCH METHODS FOR EVERY DAY LIFE: BLENDING QUALITATIVE AND QUANTITATIVE APPROACHES, JOSSEY-BASS, 7-8(2009).

PART TWO

STANDARDS AND PROTECTION OF THE RIGHT TO FAIR TRIAL

2.1. Introductory: *A Brief*

International and regional human rights instruments contain the right to fair trial standards. Hence, the right to be tried for a criminal offense by an independent, impartial, and competent court in accordance with due process standards is an internationally recognized and protected right.[14] It serves as a litmus test for the proper administration of justice. The right to a fair trial is a long-standing widely recognized human right that applies to all criminal offenses, no matter how heinous they are.[15]

The fair trial standards are found in both International and regional human rights treaties. The available standards for fair trial include the Universal Declaration of Human Rights (UDHR),[16] International Covenants on Civil and Political Rights (ICCPR),[17] the European Convention for Protection of Human Rights and Fundamental Freedoms (European Convention), the American Convention on Human Rights, African Charter on Human and Peoples' Rights, (the African Charter). At the national level, various countries including Ethiopia, constitutional provisions guarantee the right to fair trial.

2.1.1. The ICCPR

2.1.1.1 The Right Fair Trial Standards: Pre-Trial-Post Trial

Among these international human rights documents, articles 14 and 15 in ICCPR are the most detailed provisions on fair trial rights and the focus of this research. Hence, the rights enshrined under the ICCPR may be sufficient to show the mandatory

14 International Commission of Jurists, Trail Observation Manual for Criminal Proceedings, Practitioners Guide No.5, 1 (2009).
15 *Id.*
16 UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 10&11, available at: https://www.refworld.org/docid/3ae6b3712c.html [accessed 13 February 2022],
17 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 14&15, available at: https://www.refworld.org/docid/3ae6b3aa0.html [accessed 13 February 2022].

global standards to which state parties are expected to adhere. The ICCPR blatantly protects the rights against arbitrary arrest and detention.[18] The other pre-trial standards stipulated under the Covenant are the right to know the reasons for arrest;[19] the right to legal counsel;[20] the right to prompt appearance before a judge to challenge the lawfulness of arrest and detention;[21] the prohibition of torture and the right to humane conditions during pretrial detention;[22] and the prohibition on *incommunicado* detention.[23]

The very focus of this research will be on the hearing or the trial process standards. In this regard, the ICCPR has also various provisions that establish the standards. It expressly states that equality before the courts should be guaranteed, as is the right to a fair and public hearing before a competent, independent, and impartial body constituted by law, regardless of whether a criminal trial or a civil suit is involved.[24] These rights can be summarized as equal access to, and equality before, the courts. Besides, the other trial standards are the right to a fair hearing and public hearing;[25] the right to a presumption of innocence;[26] the right to prompt notice of the nature and cause of criminal charges;[27] the right to adequate time and facilities for the preparation of defense;[28] the right to a trial without undue delay;[29] the right to defend oneself in person or through legal counsel;[30] the right to examine witnesses;[31] the

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19 *Id*, Article 9(1).
19 *Id*, Article 9(2); *see* also 1992 Resolution on the Right to Recourse Procedure and Fair Trial of the African Commission on Human and Peoples' Rights [hereinafter African Commission Resolution], Paragraph 2(B).
20 *See id*, the ICCPR, at Article 14(3)(d).
21 *Id*, at Article 9(3) & (4).
22 *Id*, ICCPR, Article 7 & 10; *see* also UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, Article 2(2) available at: https://www.refworld.org/docid/3ae6b3a94.html [accessed 13 February 2022]
23 *See* ICCPR, *supra* note 17, Article 7,
24 *See* ICCPR, *supra* note 17, Article 14 (1); see also Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Articles 7(1) and 26, available at: https://www.refworld.org/docid/3ae6b3630.html [accessed 13 February 2022].
25 *See* ICCPR, *supra* note 17, Article 14&15.
26 *Id*, Article 14(2); *see* also Banjul Charter, *supra* note 24, Article 7(1)(b).
27 *Id,* ICCPR, Article 14(3)(a).
28 *Id,* Article 14(3)(b).
29 *Id,* Article 14(3)(c); *see* also the African Commission on Human and Peoples' Right, 4 Resolution on the Right to Recourse and Fair Trial - ACHPR/Res.4(XI)92., Article 2(E)(1). [the African Commission Resolution].
30 *See* ICCPR, *supra* note 17, Article 14(3)(d).
31 *Id*, Article 14(3)(e); *see* also African Commission Resolution, *supra* note 29, Paragraph 2(e)(3).

right to an interpreter;[32] the right against self-incrimination;[33] the prohibition on retroactive application of criminal laws;[34] and the prohibition of double jeopardy.[35]

Many rights, as Article 4(2) of the ICCPR specifies, are *non-derogable*, meaning that they may not be suspended even in times of the most serious public emergency. Of these, the right to life;[36] the right against torture, cruel, inhuman, or degrading treatment;[37] prohibition of slavery, slave trade, and servitude;[38] prohibition on imprisonment on the basis of inability to pay a contractual obligation;[39] the principle of legality in the field of criminal law;[40] the right to recognition as a person before the law;[41] and freedom of thought, conscience, and religion.[42]

According to the Human Rights Committee General Comment No 29, certain of the rights not enumerated in article 4(2) of the ICCPR have components that cannot be lawfully derogated from.[43] These are particularly relevant to human rights in the context of counter-terrorism: all persons deprived of their liberty must be treated with humanity and respect for the inherent dignity of the human person;[44] there is a prohibition on taking hostages, abductions, and unacknowledged detention; and the fundamental requirements of a fair trial.[45]

2.1.1.2. The Right to Fair Trials: At the Hearing Stage

Article 14 of the ICCPR is, without a doubt, the most pertinent to our monitoring. It specifically states that equality before the courts is guaranteed, as is the right to a fair and public hearing before a competent, independent, and impartial authority established by law, regardless of whether the case is criminal or civil.[46]

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32 See ICCPR, *supra* note 17, Article 14(3)(f); *see* also African Commission Resolution, Paragraph 2(E)(4).
33 *Id*, Article 14(3)(g).
34 *Id*, Article 15(1); *see* also Banjul Charter, *supra* note 24, Article 7(2).
35 *See* ICCPR, *supra* note 17, Article 14)7).
36 *Id,* Article 6.
37 *Id,* Article 7.
38 *Id,* Article 8, para.1&2.
39 *Id,* Article 11.
40 *Id,* Article 15.
41 *Id,* Article 16.
42 *Id,* Article 18.
43 *See* UN Human Rights Committee (HRC), CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, 31 August 2001, CCPR/C/21/Rev.1/Add.11, para. 13-16 available at: https://www.refworld.org/docid/453883fd1f.html [accessed 13 February 2022].
44 *See* ICCPR, *supra* note 17, Article 10.
45 *Id*, Article 14.
46 *See* ICCPR, *supra* note 17, Article 14, para 1.

The Covenant also states a number of procedural guarantees that an individual has in the outcome of any criminal allegation made against him or her. The next section elaborates on the meaning of the rights stated in Article 14 in the order they occur.

A) **Equal access to, and equality before, the courts:**

The very first sentence of Article 14(1) reads that "all individuals should be equal before the courts and tribunals," which has been interpreted to indicate that all people must be allowed equal access to the courts without discrimination. On the one hand, this suggests that establishing separate courts for different groups of people based on their race, color, gender, language, religion, political or other opinion, national or social origin, property, birth, or other status would be a breach of Article 14 (1) of the treaty. The right to a fair and public hearing before a competent, independent, and impartial tribunal constituted by law is addressed in the second sentence of Article 14(1). It covers the fundamental elements of due process of law, which are complemented in criminal proceedings by the additional requirements of Articles 14 and 15.

B) **The right to a fair hearing:**

The right to a fair hearing, as defined in Article 14(1) of the ICCPR, includes the procedural and other safeguards outlined in Articles 14 and 15. Its reach, however, is broader, as seen by the phrasing of Article 14(3), which refers to the actual rights stated as "minimum guarantees." As a result, even if all of the key procedural safeguards outlined in paragraphs 2-7 of Article 14 and the requirements of Article 15 are respected, a trial may nevertheless fail to achieve the fairness threshold envisioned in Article 14(1). The respect of the principle of equality of arms between the defense and the prosecution is the single most significant factor in determining the fairness of a trial. Equality of arms, which must be followed throughout the trial, implies that all parties are handled in a way that ensures their procedural equal position throughout the duration of the trial.[47] It would be difficult to anticipate all of the events that may result in a breach of this concept. It can range from denying the

47 *Id*

accused and/or counsel time to prepare a defense to excluding the accused and/or counsel from attending an appellate hearing when the prosecution is present.[48]

C) The right to a public hearing:

As one of the key parts of the notion of a fair trial, Article 14(1) of the ICCPR also ensures the right to a public hearing. However, it also allows for various exceptions to this general rule under certain conditions. The public nature of a trial comprises both the public nature of the hearings and the public nature of the final judgment delivered in a case. The right to a public hearing implies that the hearing should be performed orally and openly unless the parties specifically request otherwise. Within reasonable bounds, the court is required to offer notice regarding the time and location of the public hearing, as well as suitable facilities for attendance by interested members of the public. The public, including the press, may be excluded from all or part of a trial for the grounds mentioned in Article 14(1), but such exclusion must be based on a court judgment made in accordance with the applicable procedural rules. Consequently, the public may be excluded for reasons of "morals, public order (*ordre public*), or national security, or when the parties' private lives need it." The public may also be kept out "to the extent strictly necessary in the court's judgment in unusual situations when exposure would harm the interests of justice."

D) The right to a competent, independent and impartial tribunal established by law

The fundamental institutional framework allowing the enjoyment of the right to a fair trial is that proceedings in any criminal case (or in a civil suit) must be handled by a competent, independent, and impartial tribunal constituted by law.[49] The purpose for this clause is to avoid the arbitrariness and/or bias that may occur if criminal charges were resolved by a political or administrative authority. A tribunal must be competent and legally established. While competence refers to a court's proper personal, subject-matter, territorial, or temporal jurisdiction in a specific case, the court as a whole, including the determination of its competence, must be created by legislation.

48 *Id.*
49 *See* the ICCPR, *supra* note 17, Article 14(1), *see* also Banjul Charter, *supra* note 24, Articles 7(1) and 26.

Independence is predicated on a separation of powers in which the judiciary is institutionally shielded from undue influence or interference from the executive branch and, to a lesser extent, the legislative branch. The Basic Principles on the Judiciary outline the necessity for and means for achieving that independence. Some practical safeguards of independence include specifying the qualifications required for judicial appointment, the terms of appointment,[50] the requirement for guaranteed tenure,[51] the requirement for efficient, fair, and independent disciplinary proceedings regarding judges,[52] and the duty of every State to provide adequate resources to enable the judiciary to properly perform its functions[53](for example adequate salaries[54] and training[55]).

