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Addis Ababa University

College of Law And Governance Studies

School of Law Graduate Program

LL. M. In Public International Law

Examining The Available Trigger Mechanisms To Prosecute *Getachew Assefa et al* Before The ICC

**A Thesis Submitted In Partial Fulfillment For The Requirements of LL.M.
Degree In Public International Law**

By

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**June, 2020
Addis Ababa, Ethiopia**

Declaration

I, **Alemseged Dejenie Abate**, hereby declare that this thesis is my original work and it has never been presented in any other University. All source materials used in this work have been duly acknowledged.

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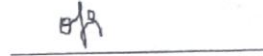
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Dedication

Dedicated to Yonas Gashaw and other victims of human rights violations who inspired me to confront the troubles of conducting this thesis.

Acknowledgment

First of all, thanks to God, the Almighty, for giving me the patience, strength, and health to do this thesis. Then, my courteous gratitude extends to my supervisor, Wondwossen Demissie (Ph.D.). I have been indebted in the preparation of this thesis to him whose patience and kindness as well as his academic experience, constructive comments, insights, and recommendations have been invaluable to me. Besides his academic guidance, I also wish to express my sincere thanks to him for providing me the necessary materials.

Let my gratitude goes to my examiners. I have been thankful in the improvement of this thesis to them whose academic experience and insightful comments have been great for mine.

I would like to thanks my parents Dejenie Abate (my role model) and Wirka Endashaw whose love is illimitable. I am also grateful to close friends who have contributed enormous efforts for the judicious accomplishment of my thesis. Selamsew Mohammed, Solomon Nigus, Seifu Moges, Biruk Mulat, Alemnew Abebe, Markos Mamo, Birhanu Abebe, Girma Senbete and Messay Tsegaw take my gratefulness for the care you have had to me and my endeavors. I owe you all!!!

Acronyms

E.C: Ethiopian Calender

EPRDF: Ethiopian Peoples Revolutionary Democratic Front

FAG: Federal Attorney General

FHC: Federal High Court

FPC: Federal Police Commission

GA: General Attorney

ICC: International Criminal Court

ICL: International Criminal Law

IHL: International Humanitarian Law

IMT: International Military Tribunal

NISS: National Intelligence And Security Service

OLF: Oromo Liberation Front

PM: Prime Minister

UN: United Nations

UNSC: United Nations Security Council

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Abstract

The Pre-Abiy EPRDF-lead Government of Ethiopia has been accused of grave human rights violations since 1991. The new PM Abiy Ahmed has also officially admitted these critical allegations before the parliament. Following the PM admission, the FAG has prosecuted Getachew Assefa et al. before the FHC. Despite the charge filed before and the arrest warrant issued by the FHC, so far the Ethiopian Government has failed to bring the alleged suspects before justice since the alleged suspects are shielded in the Tigray and the latter has failed to hand over the suspects. To curtail the possible impunity of the alleged perpetrators, looking for the available leeway to trigger prosecution before the ICC was the core objective of this thesis. In doing so the study has employed both primary and secondary sources and found a leeway to refer Attorney General v. Getachew Assefa et al before the ICC.

Chapter One: Introduction

1. Background of The Study

The Rome Statute for the ICC¹ has established the international court with jurisdiction over core crimes.² Article 13 of the same statute has also provided for the mechanisms to set justice in motion before the ICC. Among the trigger mechanisms, the UNSC referral is the most controversial.³ However, it is still playing significant roles in bringing the offenders of ICL before justice. Once the UNSC has exercised its power under article 13(b) of the statute and referred the matter to the attention of the Court,⁴ it can preside over the crimes which have neither been committed in the territory of State party nor committed by the nationals of Member States. Recently the jurisprudence of ICL has come up with the precedents which would dictate the stepping in of the ICC's Complementarity jurisdiction over the nationals of non-party states if the concerned States are either unable or unwilling to genuinely dispose of the case.

The Pre-Abiy EPRDF-lead Government of Ethiopia has been accused of grave human rights violations since 1991. The new PM of Ethiopia Abiy Ahmed as officially admitted before the parliament, some Governmental agents have committed systematic and widespread human rights violations against civilians.⁵ Following the Government's explicit admission, the FAG is pressing charges against 26 former officials and employees of the NISS.⁶ Despite the pending charge four of the alleged suspects including Getachew Assefa have not been brought before the

¹ Rome Statute of the International Criminal Court (last amended 2010) 1998.

² Ibid, art 5

³ Among the critics against the extraterritorial jurisdiction of ICC, the principle of *pacta tertiis nec nocent nec prosunt* is the most important one. See Gennady M Danilenko, 'The Statute of the International Criminal Court and Third States' (2000) 21 Michigan Journal of International Law 445.