E) **The right to a presumption of innocence:**

The right to presumption of innocence is a pillar to every criminal proceeding. As a result, according to the ICCPR, "Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law."[56] The presumption of innocence, as a fundamental component of the right to a fair trial, entails, among other things, that the burden of proof in a criminal trial is on the prosecution and that the accused receives the benefit of the doubt. Furthermore, the presumption of innocence must be maintained not only at a criminal trial in reference to the defendant, but also in relation to a suspect or accused during the pre-trial period. It is the responsibility of both the officials involved in a case and all public authorities to uphold the presumption of innocence by refraining from prejudging the outcome of a trial.[57]

F) **The right to prompt notice of the nature and cause of criminal charges:**

Everyone has the right, in full equality, "to be informed promptly and in detail in a language that he understands of the type and reason of the charge against him" in

50 See Basic Principles on the Independence of the Judiciary, UN General Assembly resolution 40/32, November 29, 1985 and resolution 40/146, December 13, 1985 [hereinafter Basic Principles on the Judiciary], Principle 10.
51 *See id,* Principle 12.
52 *See id,* Principle 17-20
53 *See id,* Principle 7.
54 *See id,* Principle 11.
55 *See id*, Principle 10.
56 *See* the ICCPR, *supra* note 17, Article 14(2)
57 *See* Human Rights Committee General Comment No. 13/21 of April 12, 1984 [hereinafter General Comment 13], para 7.

the determination of any criminal charge against him/her.[58] This obligation to inform refers to an explicit legal description of the offense ("nature") and the facts behind it ("cause"), and so extends beyond the analogous rights afforded under Article 9(2) of the ICCPR applicable to arrest. The reasoning is that the information given must be adequate to prepare a defense. When information may be presumed "promptly" may generally be to refer the simultaneous notice with a language that s/he understand both in oral and written form or the translated therefore, of the lodging of the charge or immediately thereafter, with the opening of the preliminary judicial investigation or with the setting of some other hearing that gives rise to clear official suspicion against a specific person.

G) The right to adequate time and facilities for the preparation of a defense:

One of the other things that is important to ensure the right to fair trial of the accused is ensuring the right to adequate time and facilities for the preparation of a defense. According to Article 14(3)(b) of the ICCPR, everyone has the right to "have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing" in the determination of any criminal charge against him or her.[59] The right to adequate time and facilities for defense preparation belongs not only to the defendant but also to his or her defense counsel[60] and must be respected at all stages of the proceedings. Of course, what constitutes *adequate* time will vary depending on the nature of the proceedings and the facts of the case. The term *facilities* has, among other things, been interpreted to mean that the accused and defense counsel must be granted access to appropriate information, files and documents necessary for the preparation of a defense and that the defendant must be provided with facilities enabling communication, in confidentiality, with defense counsel.[61]An individual's right to communicate with counsel of his or her own choosing, is the most important element of the right to adequate facilities for the preparation of a defense.

58 *See* the ICCPR, *supra* note 17, Article 14(3)(a)

59 See the 1992 Resolution on the Right to Recourse Procedure and Fair Trial of the African Commission on Human and Peoples' Rights [hereinafter African Commission Resolution], Article 2(E)(1).

60 See Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990 [hereinafter Basic Principles on Lawyers] Principle 21.

61 *See* General Comment 13, *supra* note 57, para 9; *see* also Basic Principles on Lawyers, Principle 21.

H) **The right to a trial without undue delay:**

Everyone has the right, in the determination of any criminal charge brought against him or her, *to be tried without undue delay.*[62] This clause has been construed to include the right to a speedy trial that results in a definitive judgment and, if appropriate, a sentence. Usually, the time limit begins to run when the suspect (accused, defendant) is informed that the authorities are taking specific steps to prosecute him in accordance with the law. Of course, what constitutes unreasonable delay will be based on the facts of a case, such as its complexity, the conduct of the parties, if the accused is detained, and so on. The right, however, is not reliant on the accused requesting that he or she be tried as soon as possible. It should be noted that a person in pre-trial detention may be entitled to release prior to the start of the trial provided there has not been an undue delay.

I) **The right to defend oneself in person or through legal counsel:**

The right to defend oneself in person or through legal counsel is an important right that ensures in establishing the balance of truth in the criminal proceedings. As clearly stated under the ICCPR,[63] the right to counsel in the pre-trial stages of a criminal trial is inextricably related to the right to a defense during trial. Accordingly, everyone has the right "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means."[64]Article 14 (3) (c) of the ICCPR includes some specific rights such as the right to be tried in one's presence;[65] to defend oneself in presence; to choose one's own counsel; to be informed of the right to counsel; and to receive free legal assistance. According to the prevailing reading of the ICCPR, the right to counsel applies to all stages of criminal proceedings,

62 *See* the ICCPR, *supra* note 17, Article 14 (3) (c).
63 *See id*, Article 14(3)(d)
64 *See id.*
65 This is one of the more controversial rights in terms of its interpretation. A literal reading would not permit trials in absentia, which is a view consistently held by most international human rights NGOs and, more recently, supported by the Statute of the International Criminal Court. However, according to the HRC, trials in absentia are permissible in certain circumstances if the state makes "sufficient efforts with a view to informing the [accused] about the impending court proceedings, thus enabling him to prepare his defense."

including the preliminary investigation and pre-trial detention. Assignment of counsel by the court contravenes the principle of fair trial if a qualified lawyer of the accused's own choice is available and willing to represent him or her.[66] Court-appointed counsel must be able effectively to defend the accused, that is, to freely exercise his/her professional judgment and to actually advocate in favor of the accused.[67]

J) The right to examine witnesses:

Regarding the right to examine witnesses, the ICCPR clearly stipulates that everyone has the right "to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"[68] in the decision of any criminal accusation against him/her.[69] It should be underlined that the defense does not have a limitless right to demand the obligatory presence of witnesses on the defendant's behalf, but only "under the same conditions" as witnesses against him/her, according to the text itself. The prosecution is not subject to such limitations. While a court is allowed pretty wide rein in summoning witnesses, it must do so in accordance with the concept of justice and equality of arms. This, in turn, requires that the parties be treated equally when it comes to the admission of evidence through the interrogation of witnesses.

Furthermore, Article 14(3)(e) has been conclusively construed to indicate that the prosecution must notify the defense of the witnesses it plans to call at trial within a reasonable time period before the trial so that the defendant has enough time to prepare his or her defense. The defendant has the right to be present during a witness' testimony and may be limited in doing so only in extraordinary situations, such as when the witness reasonably fears retaliation from the defendant. To avoid violations of a defendant's right to examine and be examined by witnesses against him or her, courts should carefully consider allegations of probable reprisals and allow defendants to be removed from the courtroom only in genuinely justified cases. In no circumstance, however, may a witness be cross-examined in the absence of both the defendant and counsel. Similarly, using the testimonies of anonymous

66 *See* Basic Principles on the Role of Lawyers, Principle 5.
67 *See* General Comment 13, *supra* note 57para 9.
68 *See* the ICCPR, *supra* note 17, Article 14(3)(e)
69 *See* African Commission Resolution, *supra* note 59, para. 2(e)(3)

witnesses at trial is deemed illegal since it violates the defendant's right to question or have witnesses investigated against him/her.[70]

K) The right to an interpreter:

Everyone has the right to "free assistance of an interpreter if he cannot comprehend or speak the language used in court"[71] in the decision of any criminal charge brought against him/her. The right to an interpreter applies equally to nationals and aliens,[72] but it cannot be exercised by someone who is adequately fluent in the court's language. Since the very purpose of ensuring this right is for those who cannot comprehend or speak the working language of the court, those who are able in speaking and comprehending the working language of the court are not eligible for enforcement of this right. When allowed, the right to translation aid is unrestricted and cannot be limited by requiring payment from the defendant upon conviction.

L) The prohibition on self-incrimination:

Another component of the right to fair trial stated under the ICCPR is the right against self-incrimination. As a result, everyone has the right not to be compelled to testify against oneself or herself or to confess guilt in the adjudication of any criminal charge brought against him or her.[73] This right seeks to ban any type of coercion, direct or indirect, physical or mental, and whether applied before or during the trial, that might be used to force the accused to testify against himself/herself or admit guilt. But while this provision does not directly address the exclusion of evidence collected through such techniques, it is a well-established jurisprudence that such evidence is inadmissible at trial.[74] At any point of the proceedings, the judge must have the authority to evaluate a claim of coercion or torture.[75]

70 *See* Human Rights Committee's Concluding Observations on Colombia, UN Doc. CCPR/c/79/Add. 76 1 April 1997, para. 21, 40.
71 *See* the ICCPR, *supra* note 17, Article 14(3)(f); *see* also African Commission Resolution, *supra* note 59, para. 2(E)(4)
72 *See* General Comment 13, *supra* note 57, para 13.
73 *See* the ICCPR, *supra* note 17, Article 14(3)(g)
74 *See* General Comment 13, *supra* note 57, para 14.
75 *See id*, para 15.

2.1.2. The African Charter

The most relevant fair trial standards next to the ICCPR to this research are the frameworks enshrined under the *African Charter*. Though Article 1 of the African Charter imposes a basic obligation on States Parties to recognize and implement the Charter's rights, including the right to a fair trial under Article 7(1), this provision Article provides relatively few fair trial rights and has been criticized as insufficient, while it does include the right to be tried by an impartial judge within a reasonable time.[76]

2.1.3. Other International Non-binding Standards

There are also a number of non-binding documents pertinent to the conduct of criminal proceedings and the establishment of fair trial standards. Of these (mainly the UN General Assembly resolutions), Basic Principles for the Treatment of Prisoners;[77] the Standard Minimum Rules for the Treatment of Prisoners;[78] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[79] the Basic Principles on the Role of Lawyers;[80] the Basic Principles on the Independence of the Judiciary;[81] the UN Standard Minimum Rules for the Administration of Juvenile Justice;[82] the Code of Conduct for Law Enforcement Officials;[83] the Guidelines on the Role of Prosecutors;[84] the Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary

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76 Christof Henys *Civil and Political Rights in the African Charter* in Malcolm Evans and Murray *The African Charter on Human Rights* 134,145(Cambridge; Cambridge University Press, 2002).

77 Basic Principles for the Treatment of Prisoners, UN General Assembly resolution 45/111, December 14, 1990 [hereinafter Basic Principles on Prisoners].

78 Standard Minimum Rules for the Treatment of Prisoners, UN Economic and Social Council resolution 663 C (XXIV), July 31, 1957 and resolution 2076 (LXII), May 13, 1977 [hereinafter Standard Minimum Rules].

79 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly resolution 43/173, December 9, 1988 [hereinafter Body of Principles].

80 Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27-September 7, 1990 [hereinafter Basic Principles on Lawyers].

81 Basic Principles on the Independence of the Judiciary, UN General Assembly resolution 40/32, November 29, 1985 and resolution 40/146, December 13, 1985 [hereinafter Basic Principles on the Judiciary];

82 UN Standard Minimum Rules for the Administration of Juvenile Justice, UN General Assembly resolution 40/33, November 29, 1985)

83 Code of Conduct for Law Enforcement Officials, UN General Assembly resolution 34/169, December 17, 1979.

84 Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, (August 27-September 7, 1990).

Executions;[85] the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[86] the UN Rules for the Protection of Juveniles Deprived of Their Liberty;[87] and the Draft Body of Principles on the Right to a Fair Trial and a Remedy.[88]

2.1.4. Judicial Jurisprudences

Of course, the international fair trial standards are not only limited to conventions and treaties.[89]They are now protected by standards inferred from international and regional tribunals' jurisprudence, such as the European Court of Human Rights (European Court), and, more recently, the decisions of the International Tribunals for the Former Yugoslavia and Rwanda, as well as their respective Statutes.[90]

2.1.5. Fair Trial Standards in the Fight against Terrorism

When it comes to the issue at hand, assessing the fair trial standards of federal high courts hearing terrorism and crimes against constitutional order, the United Nations Global Counter-Terrorism Strategy[91] reaffirms respect for human rights and the rule of law as the fundamental foundation for the fight against terrorism. Member States, in particular, reaffirmed that the promotion and protection of human rights for all, as well as respect for the rule of law, are essential to all components of the Strategy, and acknowledged that effective counter-terrorism measures and human rights protection are not mutually exclusive goals, but rather complementary and mutually reinforcing.[92]

85 Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions, UN Economic and Social Council recommended resolution 1989/65, (May 24, 1989).
86 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, (August 27- September 7, 1990).
87 UN Rules for the Protection of Juveniles Deprived of Their Liberty, UN General Assembly resolution 45/113, (December 14, 1990).
88 The Draft Body of Principles on the Right to a Fair Trial and a Remedy, UN Economic and Social Council, E/CN.4/Sub.2/1994/24 (3 June 1994).
89 Chernichenko S. and Treat W, The Administration of Justice and the Human Rights of Detainees. The right to a fair trial: Current Recognition and Measures Necessary for its Strengthening dated 3rd June 1994, E./CN.4/Sub.2/1994/24.
90 *Id.*
91 The United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288) was adopted by consensus by all Member States on 8 September 2006 and has since then been reaffirmed on a biannual basis, lastly by General Assembly resolution 68/276 of 13 June 2014.
92 *Id.*

2.1.6. Brief Overview of the National Standards and Protection: *The FDRE Constitution*

In the Ethiopian criminal justice system, as it has been stipulated under the FDRE Constitution provisions that deal with the *right to liberty* (includes the right against arbitrary arrest or detention),[93] the *rights of persons arrested* (such as the right to be informed promptly, the right to remain silent, the right to be brought before the court, the right to petition the court to order their physical release, the right against self-incrimination, the right to be released on bail),[94] *the rights of persons accused* (such as the right to public trial, the right to be informed with sufficient particulars of the charge, the right to be presumed innocent until proven guilty, the right to full access and confront any evidence presented against them, the right to be represented by legal counsel, the right to appeal, the right to get language interpreter),[95] and the *rights of persons held in custody and convicted prisoners* (the right to treatments respecting their human dignity, the right to be visited by families, friends, legal counsel, religious councilors, medical doctors and the like),[96] the primary emphasis is on due process. Principles such as the presumption of innocence and the right to a fair trial at least theoretically ensure that individual liberty is not wrongly taken away. Besides, at the national level, the standards of fair trials are found scattered in other normative frameworks, such as the 2009 Criminal Justice Policy, the 2004 Criminal Code, the Criminal Procedure Code, and the Civil Procedure Code. For the sake of comprehensiveness, this research only deals with the free trial rights enshrined under the Constitution.

Ethiopia is a signatory to international and regional human rights treaties that safeguard the right to a fair trial.[97] The right to a fair trial, as stated previously, is a constitutionally guaranteed right that must be respected and protected by all levels of government.[98] Under the heading of the right of persons accused, Article 20 of the FDRE Constitution stipulates various guarantees to a fair trial. The provision ensured

93 Constitution of the Federal Democratic Republic of Ethiopia, 21 August 1995, Article 14 &17.
94 *Id*, at Article 19.
95 *Id*, at Article 20.
96 *Id*, at Article 21.
97 *See* e.g., ICCPR, *supra* note 17, Article 14; *see* also the Banjul Charter, *supra* note24, Article 7; 9.
98 See A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Federal *Negarit Gazeta*, 1st Year No.1 (Addis Ababa, 21st August, 1995) Art 20 and Art. 13(1), [hereinafter the FDRE Constitution].

the right to be informed with sufficient particulars of the charge, the right to be presumed innocent until proven guilty according to law, the right not to be compelled to testify against oneself, and the right to access any evidence presented against them, the right to adduce evidence produced in their defense, the right of appeal, and the right to request the assistance of an interpreter.[99] The right to a public hearing is guaranteed by the Constitution.[100] The court may hear cases in closed session on the grounds of protecting the parties' right to privacy, public morals, and national security.[101] Furthermore, the judiciary organ established by the Constitution strengthens the guarantees of fair trial rights.[102] According to Article 79 of the FDRE Constitution, judges must act independently and without interference or influence from any governmental body, government official, or other source.

Besides, with the exception of the right to a public trial, the formulation of the accused's right to a fair trial under the FDRE Constitutional provision contains no express or general limitation clause.[103] As a result of examining how limitations to fundamental rights are made under the FDRE Constitution, it is possible to conclude that the Constitution does not permit a legitimate ground of limitation or restriction in the exercise of the right. In terms of temporary alteration in a state of emergency, like international instruments, fair trial rights are not listed among the Constitution's non-derogable rights.[104] However, deviating from the fundamental principles of fair trial rights, including the presumption of innocence, is prohibited at all times, according to the treaty body's interpretation of the ICCPR.[105] Because the realization and protection of fair trial guarantees must adhere to international standards, reneging on the protection of the right during a state of emergency is prohibited.[106]

99 *See id,* Article 20.
100 *See id*, Article 20(1); *see* also Federal Courts Proclamation, Proclamation No.1234/2021, Federal *Negarit Gazeta*, 27th Year No.26 (ADDIS ABABA 26th April, 2021), Article 32(1)(2) [hereinafter the Federal Court Proclamation]
101 *Id.*
102 *See* the FDRE Constitution, *supra* note 98, Article 78.
103 *See id,* Article 20.
104 *See* Simenh Kiros, *The Principle of Presumption of Innocence and Its Challenges in the Ethiopian Criminal Process*, 6:2 MIZAN LAW REVIEW 273, 274 (2012).
105 *See* General Comment No. 29, *supra* note 43, para 11.
106 *See* the FDRE Constitution, *supra* note 98, Article 13(2).

PART THREE

THE TRIALS

3.1. The Context and the Backgrounds of Cases

Initially, the trial monitoring was planned to be conducted at the three courts, namely, *Lideta* Federal High Court, Dire Federal High Court Dire Dawa Bench, and *Arada* First Instance Court, (for preliminary inquiry). Later on, the research could not find active cases on crimes of Terrorism n md crimes of constitutional order in Federal High Court Dire Dawa Bench. For this reason, the plan to monitor in Dire Dawa was not successful. The other was the Arada First Instance Court, particularly, for preliminary inquiry monitoring, however, due to competition with time frame, the researcher only focused on the trial monitoring in *Lideta* Federal High Court.

As it is remembered, allegedly stated, on November 3, 2020, the Northern Command of the National Defense Force was attacked by Tigray Forces. In response to this attack, on November 12/2020, the Federal Police Commission announced that an arrest warrant had been issued for those TPLF officials accused of treason by attacking the North Command of the National Defense Forces in Tigray regional state.[107] Furthermore, the Commission accused these groups of attempting to destabilize the constitution and constitutional order by arming, training, and funding the *OLA-Shene* group and other anti-peace elements.[108] Since these groups have been accused of human rights violations and corruption, arrest warrants have been issued for 64 members of the TPLF.[109]

107 *See* Arrest Warrant Issued For TPLF Junta Members, November 12, 2020, https://www.fanabc.com/english/arrest-warrant-issued-for-tplf-junta-members/ (Last visited on Feb.20,2022)

108 See Arrest Warrant Issued For TPLF Junta Members, November 12, 2020, https://www.fanabc.com/english/arrest-warrant-issued-for-tplf-junta-members/ (Last visited on Feb.20,2022)

109 They are: Dr. Debretsion Gebremichael, Getachew Reda, Fetlework Gebregziabher, Asmelash Weldesilassie, Dr Abrham Tekeste, Keria Ibrahim, Redai Aleform, Amanuel Assefa, Dr Atinkut Mezgebu, Kiros Hagos, Yalem Tsega, Sebele Kahssay, Getachew Assefa, Daniel Assefa, Isaias Tadesse, Dr Aklilu Hailemichael, Alem Gebrewahid, Teklay Gebremedhin, Dr Eyasu Berhe, Dr Redai Berhe, Dr Kidanemariam Berhe, Nega Assefa, Shishai Meressa, Dr Gebrehiwot Gebregziabher, Atsebha Aregawi, Dr Engineer Solomon Kidane, Hadush Zenebe, Berhe Gebreyesus, Yitbarek Amha, Dr Gebremeskel Kahsay, Dr Fiseha H/Tsion, Resk Alemayehu, Dr Addisalem Balema, Zenebech Fiseha, Freweyni Gebregziabher, Seyoum Mesfin, Abay Tsehaye, Eyasu Tesfay, Lemelem Hadigo,

According to the Federal Police Commission's statement, an arrest warrant has been issued for the heads of the defense army and police forces for treason and conspiring with the TPLF to destabilize the country.[110] Disregarding the responsibility bestowed upon them by the government and the people, the suspect, according to the Commission, exposed the army to attack by disconnecting the communication system after accepting a mission from TPLF "Junta" members.[111] As a result, an arrest warrant has been issued for 32 defense, army, and police chiefs.[112]

Consequently, a number of core TPLF leaders were killed in action and others such as Teklewoini Assefa, Dr. Solomon Kidane, Gebremedhin Tewolde, Woldegiorgis Desta, Ambassador Abadi Zemo, Kidusan Nega, Tedros Hagos, Mihret Teklay, Berhane Adem Mohammed, Sebhat Nega, Lt -Col Tseadu Rich,Colonel Kinfe Tadesse, Colonel Yemane Kahisay, and Asgede Gebrekiristos have been arrested.[113] On January 7, 2020, however, Sebehat Nega, Kidusan Nega, Abay Woldu and Abadi Zemuw were released from prison.[114] They were among 20 senior

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Prof. Kindeya Gebrehiwot, Habtu Kiros, Beyene Mikru, Kassaye Gebrehiwot, Rufael Shifera, Lia Kassa, Tewelde Gebretsadik, Mulu Gebregziabher, Kiros Gue'sh, Dr Amanuel Haile, Desalegn Tefera, Engineer Araya Berhane, Almaz Gebretsadik, Solomon Me'asho, Tekiu Me'asho, Genet Arefe, Berkti Gebremedhin, Dr Hagos Gedefay, Zeray Asgedom, Assefa Belay, Shewangizaw Gezahegn, Atsbeha Gidey, Sebehat Nega, Sekoture Getachew, and Berihun Tekleberhan.

110 See Arrest Warrant Issued For TPLF Junta Members, November 12, 2020, https://www.fanabc.com/english/arrest-warrant-issued-for-tplf-junta-members/ (Last visited on Feb.20,2022)

111 See Arrest Warrant Issued For TPLF Junta Members, November 12, 2020, https://www.fanabc.com/english/arrest-warrant-issued-for-tplf-junta-members/ (Last visited on Feb.20,2022).

112 These are: Lt. Gen Tadesse Werede Tesfaye (Wedwerd), Maj. Gen Yohannes Goldegiorgis Tesfay (Medid), Maj Gen Berhanu Negash Beyene (Medimedhin), Brig Gen Hailesilassie Girmay Gebremichael, Brig Gen Migbe Haile Woldearegai (Ababerha), Maj Gen Ibrahim Abduljelil Mohammedzun, Brig Gen Gebrekidan Gebremariam Yebiyo, Maj Gen Gebre G/Adhana W/Zegu (Gebredila), Maj Gen Gebremeskel Gebreyohannes (Aster), Brig Gen Abreha Tesfay Berhe (Dinkul), Brig Gen Fiseha Beyene (Werkayinu), Major General Hintsa W/Gorgis Yohannes, Brig Gen Alefom Alemu W/Mariam (Chento), Brig Gen Gebremeskel G/Egziabher (Tekem), Brig Gen T/Berhane W/ Aregawi, Maj Gen Ataklti Berhe G/Mariam, Tigray Police Commissioner Kahsay G/Meskel (Tsinbula), Tigray Police Deputy Commissioner Mengiste Aregawi, Commander Getachew Kirose, Deputy Commissioner Girmay Kebede (Manjus), Deputy Commissioner Teklay Tsehaye, Commander Niguse W/Gebriel Head of Tigray Special Force, Commander G/Silassie Tafere, Commander Fiseha T/Mariam (Wedi Arba), Commander Tesfaye G/Kidan (Tesfaye Banda), Maj.Gen G/ Medhin Fekadu Hailu (Wedi Necho)- arrested, Maj.Gen Yirdaw G/Medhin G/Tsadik (Aster) –arrested, Brig Gen G/Hiwot Sisinos Gebru –arrested, Brig Gen Inso Ejajo- arrested, Brig Gen Fiseha G/ Silassie- arrested, Colonel Desalegn Abebe Tesfaye- arrested, and Colonel Eyasu Negash- arrested.