⁴ UNSC has already referred the gross human rights violations in Sudan and Libya to the attention of ICC. See United Nations Security Council, "Resolution 1593 (2005) Adopted by the Security Council at Its 5158th Meeting, on 31 March 2005" (2005) <<https://www.icc-cpi.int/NR/rdonlyres/85FEBD1A-29F8-4EC4-9566-48EDF55CC587/283244/N0529273.pdf>>. and United Nations, "Security Council Resolution 1970 (2011)" (2011) <<https://www.icc-cpi.int/NR/rdonlyres/081A9013-B03D-4859-9D61-5D0B0F2F5EFA/0/1970Eng.pdf>> accessed August 11, 2019.

⁵ Ahmed Speech, "PM Dr. Abiy Ahmed Speech in Parliament - FULL" (*YouTube*, June 18, 2018) <<https://youtu.be/wJnC2aX4jP8>> accessed August 11, 2019.

⁶ *Attorney-General V Getachew Assefa et al.* [2011] FHC 198, [2011]

Court.⁷ The regional government of Tigray has refused to hand over the former intelligence-chief despite the arrest warrant issued by the concerned court.⁸ The suspect has been hiding in his home town Mekelle since he was removed from office.⁹ General Attorney BirhanuTsegaye has also indicated that the Government knows the former intelligence chief is still in Tigray.¹⁰ Also in one report to the parliament, the PM has mentioned that though the Government has not been able to cause the arrest of Getachew Assefa and others they cannot be immune from self-imposed detention which is the worst jail than the formal prisons.¹¹ There is also some suspicion that Getachew Assefa has been able to take cardiovascular diagnosis in Britain under the blessing of the PM.¹²

2. Statement of the Problem

Despite the charge filed before and the arrest warrant issued by the FHC, so far Getachew Assefa and others have not been brought before the Court. That is not because they are outside of the territory of Ethiopia over which the Court has jurisdiction but because the Regional State of Tigray has shielded them.¹³

⁷ Borkena, 'Ethiopia : Court Order for the Fugitive Former Spy Chief Issued Again' (*Borkena Ethiopian News*, May 24, 2019) <<https://borkena.com/2019/05/24/ethiopia-court-order-for-the-fugitive-former-spy-chief-issued-again/>> accessed June 11, 2020.

⁸ Wondwossen Demssie, 'Op:Ed: The Government's Approach to Past Human Rights Violations Needs to Be Transparent' *Addis Standard* (Addis Ababa, January 25, 2019) <<http://addisstandard.com/oped-the-governments-approach-to-past-human-rights-violations-needs-to-be-transparent/>> accessed August 11, 2019.

⁹ ethsat, 'Ethiopia: Tigray Regional Government Refuses to Handover Fugitive Former Spy Chief – The Ethiopian Satellite Television and Radio (ESAT)' (*Ethsat.com*, 2016) <<https://ethsat.com/2019/01/ethiopia-tigray-regional-govt-refuses-to-handover-fugitive-former-spy-chief/>> accessed September 7, 2019.

¹⁰ Tigray Government Refuses to Hand Over Getachew Assefa - Attorney General' (*Ezega.com*, 2018) <<https://www.ezega.com/News/NewsDetails/6883/Tigray-Government-Refuses-to-Hand-Over-Getachew-Assefa-Attorney-General>> accessed September 17, 2019.

¹¹ Dr. Abiy Ahmed Amazing Parliament Speech about Getachew Assefa, February 1, 2019' <https://www.youtube.com/watch?v=BqjhGO7rkxE&fbclid=IwAR0QuoKYy8BkOv0xvyy-VHDibJ1YXa2Zd_JRVw7RTdDO8eb2CosdC1CJjUI> accessed September 14, 2019.

¹² Temesgen Desalegn, 'ወታደራዊ ሰሞጽ ያሠጋል' ፍቅር (Addis Ababa, June 2011 EC) 5

¹³ (n 10)

Research Questions

The study will attempt to answer the following questions:

1. Do the facts alleged on the charge constitute any of the crimes under the Rome Statute?
2. Does the case *FAG Vs Getachew Assefa et al.* admissible before the ICC?
3. Without Ethiopia being a party to the Rome Statute, what mechanisms are available to prosecute the suspects before the ICC?
4. To what extent are the available mechanisms feasible?

3. The Objective of The Study

3.1. General Objective

To investigate if the facts alleged on the charge relating to *Getachew Assefa et al* constitutes any of the crime under the Rome Statute and, if so, to explore the possibility of resorting to the ICC without Ethiopia being a State party to the Statute.