113 *See* Fana Broadcasting Corporate, Defense Force Announces Arrest Of Nine More TPLF Members, Jan.07, 2021, https://www.fanabc.com/english/defense-force-announces-arrest-of-nine-more-tplf-members/ (last visited on Jan.19, 2022); see also Head of the TPLF Clique Ringleaders Sebhat Nega Arrested (Feb.08.2021), https://www.fanabc.com/english/head-of-the-tplf-clique-ringleaders-sebhat-nega-arrested/ (last visited on Feb.19, 2022)

114 *See* Addis Standard, Breaking: Top former TPLF officials released, January 7, 2022, https://addisstandard.com/breaking-top-former-tplf-officials-released/ (last visited on Feb.20, 2022).

TPLF leaders accused of organizing an illegal group to overthrow the constitutional order, attacking the Northern Command, inciting youths to fight, looting fuel depots, and assassinating several Defense Forces members. It was also claimed that the Federal Police Criminal Investigation team was involved in unconstitutional activities such as establishing contacts with various foreign countries, fundraising for war, shooting rocket-propelled grenades at airports in Gondar and Bahir Dar, and other crimes.[115] Of course, the government measures appear to be part of the national reconciliation process. If this is so, at least the right to equality might be expected to be raised by various defendants that are under trial on similar criminal cases.

The researchers have monitored nine cases that have been allocated into three benches, namely the 1st, 2nd, and 3rd, anti-terrorism and crimes against constitutional order affairs benches. These cases were adjourned in the range of February 21/2022 to March 22/2020 for the reasons of, *inter alia,* to deliver an order; to hear public prosecutors witness testimony; to receive the defendant defense; to wait for the physical presence of the defendant at the court; and to examine.

The most of the cases that have been monitored by this research were related to criminal charges established based on the attacks on Northern Command National Defense Force by the Tigray Forces or Tigray People Liberation Front (TPLF) and charged related to Oromo Liberation Army (OLA). Regarding the listing as a terrorist group of these two groups, first, in a statement released on 1st of May 2021 by the Office of the Prime Minister, the Council said the two organizations are responsible for attacks carried out in various parts of the country. As a result, Ethiopia's Council of Ministers has officially designated Oromo Liberation Army (OLA)-*Shene* and TPLF as terrorist organizations. Then, on 5th of May 2021, the House of Peoples Representatives, in its 13th regular session, unanimously approved the resolution passed by the Council of Ministers to designate *Shene* and TPLF as terrorist organizations.[116]

115 *See id.*
116 *See* TPLF and Shene designated as terrorist organizations, 7 May 2021 https://www.ethioembassy.org.uk/tplf-and-shene-designated-as-terrorist-organisations/ (last visited on March 20, 2000)

3.2. Monitored Trial All Together

3.2.1. Major General Gebremedihin Fekadu *et al* vs. Federal Public Prosecutor

While this trial monitoring was begun, on March 07/2022, this case was adjourned with a view to examine and hear the testimony of the 6th witness produced by the public prosecutor against the defendants. Under the Case of Major General Gebremedihin Fekadu *et al* vs. Federal Public Prosecutor,[117] the defendants have been charged on the violation of Article 32(1) (a) and (b), Article 35 and 247 (a) and (d) of the 2004 FDRE Criminal Code.[118] They are accused as principal offenders and engaged in conspiracy with their full intention of the result and with general purpose to intercept the National Defense's Radio Connection within the Northern Command through conspiring with a terrorist group called TPLF.[119]

On this trial one documentary evidence and one testimony was scheduled to examine. Regarding the documentary evidence, it was a kind of an assessment that was produced against the defendants as an expert testimony. However, the defendant strongly challenged the credibility of the document since it has no indication who has prepared such a document. There was a debate where it was an assessment or scientific study and the like. Basically, matters such as coding, programming, long and short connections, stated under the document were too technical and was not clear in what capacity and knowledge they are giving the testimonies considering their profession and position at the Northern Command.

The other surprising issue was the witness (the 6th witness) produced by the Public prosecutor against the defendants who affirmed that Northern Command's Communication Director, Major General Geberemedih Fekadu was his immediate boss. During the cross examination of the 6th witness, the defendant asked him to identify who is Major General G/Medihin Fekadu and Colonel Geberhiwot including their physical appearance. Even though he claimed that he knows the defendants very well, he could not identify who is Major General G/Medihin Fekadu and Colonel Gebrehiwot that totally undermines the credibility of the witness. Of course, the total testimony of the witness appears hearsay evidence that is totally irrelevant

117 *See* Major General Gebremedihin Fekadu *et al* vs. Federal Public Prosecutor, File No.00/0100/266708. (This case is a pending case under trial the full file may not be available).
118 *See id.*
119 *See id.*

to criminal proceedings. This may show us how the public prosecutor is negligent in producing relevant witness on one side and appropriate documentary evidence on the other that either affect the right to speedy trial.

However, during the trial, the defendants' rights such as the right to get the details of the accusation in written form, the right to access the evidence produced against them and confront the witness against them, and the right to be represented by the legal counsel by their own choice.

Of course, in order to finalize the hearings from the public prosecutor's witness, the court ordered to continuously hear the testimony from March 8-11/2022. From all testimony hearings some important testimonies attracted the researchers.

On March 09/2022, the 3rd wittiness got an objection form the defendants due to he was telling unrelated and irrelevant issues such as about general overview of the November 3/2020 Northern Command Attack by the Tigray Force other than the issue he called to do. However, the court did not do anything to stop by accepting the objection of the defendants. These types of testimonies have nothing to do except, wasting the time of the court and the defendants. For the defendant, of course, it is a matter of the right to speedy trial since more emphasis and time was given for testimonies that are irrelevant to the facts.

Besides, on the same date, the 7th witness of the public prosecutor was there to give his testimony on how the communication apparatus to devices were removed from the office of the Northern Command but the prosecutor was correcting (leading) the witness testimonies, particularly facts related to time and places. However, the court orders the public prosecutor to stop leading the witnesses which is an appropriate order. Technically, the public prosecutors either intentionally and systemically violate the defendants' rights with their poor evidence or lack the necessary prosecution and investigation skills.

On March 10/2022, the public prosecutor produced the 29th witness to testify against the defendants. However, since there were changes on the witness title and place of residence, the defendants' request the court to fulfill the requested details of the defendant and the court adjourned to the next day (March 11/2022). Of course, the witness's identity, such as his full name, is as similar as the previously stated

documents; however, the differences in his details were his title (changed a bit, promoted to the next military rank) and his address. As a result, the court's order to produce an Identity Card that shows his newly acquired military rank and current status has no legal basis other than impacting the defendant's right to a speedy trial and, possibly, exposing the witness's details for vengeance, so that, arguably, as a purpose of witness protection mechanism, the witness's place of residence may not be relevant for or has an impact on his testimony.

On March 11/2022, the 29th witness came up with the requested Identity Card that shows his current military title and place of residence. This day also was the day of hearing the public prosecutor's 20th witness, unfortunately, unable to appear before the court, as the public prosecutor testified to the court, due to health issues. Surprisingly, when the 29th witness testified before the court, the judge seated on the left side of the middle judge was sleeping and did not listen to the witnesses' testimony at all, despite the fact that the 29th witness was identified as one of the major witnesses who could explain more on the facts in accordance with the charge. As a result, this type of judicial negligence during criminal proceedings would have a negative impact on the fairness of the trials by establishing an inadequate understanding of the facts on the subject matter. It has an impact in both directions; it either helps to ensure impunity or contributes to the conviction of innocent people.

Finally, the court ordered the Federal Police to bring the remaining 25 of the 47 public prosecutor's witnesses. Only 22 of the 47 registered public prosecutor witnesses appeared in court, resulting in another adjournment that severely harmed the defendant's right to a speedy trial. The researcher believes there should be controlling mechanisms in setting at least the maximum limits of witnesses to be produced to testify the required testimony in a given defendant. Unless otherwise, as stated, it affects the speedy trial rights and creates unnecessary adjournments on the side of the court.

3.2.2. Colonel Abadi G/Hiwot vs. the Federal Public Prosecutor

This case was adjourned to March 15/2022 to hear the testimony of the public prosecutor witness. Under this case, the defendant has been prosecuted in violation of Article 32 91) (A) (B) and 240 (1)(B) together with Article 247 (D) of the 2004

FDRE criminal Code.[120] The charge of Colonel Abadi states, he has been accused as principal offender and engaging in conspiracy with his intention to the result of and general purpose to start a war between *Amhara* and *Kimant* people knowing that there was a problem in Gondar, *Azezo,* but ordered the Defense Force to leave the Camp. The *Kimant* armed group started a war on the Amhara people that caused death and mass destruction of properties.[121] Besides, the defendant, knowing the crises in the areas, have sent the defense forces to the place without sufficient protection and security which resulted in four deaths and two injuries of the military members including their driver.[122] Furthermore, the charge states that when the *Kimant* armed group opened fire on the military, the defendant obstructed security measures and ordered the military to not take any defensive measures; as a result, caused the death of one defense force member she was on duty at that time.[123]

Under the trial, the main issues raised before the court was concerning the mechanisms of granting the public prosecutors witness protection. The public prosecutor sets the testimony by hiding the identity of the witness, however, the defendant has strongly objected and appealed to the Supreme Court. The defendant's reason for the appeal was that the public prosecutor presented 1st witnesses without notifying their names. Nonetheless, the public prosecutor stated that there was a security issue so witnesses should be protected. However, the defendants appealed that this kind of proceeding should only be decided by the court, not by the General Attorney in the way that infringes the Proclamation No. 699/2010 (*A Proclamation to provide for the Protection of Witnesses and Whistle-blowers of Criminal Offences).* Besides, the defendants stated that not knowing the identity of their witness violates their constitutional rights.

Consequently, the court ordered a stop hearing the testimonies of witnesses until the Federal Supreme Court gives its decision on the appeal and as soon as the decision is given, the file will be rendered in the same month. Here, the main issues have been on one side what is the scope of witness protection? Do skipping the names of the witness before the court, but with his physical existence, amounts as a

120 *See* Colonel Abadi G/Hiwot vs. the Federal Public Prosecutor, File No.00/0100/272610. (This case is a pending case under trial the full file may not be available).
121 *See id.*
122 *See id.*
123 *See id.*

mechanism of witness protection? On the defendant side, how far the absence of the public prosecutor witness name affects his constitutional right to confrontation? Of course, if the name of the witness is highly detrimental for the substance of the case such as where a defense force member is in a given specific office, checking his name may be helpful to discredit his testimony through the non-existence of the person identified in such a name. However, the researches were not able to get the basic substantive issues raised on their appeal. Though the defendants exercised their right to appeal, the unnecessary delay of hearing witness testimonies by the court contributes for the violation of the right to speedy trials of the defendants.

In general terms, however, during the trial, the defendants' rights such as the right to get the details of the accusation in written form, the right to access the evidences produced against them, the right to appeal and the right to be represented by the legal counsel by their own choice have been respected and protected.

3.2.3. Kelifa Abdurahman Hussen *et al* vs the Federal Public Prosecutor

The case was adjourned for March 15, 2022 to order due to the absence of one of the judges entertaining the case and the defendants' lawyer. Under this case, the Federal Public Prosecutor has prepared a charge on Kelifa Abdurahman Hussen *et al*[124] in violation of Article 32(1) (A), Article 35 and 38 of the 2004 FDRE Criminal Code and Anti-terrorism Proclamation No. 652/2001 Article 3(3) on the 5th defendant in violation of Anti-terrorism Proclamation No. 652/2001, Article 12.[125] Kelifa Abdurahman and other 13 defendants are accused as principal offenders and having conspiracy with their full intention of the result and with general purpose to support the OLA's (*Shene*) political ideology on December 4/2019 in Oromia Region Kelem Wollega Zone due to conflicts in Dembi Dollo University Students obliged to leave the campus and started heading to their home from Dembi Dollo to Mechara in a red dolphin (minibus) with Code 3-34629 Oromia plate number.[126] The defendants stopped the car with guns and other weapons, selected and beat the Amharic

124 The additional defendants are about 15 defendants
125 *See* Kelifa Abdurahman Hussen et al vs the Federal Public Prosecutor, File No.00/0100/255390. (This case is a pending case under trial the full file may not be available).
126 *See id.*

speaking girls and other unidentified women in the car and took them off of the car and kidnapped them, eventually handing over them to the OLA members.[127]

On such days, the researchers observed that the defendants' lawyer and the judge seated on the right side could not appear in the proceeding due to personal reasons and health issues. Thus, the court ordered to examine the and to give decision after two days in the presence of the defendants' lawyer; as a result, adjourned for March 18, 2022. On prior trials, the case was adjourned several times. Considering this and previous seven adjournments granted to the public prosecutor and the court's decision to give adjournment within the range of two days was very fascinating since it helps to ensure the defendants' right to speedy trial. Besides, the defendants exercised their right to be represented by the legal counsel based on their choice.

In general terms, however, during the trial, the defendants' rights such as the right to get the details of the accusation in written form, the right to access the evidences produced against them, the right to confront the witnesses against them, and the right to be represented by the legal counsel by their own choice have been ensured.

On March 18/2022**,** after examining the evidence, the court gave the following decisions: the 1st, 5th, 6th, 7th, and 8th defendants ordered to bring their defense. To this end, the court adjourned the defendants to bring their defense from April 11-15 of 2022. On the other hand, on the remaining three defendants (13th, 14th, 15th), the court stated that the evidence produced against the defendants were not sufficient enough and the procedure of taking testimonies at police stations was weak, untested, and questionable. Thus, the court orders for the acquittal of the 13th, 14th and 15th defendants with securing bond.

The researcher observed that the public prosecutor had requested seven adjournments to present witnesses and the court granted the request; as a result, the defendants' right to speedy trial has been severely violated. Besides, the defense lawyer appointed for the defendants appears to be negligent and lacks the required to experiences and skill; as a result, he could not play his part in leveling the field that is important to ensure the protection of the rights of fair trials, in one hand, and the improved justice system on the other.

127 *See id.*

3.2.4. Asmelash Alemu Dereje vs Federal Public Prosecutor

While the trial's monitoring was begun, the case was adjourned on March 22/2022 to hear the witness testimony of the public prosecutor. Under the criminal charge, the Federal Public Prosecutor accused Asmelash Alemu Dereje in violation of the Proclamation to Provide for the Prevention and Suppression of Terrorism Proclamation no. 1176/2020, Article 9(1)(B), the Anti-Corruption Proclamation No.881/2015, Article 15 (1))B), the Proclamation to Provide for Firearm Administration and Control, Proclamation No.1177/2020, Article 22(2).[128] The defendant, while working at the Agency for/refugees and Returnees Affairs' driver in Shire, he was working with a terrorist named Yemane G/Meskel and other unidentified terrorists and helped them to move from place to place using the agency's vehicle code 35-6388 Prado.[129] Besides, the defendant helped or assisted to arrest the Agency's employees illegally by groups who have no legal rights to do so. He also threatens the Agency's employees with guns, those who returned from Addis Ababa to Shire to take the Agency's property.[130] The defendant was also accused of taking the Prado Code 35-6388 car and hiding it with intention to use for himself.[131] In conclusion, the defendant has been accused of assisting terrorists, threatening employees with illegal gun, and for corruption of the Agency's vehicle.

During the trial, the public prosecutor requested another adjournment stating that due to an error on the title of the witnesses, the 4th and 5th witnesses could not be human resource data of the National Defense Force and let the National Defense Force to summon the witness. On the other hand, the defense lawyer stated that the time given to the public prosecutor to summon the witness was enough and just by mere fact that there was an error on the title of the witness should not be a justification for their absence. As long as they work in the defense force, it was easy to find them and summon them to appear before the court. This is a simple manifestation of lack of diligence in their work. However, the Court ordered the public prosecutor to bring the remaining witness on March 23, 2022.

As the general observation in this limited time frame, the researchers observed various is-

128 *See* Asmelash Alemu Dereje vs Federal Public Prosecutor, File No.00/0100/279724. (This case is a pending case under trial the full file may not be available).

129 *See id.*

130 *See id.*

131 *See id.*

sues. The Federal Police Commission has an obligation to give summons to the witnesses not for the defense force. However, even though the names of the witnesses are known, the Federal Police Commission stated that they are not in the position of accessing the data of the defense force to summon the witnesses. Of course, these tasks, as clearly stated in the Federal Police establishment Proclamation No.720/2011 (as amended Proclamation No.944/2016), are the duties and responsibilities of the Federal Police unless manifestation of its negligence to execute the court order. This stance of the Federal Police contributed to the systematic violations of the defendants' right to speedy trial.

3.2.5. Major Tsadik Kiros Tesfaye *et al* vs. Federal Public Prosecutor

While the monitoring was started on this case, it was adjourned on February 28, 2022 to hear the public prosecutor's witness testimony. According to the charge, the public prosecutor has prosecuted Major Tsadi Kiros related to the attack on the Northern Command of the National Defense Force by Tigray Forces on November 03/2020.[132] The defendant has been accused for the violation of the 2004 FDRE Criminal Code, Article 248 (A) (B)-High treason.[133]

On the trial, the public prosecutor has produced the 1st, 2nd, and 3rd witnesses against the defendant. The 1st witness gave his testimony on how the defendant was involved in the November 03/2020 Northern Command attack. The 2nd witness, particularly, testifies that the defendant told the defendant and others that he has received an order to disarm the Northern Command National Defense members, if not, they will be engaged in hostilities. Besides, the 3rd public prosecutor witness was produced to give his testimony on an accomplice, named Haile Abreha, who has participated in the commission of described crime, and the witness affirmed that he has observed in his naked eye the incident. After hearing the three witnesses, the court gave an order to let the public prosecutor come up with the remaining witnesses on March 03/2022.

132 *See* Major Tsadik Kiros Tesfaye et al vs. Federal Public Prosecutor, File No.00/0100/272213. (This case is a pending case under trial the full file may not be available).
133 *See id.*

On March 03, 2022, the public prosecutor stated that he could not find the witness due to the fact that they lived in a remote area or the place far away from Addis Ababa. He asserted, however, that he had informed the witness to come to the court through telephone. The public prosecutor then requested the court for alternative adjournment.

The defense lawyer of the defendant, however, objected to the public prosecutor's request and his weak approach by stating that it was initially adjourned to January 28/2022, however, beginning that period, the court adjourned the case for a longer period of time (more than a month). Besides, as the defense lawyer stated, the public prosecutor's information to summon the witness was not supported by evidence so that it violates the right to speedy trials of his clients. The defense lawyer, therefore, requested the court to deliver an order on to decide the case based on the already heard testimonies.

The court, however, by rejecting the defense lawyer's claim adjourned to March 30, to April 1, 2022 to hear the public prosecutor's witness. The researchers observed that the Court's approach in giving longer periods to the public prosecutor on one hand and the negligent approach of the public prosecutor in producing his witness on the other would affect the overall justice process. To be more specific, the rights of speedy trials and; by nature, longer adjournments, *per se*, adversely affect their presumption of innocence since the court and the public prosecutor placing far their proving mechanisms.

3.2.6. Khalid Kalis vs Federal public Prosecutor

At the time of beginning the trial monitoring, the case was adjourned by the Court on March 08/2022 to order. The public prosecutor accused the defendant in violation of Article 32(1) and the Proclamation provided for the prevention and suppression of terrorism crime Proclamation No.1176/2020, Article 9(1).[134] The defendant was accused as a principal offender while he has participated on the alleged crime in SNNP Region, Worabe Zone.[135] In such Zone, according to the charge, he recruited individuals by saying that they are going to receive s very good Islamic education

134 *See* Khalid Kalis vs Federal Public Prosecutor, File No. 00/0100/280134. (This case is a pending case under trial the full file may not be available).
135 *See id.*

and took them to Kenya and told them they are going to liberate the Ethiopian Muslims. To this end, he told them we are going to kill Christians, burn churches and establish Islamic government in Ethiopia.[136]

During the trial, the researchers came to know that, the file has been transferred from the 2nd Anti-terrorism and crimes against constitutional order affairs bench to the 1st one. However, the 1st bench presiding judges have come to this day and stated that in order to familiarize and substantiate the case; the transfer of the case to this bench should have been announced for them through a formal letter before the trial date. The court, therefore, adjourned to April 6/2022 to give a decree. Obviously, these kinds of institutional negligence highly affect the defendant's time in which his right to speedy trial is at stake.

Besides, there was not any justification given to both the newly assigned bench and the defendants. More importantly, the defense lawyer was also reluctant in requesting the court to rectify these kinds of inconveniences and working procedure that results in a prolonged delay to entertain his clients.

3.2.7. Amanuel Gidey Assefa vs Federal Public Prosecutor

This case was adjourned on February 28/2022 to receive the defense of the defendant. According to the Public prosecutor's charger, the defendant was accused in violation of the Anti-terrorism proclamation No 11/2020 by helping the terrorist group called TPLF through Facebook advertisement of the group, providing information, and money.[137] Besides, the defendant is also accused of spreading misinformation about the current government of Ethiopia through Facebook.[138]

Under the trial the defendant stated that he did not have financial capacity to pay for a legal representative (lawyer) and requested the court to be provided with legal representation at the government expense. The court accepted and ordered in a way of addressing the defendant's legal representative issue.

On the substantive issue, the defendant claimed that some of the allegations of the public prosecutor are not supported by sufficient evidence. Besides, according to the

136 *See id.*
137 *See* Amanuel Gidey Assefa vc federal Public Prosecutor, File No. 00/0100/280222. (This case is a pending case under trial the full file may not be available).
138 *See id.*

defendant, the Anti-terrorism Proclamation No.1176/2020 does not criminalizes like and share of posts on Facebook as crime of terrorism. Of course, the 2004 FDRE Criminal Code Article 2(3) that deals with the principle of legality states that the "court may not create crimes by analogy."[139] This general criminal law part is applicable to all criminal legislation in Ethiopia.

3.2.8. Dr. Debretsion G/Michael Measho et al vs Federal Public Prosecutor

When this trial monitoring began, the case was adjourned on March 07/2022 to await the defendant's physical presence in court. In short, the charges filed against Dr. Debretsion and 61 others are for the criminal acts of overthrowing of a constitutionally established regional government through violence and illegal manner; and engaging to overthrow the Federal Government by organizing a special force and attacking the Northern Command of the National Defense Force of Ethiopia.[140]

For this trial, the Police was ordered by the court to summon of the accused that did not appear before the court. However, the Police brought an answer by only mentioning the accused organizations. According to the Police, the summon was not served due to the fact that the accused address is not clearly mentioned. Obviously, one of the defendants, for example, is living in Mekele. Though the Police failed to execute the order to summon the defendants, unless otherwise all these are for the sake of procedural compliance, one would not expect, having considered the existing war between the two parties; that is, the Tigray Force and the Federal Government, serving the summon to Dr. Debretsion et al and apprehend them to the court is feasible. The researchers believe that it appears to be a waste of time.

The court, taking into consideration, orders for the Federal Police to explain for the court the reasons for not serving the summons to the accused that failed to appear. Of course, under this trial, only three defendants represented by an advocate have submitted their written application to the court.

Regarding the summoning of the accused individuals that are not present before the court, the court adjourned to March 10/2022 to hear the response of the Federal

139 The FDRE Criminal Code, Article 2(3)
140 See Dr. Debretsion G/Michael Measho et al vs Federal Public Prosecutor, File No. 00/0100/272802. . (This case is a pending case under trial the full file may not be available).

Police and have a look at the application brought by the advocate on behalf of the three physically existing defendants.

On March 10/2022, the head of the Federal Police explained before the court that the days given to serve summons were not enough because the specific address of the accused was not provided. Besides, due to the number of the accused being too many, it has been difficult for them to clean up between the accused. On the other hand, the defendants that physically appeared before the court stated that the police and the public prosecutor did not fulfill their responsibility and affect their rights through repeated adjournment. Hence, they have requested the court to entertain the cases that physically existed before the court. The judge has explained that there will be no adjournment on the basis of police non-performance from this day onwards.

During the trial, the 42nd defendant has raised an application to medical treatment on his own.

The judge has ordered the advocates to give the address of the accused organization for the public prosecutor and the police to serve summon. Consequently, another adjournment has been set on March 24/2022 for the appearance of the representatives of the accused organization and to give a response for the physically present defendant's (the 42nd) application.

On March 24/2022, except for Kaleb Oil Ethiopia, the representatives of the three accused organizations appeared. Besides, the police officer responded to the 42nd defendant's application by stating that the prison is willing to facilitate his medical treatment to the accused as long as the court is going to give an order on it and it is at the cost of the defendant based on his application.

In this trial, the Federal Police has served summons for the accused organization by searching the accused address on his own. This shows that the police did not serve the previous summons due to his carelessness and lack of efforts to do so. This kind of court-police relationship adversely affects the time of the court and justice.

3.2.9. Major Abera Nigussie *et al* vs Federal Public Prosecutor

The case was adjourned on March 14/2022 to hear the Public Prosecutor's witness produced against the defendant. According to the charge, Majo Abera Nigussie et al have been accused in relation to the attack on the Northern Command of the National Defense force of Ethiopia. They were allegedly involved in attacking the 5th Mechanized defense Force of Ethiopia found at North Gondar, Dansha, by leading the militia and special force of Tigray.

On this day, the trial was adjourned to hear the witness of the public prosecutor's witnesses. However, the prison officers have not managed to bring the defendants on time. Apart from this, the case was very detailed and wide to be testified by the witnesses; only two testimonies in the morning and afternoon have been heard. Later the afternoon programme was rescheduled to the next day. In terms of court efficiency, adjourning a trial day to hear on witness or ending up with hearing one witness is very poor.

The 2nd defendant has mentioned to the court that she cannot understand Amharic language while examining the witness and the presiding judge has explained to her that she can speak in the language she prefers and an interpreter will be assigned for her at the state's expense. The immediate action of the court on the defendant's request related to language translation issue can be taken as good practice. Besides, the judges trial management skill in this trial was comparatively better.

The next hearing of the public prosecutor was heard on March 06/2022. On the trial, the hearing of the witness has been undertaken in accordance with the criminal procedure and protecting and respecting the constitutionally guaranteed right.

PART FOUR

TRIAL ANALYSIS

4.1. Introduction

As it has been stated in the previous part, fair trial standards encompasses, trial standards are: the right to fair hearing and public hearing; the right to a presumption of innocence; the right to prompt notice of the nature and cause of criminal charges; the right to adequate time and facilities for the preparation of a defense; the right to a trial without undue delay; the right to defend oneself in person or through legal counsel; the right to examine witnesses; the right to an interpreter; the right against self-incrimination; the prohibition on retroactive application of criminal laws; and the prohibition of double jeopardy.

The researchers looked at nine trials that were divided into three benches: anti-terrorism, crimes against constitutional order, and crimes against constitutional order affairs. These cases were adjourned between February 21st and March 22nd, 2022, for a variety of reasons, including to give an order, hear public prosecutors' witness evidence, receive the defendant's defense, wait for the defendant's actual appearance in court, and examine the defendant. The total monitoring day to all of these trials is given 35 working days. Thus, the researchers want to inform initially that there are no cases monitored from the pre-trial stage up to the final trial of conviction or acquittal of the suspect or accused. As a result, the overall findings of the monitoring may not sketch the full picture of a given trial proceedings. To enrich some practical gaps, the researcher, as previously indicated, collected some data from the judges, public prosecutors, defense lawyers, investigative police officers, and previously engaged researchers on similar topics.

4.2. The General Gebremedihin Trial

During the monitoring period, the researchers observed and identified factors that contribute to the violation of the fair trial rights of the accused. In the *Major General Gebremedihin Fekadu et al vs. Federal Public Prosecutor* trial (the General Gebremedihin Trial), the some of the public prosecutor evidences were questionable. The complete testimony of the witness, for example, seems to be

hearsay evidence since the public prosecution witness was unable to personally identify the defendant in the courtroom and failed to offer relevant documentary evidence. This might reveal how the public prosecutor has been careless in presenting important witnesses on one hand and proper documentation evidence on the other, both of which could jeopardize the right to a speedy trial. The prosecutor was correcting (leading) the witness testimony, especially details about time and location. Technically, the public prosecutors' poor evidence either purposefully and consistently violates the defendants' rights, or they lack the essential prosecutorial and investigative competence. This negligent prosecutorial approach is also shared by the respondent from Federal High court. According to him, only judges cannot bring about change; rather, all stakeholders must work together to eliminate the extant problems by being more devoted, responsible, and effective, including police officers and public prosecutors.[141] Furthermore, he added that:

> The majority of the issues stem from procedural flaws that are related to failure to bring witnesses, failure to carry out a court order, police officer and public prosecutor negligence, and a lack of focus and attention to cases. Thus, if every organ of the judicial system works together to tackle these difficulties via education, training, and effective communication, I believe that problems linked to speedy trials may be solved quickly and effectively, and that we can make a positive change in the justice system.[142]

One of the key issues is the lack of a speedy trial as a result of several causes such as police officer and public prosecutor negligence. The primary issues are prolonged time to review evidence and nonappearance of witnesses owing to instability in various places.[143] However, this is not a matter that can be answered alone by judges; improving the justice system and finding solutions to some of the challenges we confront would need the entire institution.[144]

However, in the General Gebremedihin Trial, when the 29th witness testified in front of the court, the judge on the left side of the middle judge was less attentive (boldly speaking), sounded asleep and did not pay attention to the testimony. As a result, judicial neglect during criminal procedures would have a severe influence on the fairness of the trials by demonstrating a lack of comprehension of the facts in the

141 Interview with Dememew Shiferaw, Judge at Federal High Court, Terrorism and Constitutional Crimes Judge Bench.
142 *Id.*
143 *Id.*
144 *Id.*

cast has a two-fold effect: it either promotes impunity or leads to the conviction of innocent persons. The researcher argues that there should be measures in place to determine at least the maximum number of witnesses who may be called to testify in a specific defendant's case.

Of course, the irregularities manifested in the General Gebremedihin Trial are supported by challenges faced by public prosecutors. The public prosecutor respondent stated that:

> The main challenges in respecting the rights of suspects or accused are: delays in decisions, public prosecutors do not bring their witnesses on time, rather than bringing the witnesses, the Federal Police Officer sends them to the office by letter, overlap of adjournment, lack of transcribers, lack of translators for some cases... all of which have resulted in the trial process being delayed.[145] Aside from that, there was a lack of sufficient evidence, police negligence in bringing evidence and witnesses, a rushed trial, and a busy court schedule.[146]

Articles 14 and 15 of the ICCPR define procedural protections, but the right to a fair hearing is far wider. The single most important criterion in ensuring the fairness of a trial is the respect for the concept of equality of arms between the defense and the prosecution. Equality of arms refers to the treatment of all parties in a way that ensures their procedural equality throughout the trial. It would be impossible to foresee all of the occurrences that may lead to a violation of this idea.

4.3. Colonel Abdi Trial

In *Colonel Abadi G/Hiwot vs. the Federal Public Prosecutor* trial (Colonel Abdi Trial), the public prosecutor prepares the testimony by concealing the witness's name; nevertheless, the defendant objects strenuously and files an appeal with the Supreme Court. The defendant's appeal was based on the fact that the public prosecutor introduced the first witnesses without disclosing their identities. Despite this, the public prosecutor argued that there was a security concern and that the witness should be safeguarded. The defendants, on the other hand, argued that such a case should be determined by the court alone. Given the fact that the defendants exercised their right to appeal, the court's unreasonable delay in hearing witness testimony adds to the defendants' right to a speedy trial.

145 Interview with Aseged Haile, Public Prosecutor at Lideta Hight Court.
146 Interview with Seid Kemal, Public prosecutor at Lideta High Court.

The respondent from the public prosecutor office states that "regarding public hearing in accordance with the Witness Protection Proclamation No. 669/2010,[147] it can be closed but these kinds of cases are very few it is not more than one or two."[148] One of the respondents from the Federal High Court states that they are respecting and acting in accordance with due process of law are other means of respecting the suspect's constitutional rights.

> During this process, we tell the accused of all the facts and witnesses that have been presented against them. However, this is done in accordance with the Witness Protection Proclamation. The proclamation allowed the witness the option of not mentioning his name, which the accused may use to attack him. As a result, we apply a strict interpretation to these exclusions and allow the accused to question the witness against him. We also publicize the trial in ways that do not jeopardize the accused's innocence. We take appropriate measures in response to the public prosecutor's and police officer's negligent.[149]

When a suspect or accused is brought to court, "we make certain that she/he understands the accusation and that he is able to express his opinions. Whether other bodies had infringed on their human and constitutional rights."[150]

The defendant has the right to examine or have examined the witnesses against him and to obtain the attendance and examination of witnesses on his behalf.

Article 14(3)(e) of the ICCPR has been conclusively construed to indicate that the prosecution must notify the defense of witnesses it plans to call at trial. The

147 Under Article 4(1) of the Witness Protection Proclamation, various types of protection measures such as physical protection of person and property; providing a secure residence including relocation; concealing identity and ownership; change of identity; provision of self-defense weapon; immunity from prosecution for an offence for which he renders information; prohibiting an accused person from reaching the protected person's residence, work place or school before or after a final judgment is delivered on the crime for which information is given; not to disclose the identity of a witness until the trial process begins and the witness testifies; hearing testimony in camera; hearing testimony behind screen or by disguising identity; producing evidence by electronic devices or any other method; unless it is deemed confidential, providing information regarding the progress of investigation on what has been whistle blown and advice to a w m)providing transport allowance and per diem to a witness summoned to testify; covering relocation cost where the protection measure entails relocation; suspension or revocation of retaliatory administrative measures or taking any other compensatory measure; provision of medical treatment free of charge at government hospitals in case of injury sustained as a result of retaliatory measure; covering costs of basic needs in case of incapacity to work as a result of retaliatory measure; in case of death as a result of retaliatory measure, covering funeral expenses and provision of pecuniary subsidy to family; assisting the protected person to secure opportunity; and providing or causing the provision of counselling service to the witness or whistle-blowers.

148 Interview with Yosef Muchie, Public Prosecutor at Lideta High Court.

149 Interview with Zelalem Tesfaye, Judge at the Federal High Court, Terrorism and Constitutional Crimes Judge Bench.

150 Interview with Edossa Chala, Judge at Federal High Court , Terrorism and Constitutional Crimes Judge Bench.

defendant has the right to be present during awitness' testimony. In no circumstance may a witness be cross-examined in the absence of both the defendant and counsel. Using anonymous witnesses' testimony at trial is also considered improper since it restricts the defendant's right to question or have witnesses examined against him/her.

4.4. Kalifa Trial

In *Kelifa Abdurahman Hussen et al vs the Federal Public Prosecutor* trial (Kalifa Trial), the researcher observed that the public prosecutor had requested seven adjournments to present witnesses and the court granted the request; as a result, the defendants' right to speedy trial has been severely violated. According to the fair trial standard, individuals have the right to a speedy trial that culminates in a final verdict and, if necessary, a punishment. When the suspect (accused) is told that the authorities are taking particular procedures to prosecute him in line with the law, the time limit usually begins to run.

Besides, in Kalifa Trial, the defense lawyer appointed for the defendants appears to be negligent and lacks the required to experiences and skill; as a result, he could not play his part in leveling the field that is important to ensure the protection of the rights of fair trials, in one hand, and the improved justice system on the other. Besides, as one of the respondents from the public prosecutor stated, "most of the times defense advocates do not appear to the court by reasoning load of tasks."[151] Regarding the negligence of defense lawyers, the researchers interviewed the defense advocates that work in the Court. According to them,

> During arrest, interrogation, investigation and search warrant is given, there is no involvement of defense advocate including the times the accused gives his confession according to Article 35 of the Criminal Procedure Code."[152] Hence, during these times we do not have any contribution to assist the suspect and this might affect the accused's constitutional and human rights.[153]

Another respondent from the same institutions asserted that:

> There are many challenges with regard to respecting the rights of suspects in pre-trial detention. These are, for example, the accused do not understand that any statement he gave may be used as evidence they do not understand

151 Interview with Aseged Haile, supra note 145.
152 Interview with Feanance Asmamaw, A Defense Laywer at Lideta High Court.
153 *Id.*

> the accusation, there is a trend of siding with the government and automatically considering the accused as a criminal.[154]

According to the fair trial standards, everyone has the right to be informed of the nature and cause for the charge against him/her immediately and in detail in a language that he/she understands. This requirement goes beyond the equivalent rights granted to arrestees under Article 9(2) of the ICCPR. However, these challenges clearly violate the fair-trial rights of the suspect such as the right to presumption of innocent, the right to be informed the reason of their arrest and any statements given by the suspects would be produced as evidence against themselves.[155]

4.5. Asmelash Trial

In *Asmelash Alemu Dereje vs Federal Public Prosecutor* trial (Asmelash Trial), during the trial, the public prosecutor requested another adjournment, claiming that the 4th and 5th witnesses could not be human resource data of the National Defense Force due to a mistake in the title of the witnesses, and allowing the National Defense Force to summon the witness. Of course, these tasks are the Federal Police's duties and obligations, as stated in the Federal Police establishment Proclamation No.720/2011 (as amended by Proclamation No.944/2016), unless the Federal Police fails to carry out the court order. The Federal Police's position contributed to the defendants' right to a speedy trial being violated on a systematic basis.

The interviewees from the Federal Police on the observance of the fair trial rights and execution of court order, however, state that:

> We respect every human and constitutional right of the arrested person. We execute their right that emanates from the court's decision. For instance, if the court grants a bail right for them, we instantly release them free by following the correct procedure. In general, there is no right that is not protected for them by the police officer.[156] We do not think that there is a right which is not protected for the arrested person. But sometimes when the court issues a bail bond, the arrested person may not be able to afford the money needed for the bail. Thus, during this time his bail right cannot be protected.[157] Our job is to investigate then to bring the collected evidence to the Public Prosecutor other than that all rights of the suspect or accused

154 Interview with Ato Tewodros Adugna, A Defense Lawyer at Lideta High Court.
155 *Id.*
156 Inspector Tadele Enbiale, Federal Crime Investigation Office, Federal Police Commission.
157 Inspector Bogale Mihret, Federal Crime Investigation Office, Federal Police Commission.

> are protected. He can meet his families, advocates, priests and receive medical treatments and at any time he can communicate with us. There are no any circumstances that the rights of the accused are infringed.[158]

Of course, these kinds of responses are common when the government institution officials are interviewed on certain violations or problems. Since the researcher already observed from the trials and the problems manifested from the side of the police, these phrases that have denying issues are just stated to show how far the police wrongly understood their actions are in the right way.

Moreover, on the reluctance of the Federal Police, one of the respondents from the public prosecutor underlined that:

> There is political involvement on some cases. The Federal police officer shows negligence on bringing witnesses of the public prosecutor. There are issues on pretrial and trial stages that can be rectified through short term and long-term strategic solutions rather than by individual issues. There is the public and government interest on some case which makes it hard to correct things by the mere effort of the public prosecutor.[159]

This assertion in general might show how far the public prosecutor is getting tired in the lack of commitments shown in the Federal Police. However, if there is still political involvement, arguably, one could also expect the entire functioning of the police would be also at risk.

4.6. Major Tsadik Trial

In *Major Tsadik Kiros Tesfaye et al vs. Federal Public Prosecutor* trial (Major Tsadik Trial), the researchers found that the Court's approach to providing the public prosecutor more time, on the one hand, and the public prosecutor's negligent approach to producing his witness, on the other side, would have an impact on the whole justice process. To be more explicit, the right to speedy trials and, by definition, longer adjournments harm their presumption of innocence because the court and the public prosecutor place their proving machinery far apart. Besides, as the respondent from the defense lawyer stated, adjournment is one of the ways for injustice on the suspect. He asserted that "they might be scared of the accused by

158 Deputy Inspector Smith Freeman (anonymized name), Federal Crime Investigation Office, Federal Police Commission.
159 Interview with Aseged Haile, *supra* note 145.

saying that they are going to request an adjournment or remand him so that he can stay arrested".[160] The other challenge is the investigator police negligence. This negligence is manifested, *inter alia*, the culture of "investigation after detention that cause inherently to violations of various human rights of the suspect or accused."[161] Of course, such kinds of "investigation negligence is also supported by the courts heedless reward of adjournments or remand requests without sufficient reasons to the police.[162] The remand time is fixed or it is 14 days for how many times should be the remand is given is still not clear. And police keep the accused arrested for a longer time which affects her/his constitutional rights. Regarding bail right there is a procedural irregularity/ infringement because bail should be issued considering individuals economic status which results in prolonged arrest due to financial incapacity. The respondent underlined that, hence, the remand or adjournment requested by the investigative police should be specific and we should have a linear bail procedure."[163]

4.7. Khalid Trial

In *Khalid Kalis vs Federal public Prosecutor* trial (Khalid Trial), the researchers learned during the trial that the case had been shifted from the 2nd Anti-terrorism and Crimes Against the Constitutional Order Affairs Bench to the 1st. However, on this day, the presiding judges of the 1st bench came to the conclusion that, in order for them to get familiar with and substantiate the case, the transfer of the case to this bench should have been communicated to them by a formal letter prior to the trial date. As a result, the court set a date for a decision on April 6, 2022. Obviously, institutional negligence has a significant impact on the defendant's time, putting his right to a speedy trial at risk. Furthermore, neither the newly appointed bench nor the defendants were provided any rationale. More importantly, the defense counsel was also hesitant to ask the court to correct these sorts of inconvenient and working procedures that result in a protracted delay for his clients to be entertained.

The right to a fair trial means that proceedings in any criminal case (or in a civil suit) must be handied by a compelent, independent, and impartial tribunal.the purpose

160 Interview with Tewodros Adugna, *supra* note 154.
161 *Id.*
162 Id.
163 Interview with Mihret Shiferaw, A Defense Lawyer at Lideta High Court.

for this clause is to avoid the arbitrariness and/or bias that may occur if criminal charges were resolved by a political or administrative authority. The obligation of every state to provide appropriate resources to enable the court to effectively fulfill its tasks is one of the practical guarantees of independence.

4.8. Amanuel Trial

In *Amanuel Gidey Assefa vs Federal Public Prosecutor* trial (Amanuel Trial), raised issues on the substance of the case and the defendant contended that certain of the public prosecutor's charges were not backed up by adequate evidence. Furthermore, the defendant claims that the Anti-Terrorist Proclamation No.1176/2020 does not make *like* and *sharing* Facebook posts a terrorism offense. In addition, Article 2(3) of the 2004 FDRE Criminal Code, which addresses the principle of legality, stipulates that "the court may not construct crimes by analogy." This section of general criminal law applies to all criminal laws in Ethiopia.

These kinds of substantive issues would have procedural remedies. One of the respondents from public prosecutor stated that:

> Most of the suspects or the accused have legal presentation so if there is a fault the chance to appeal is very high so it can be corrected accordingly. Still the issue of speedy trial is a major problem that needs to be corrected. Even if courts are busy still there should be an approach to hear cases frequently.[164]

Of course, when this kind of issue becomes the argument of the trial, both the court and the prosecution office should follow the principles of legality in the way that ensures the fair trial rights of the suspect or the accused. Apart from other gaps among the public prosecutors, as one of the respondents from the defense lawyers stated, there are "wrong attitudes among the public prosecutors towards the suspect". According to the respondent,

> Some public prosecutors consider all individuals accused by terrorism as criminals. Besides, failure to deliver evidence against the suspect is common. Considering defense advocates that they are there to set the defendants free and a tendency to be anti-defense advocates. But it

164 Interview with Yosef Muchie, *supra* note 148.

> should rather be considered that we all are providing something for the betterment of the justice system.[165]

Incriminating and prosecuting a given suspect by analogy, as shown, in Amanuel Trial is a mere violation of presumption of innocence. Of course, this issue is also shared by a respondent from judge "even though it does not occur frequently, threats based on their identity, such as being deemed a criminal before a decision is made on the side of the public prosecutor."[166] As stated in the previous section, the right to a presumption of innocence is a cornerstone of any criminal proceeding. In a criminal trial, the prosecution bears the burden of proof, while the accused is given the benefit of the doubt. The presumption of innocence is the obligation of both the officials concerned in a case and all public authorities.

4.9. Dr. Debretsion Trial

In *Dr. Debretsion G/Michael Measho et al vs Federal Public Prosecutor* trial (Dr. Debretsion Trial), though the Police failed to carry out the order to summon the defendants, unless it is for the sake of procedural compliance, one would not expect, given the ongoing war between the two parties, the Tigray Force and the Federal Government, that serving the summons and apprehending Dr. Debretsion *et al* and bringing them before the court is possible. According to the researchers, it looks to be a waste of time. Regarding the summons of those accused persons who are not present in court, the court set a date for March 10, 2022 to hear the Federal Police's response and consider the motion filed by the advocate on behalf of the three physically present defendants. Of course, this type of police common negligence is also shared by the respondent from defense attorney by stating that one of among the other challenges are the barriers created by police's negligence to bring witnesses even if they are in the city (identified places) rather they keep requesting remand they do not try to find those people.[167]

In circumstances involving co-offenders, a speedy trial may be necessary. This occurs when some of the criminals have been apprehended and others have not.

> This will deprive the appearing culprits of their right to a speedy trial. Witnesses are proving to be a challenge. In terms of detention centers,

165 Interview with Tewodros Adugna, *supra* note 154.
166 Interview with Dememew Shiferaw, *supra* note 141.
167 Interview with Ato Mihret Shiferaw, *supra* note 163.

> because terrorism suspects are high-profile persons, we ensure that they receive adequate care, medical treatment, and communication with their family living overseas. There are grievances by the rest of the offenders in circumstances when some of the co-offenders' charges are dropped. In such circumstances, we convey to them that we are unable to help them.[168]

Of course, the interviewee of investigative police officers stated that most of the time "the task of collecting evidence will be done after arresting the accused."[169] In the process of getting evidence from institutions, there is a delay because of workload and different institutional bureaucracies. Hence, it is better to collect the evidences as much as possible before arresting the suspect; and to have a good communication with the institutions that will be providing the evidences.[170] Besides, "due to coordinated nature of the crime of terrorism, it is very hard to get evidences in short time. It even becomes hard to get the suspects themselves."[171] Sometimes there is a chance of finding some of the co-offenders and in the process of searching for the rest offenders, the appeared offenders will be released on bail and may not be found again. Evidence that is earned from institutions gets delayed which slows the police's investigation process.[172] There are institutions that we cooperate together in order to collect evidences on a suspect or accused like Banks, Telecommunication and National Information and Security Services. These institutions sometimes fail to provide sufficient information when they are requested.[173] For example it can be a bank transaction, subscriber's identity or an assistance on technical and electronics investigation. On terrorism cases most of the victims died or displaced so that it is difficult to take their statement in general to locate them without forgetting instabilities across the country. For instance, while investigating or collecting evidences on the terrorist group like *Shene*, it is very difficult for us to go to Wollega and operate because the area is not peaceful. Therefore, these whole things affect the rights of the accused in both pretrial and trial stages. Stability and peace are important things to protect the rights of the suspect or the accused.[174]

168 Interview with Zelalem Tesfaye, *supra* note 149.
169 Inspector Tadele Enbiale, *supra* note 156.
170 *Id.*
171 Inspector Bogale Mihret, *supra* note 157.
172 *Id.*
173 Deputy Inspector Smith Freeman, *supra* note 158.
174 *Id.*

One of the researchers that conducts a trial monitoring on the trials of Jawar Mohammed et al vs. Federal Public Prosecutor and Eskinder Nega et al vs Federal Public Prosecutor at the Federal High Court and Supreme Court states that:

> Our observation reveals no apparent evidence to suggest that the court has done to affect the rights to fair trial of the defendants. Nevertheless, the Prosecution's use of 'marathon' appeal against both the trial court and the appellate court decisions on Mr. Eskinder's case to conduct witness hearing behind curtains and in close sessions, though we could not establish this was a deliberate effort of delaying the trial, has created the impression that the Prosecution was determined to keep the defendant, especially Mr. Eskinder, who was desperate enough to participate on the July 21, 2021, general election, from participating in the election.[175]

According to the researcher, as he states, the "the key problem in our view was the effort to solve political problems using the judicial body." Besides, he underlined that:

> Looking at the political context that led to the arrests of the two defendants, and some of the charges which were later dropped, it seems the government wanted to use the justice system to punish its critical opponents, this is in fact reflected in their releases. Again, the monitors witnessed that the Court, regardless of the political context, tried its best to ensure the fair trial rights of the two defendants. Whereas the prosecution, the attorney general's incriminating statements, the Marathon appeals…..shows no interest to ensure the fair trial rights of the defendants.[176]

Of course, while the alleged crimes of the suspects are similar in substance, the context of Mr. Jawar *et al* and Mr. Eskinder *et al's* trials differs slightly from the context of the suspects prosecuted in relation to the Ethiopian government's designation of them as terrorists and the existence of armed conflict in general.

4.1.0. Major Abera Trial

In *Major Abera Nigussie et al vs Federal Public Prosecutor* trial (Major Abera Trial), on this day, the trial was an adjournment that was made to hear the witness of the public prosecutor's witnesses. However, the prison officers have not managed to bring the defendants on time. Apart from this, the case was very detailed and wide to be testified by the witnesses;

175 Interview with Solomon Woldegebeal, a researcher and conducted the trial monitoring of Jawar Mehammed and Eskinder Nega trials, *See* also, Solomon Woldegebreal, Noah Yesuf, Motti Tesfaye (2021), *Fair Trial Monitoring Report of Jawar Mohammed and Eskinder Nega*, Colony Foundation for Justice's Trial Watch, Association for Human Rights in Ethiopia (AHRE) and Consortium of Ethiopian Human Rights Organizations (CEHRO).

176 *Id.*

only two testimonies in the morning and afternoon have been heard. Later the afternoon programme was rescheduled to the next day. In terms of court efficiency, adjourning a trial day to hear on witness or ending up with hearing one witness is very poor.

On trial there are prolonged adjournments due to bringing witnesses to the court takes long time.[177] It is not only bringing witnesses contributes for prolonged adjournment, but also the delay of bringing the suspect and the accused from the side of the prison contributes in affecting the speedy trial rights of the accused and suspects.

In conclusion from all monitored trials, the repeatedly violated rights among the components of fair trial rights, is the right to speedy trial. One of the key issues is the lack of a speedy trial as a result of several causes such as police officer and public prosecutor negligence. The other primary issues are prolonged time to review evidence and nonappearance of witnesses owing to instability in various places. According to the respondent from the judges, however, "this is not a challenge that can be addressed only by judges; it will require the entire institution to improve the justice system and provide solutions to some of the issues we face".[178] He also added that "all stakeholders in the legal system, including police, public prosecutors, judges, and the Ministry of Justice, should work together with honesty and determination to guarantee that the accused's right to a speedy trial is respected."[179] In terms of intervention, the respondent underlined that "we also have a legal obligation to do so. Aside from that, I believe that certain trainings, education, and different awareness-raising initiatives might aid in the resolution of these problems."[180]

According to the fair trial standard, everyone has the right to be tried without excessive delay in the determination of any criminal accusation made against him or her. As a result, individuals have the right to a speedy trial that culminates in a final verdict and, if necessary, a punishment. When the suspect (accused, defendant) is told that the authorities are taking particular procedures to prosecute him in line with the law, the time limit usually begins to run. Of course, what constitutes an excessive delay depends on the details of the case, such as its complexity, the parties' actions, whether the accused is held, and so on.

177 Interview with Feanance Asmamaw, *supra* note 152.
178 Interview with Dememew Shiferaw, *supra* note 141.
179 Interview with Edossa Chala, *supra* note 150.
180 *Id.*

PART FIVE

CONCLUSION AND RECOMMENDATION

4.1. Conclusion

In conclusion, this report is developed based on over 17 trial notes on nine different cases tried on the 1st, 2nd, and 3rd, anti-terrorism and crimes against constitutional order affairs benches at *Lideta* Federal High Court and highlights few concerns compared with international human rights standards. Though the monitoring notes revealed that no significant violations of the fair trial standard were observed, there are some issues that require an intervention in various forms. These concluding remarks can be seen from the court/judges, public prosecutors, defense lawyers, police, the prison, and the government perspectives.

Regarding the court (benches), on the overall, trial monitoring, the repeatedly manifested concerns is some trials are poor trial management such as unnecessary wastage of time in hearing the witnesses, skipping silent when the public prosecutor engage in leading questions during examination-in-chief, change of benches without prior informing the defendants and the public prosecutor, unreasonably giving greater time for the accused that could not come on his willing and physically difficult to apprehend him; as a result, denying those organizations or individuals accused together with these kinds of individuals affected their reasonable rights to speedy trial.

On the side of the public prosecutor, in some benches, they were coming to the court with poor preparation such as producing fact-less witnesses, engaging in leading questions during the examination-chief of his/her witnesses, consuming a greater number of witnesses that may affect the defendant's right to speedy trial.

Concerning the defense lawyer, some of them appear to be lacking required skills to defend their clients well in terms of such as diligent cross-examination questions, objecting when necessary leading questions asked by the public prosecutor to his/her witnesses.

The Federal Police is another organ that has been heavily involved in the trial process, from pre-trial criminal investigation to facilitating the summoning of witnesses and the collection of other evidence as needed by the public prosecutor. However, in some trials, the police's efforts to summon the required witness and even the accused person were ineffective.

As was observed in some trials, the defendants were not produced by the prison on the exact schedule (time) for the trial. These types of wasting time reduce the court's efficiency in consuming extra adjournments, which affects trial management and, ultimately, the defendants' fair trial rights.

The last issue is related to the government's measures that released some TPLF leaders who were accused of similar conduct to cases observed by this monitoring. This government measure may be helpful from other political contexts; arguably, however, this measure may violate the right to a competent, independent and impartial court established by law that is a fundamental institutional framework allowing the enjoyment of the right to fair trial. Besides, the government measures may also be questioned on violating the right to equality before the courts as it can be seen from the similarly tried defendants but still in trial processes.

4.2. Recommendations

Based on their observations and closing remarks, the researchers would like to forward the bullet recommendations listed below.

A) For the Federal High Court:

The *Lideta* Federal High Court should always be vigilant enough in responding to remedial measures to unnecessary actions or inaction carried out by the police, defense lawyer, public prosecutor, prison administrations and even the government. Since caseloads are the one of the challenges commonly raised by courts, the court should organize refreshment or capacity building training on *trial management* to the judges.

B) For Ministry of Justice:

The Ministry of Justice should actively carry out its responsibility to ensure the rights to a fair trial, including making every effort to ensure the right to a speedy trial and equality of arms between the defendant and the prosecution. The Ministry of Justice should organize refreshment or capacity building trainings on *effective prosecution strategy* for public prosecutors.

C) Defense Lawyers:

The defense lawyers should work their tasks diligently and enhance their capacity. Of course, the structural barriers to engage defense lawyers/council should be addressed. The researchers strongly recommend the defense council to be an autonomous and independent institution and detached from the court. Besides, short-term and long-term training opportunities should be opened for defense lawyers/councils by the Federal High Courts and respective stakeholders.

D) Society Organizations (CSOs):

CSOs that are working directly or indirectly with the issues should actively work on enhancing the capacity of defense lawyers and advocates of Federal Courts to defend well and play significantly to the protection of fair trial rights of their clients, or if they already have done, they should maximize their intervention to ensure the protection of fair trial right.

E) The Federal Police Commission:

The Police should obey its institutional and professional duties responsibly in summoning accused and witness to avoid unnecessary adjournments that in turn affect the right to fair trials of the physically detained defendants. Besides, the Police Federal Police Commission should organize capacity or refreshment training on the fair trial right of the defendant to the respective police members.

F) The Federal Prison Commission:

The Prison Commission should be punctual in presenting the defendants on time since the delay has its impact on the efficiency of criminal justice administration and ensuring the right to fair trial of the accused.

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Interviewees:

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2. Ato Edossa Chala, Judge at Federal High Court, Terrorism and Constitutional Crimes Judge Bench.
3. Ato Zelalem Tesfaye, Judge at the Federal High Court, Terrorism and Constitutional Crimes Judge Bench.
4. Ato Aseged Haile, Public Prosecutor at Lideta Hight Court.
5. Ato Seid Kemal, Public prosecutor at Lideta High Court.
6. Ato Yosef Muchie, Public Prosecutor at Lideta High Court.
7. Ato Feanance Asmamaw, A Defense Laywer at Lideta High Court.
8. Ato Tewodros Adugna, A Defense Lawyer at Lideta High Court.
9. Ato Tewodros Adugna, A Defense Lawyer at Lideta High Court.
10. Inspector Tadele Enbiale, Federal Crime Investigation Office, Federal Police Commission.
11. Inspector Bogale Mihret, Federal Crime Investigation Office, Federal Police Commission.
12. Deputy Inspector Smith Freeman (anonymized name), Federal Crime Investigation Office, Federal Police Commission.
13. Ato Solomon Woldegebeal, a researcher and conduct the trials of Jawar Mehammed and Eskinder Nega trials.

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