3.2. Specific Objectives

In identifying problems and analyzing issues, attempts will be made to achieve the following specific objectives;

1. To evaluate the facts of the charge in line with the Rome Statute
2. To determine the admissibility or otherwise of the case before the ICC
3. To identify and examine the available mechanisms of setting justice before ICC without Ethiopia being a party to it.
4. To appraise the feasibility of the trigger mechanisms before ICC.

4. Scope of The Study

The scope of the study is confined to *FAG v. Getachew Assefa et al.*

5. Significance of The Study

This study will positively inform and influence the Government to take measures with a view to curtail impunity. Or if justice will not be served through the national justice system it will point the trigger mechanisms before ICC.

6. Literatures Review

Philippe¹⁴ tries to scrutinize the nexus between the principles of universal jurisdiction and complementarity along with the difficulties in their implementation. Unlike the principle of territoriality and nationality, the principle of universal jurisdiction is allowing or requiring a state to bring criminal proceedings in respect of certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim.¹⁵ The *raison d'être* for the universal jurisdiction is based on the notion that certain crimes are so harmful to international interests.¹⁶ However, Philippe argues that there are still several legal and non-legal obstacles that may impede the genuine disposition of justice through universal jurisdiction. He emphasized that until now only the goodwill of states could be relied on to guarantee their implementation in good faith, for no sanction mechanisms have been created to induce them, without their consent, to abide by their obligations. Eriksson¹⁷ in his thesis has also tried to examine the scope of ICC's judicial power over non-party nationals. However, much focus has been given to delineate the ICC's jurisdictions based upon the traditional territoriality and nationality principle. Morris¹⁸ research argues that the compulsory jurisdiction of ICC over Non- Party States on cases solely concerned with individual culpability cannot illegitimate ICCs judicial power.¹⁹ However, cases that focus on the legality of official acts of states are heavily debatable. To examine the validity of ICCs Jurisdiction over the cases that focus on the legality of official acts of states non-party to the statute, the author has made an in-depth investigation of the underlying *stare decisis* and principles of international criminal jurisdiction and found that neither of those theories can justify ICCs power over non-State party nationals. On the other hand Scharf²⁰ has tried to examine the validity of the U.S. argument against the ICC's jurisdiction over the nationals of non-party states and concluded that the ICC's jurisdiction over the nationals of non-party states is

¹⁴ Xavier Philippe, 'The Principles of Universal Jurisdiction and Complementarity: How Do the Two Principles Intermesh?' (2006) 88 *International Review of the Red Cross*

¹⁵ Kenneth C Randall, 'Universal Jurisdiction under International Law' (1988) 66 *Texas Law Review* 785.

¹⁶ Mary Robinson, *The Princeton Principles on Universal Jurisdiction* (Princeton University Press 2001) 1, 16.

¹⁷ Christian Eriksson, 'ICC Jurisdiction Over Nationals of Non-Party States: An Ultra Vires Abomination, or Legitimate Judicial Conduct?' (LLB thesis, Örebro University 2017) <<https://core.ac.uk/display/132538885>> accessed August 12, 2019.

¹⁸ Madeline Morris, 'High Crimes and Misconceptions: The ICC and the Non-Party States' (2001) 64 *Law and Contemporary Problems*

¹⁹ *Ibid*, 14

²⁰ Michael P Scharf, 'The ICC's Jurisdiction over the Nationals of Non-Party States: A Critique of the U.S. Position' (2001) 64 *Law and Contemporary Problems* 68, 80.

well-grounded in international law. Danilenko,²¹ having closely scrutinized the principal legal and political effects of the Rome Statute on non-parties supports Scharf's position. According to him, ICC's jurisdictional reach may extend to third States. Because of these trends, Danilenko concluded that the Third States, including the United States, will not be immune from the ICC irrespective of whether they ratify the Rome Statute.

The aforementioned pieces of literature may have relevancy in enriching the jurisprudence of ICC while it has its own limitations in resolving the contentions under this study. Philippe's article was devoted to deal with the relationship between the principles of universal jurisdiction and complementarity along with their practical shortcomings.

However, under the principle of universal jurisdiction, no proper sanction mechanisms have been created to induce states, without their consent, to be abided by their obligations and to make the efforts to bring the alleged suspects under this study before justice possible. Eriksson's thesis was devoted to determining the ICC's jurisdictional reach based on the traditional notions of territoriality and nationality principle and Scharf also tried to examine it from the U.S perspective only. However, the thesis is not sufficient enough to address the problem under investigation since Ethiopia is neither party to the Rome Statute nor its suspects of human rights violations have committed the core crimes in the territory of State party. Morris has also argued that the compulsory jurisdiction of ICC over the cases that focus on the legality of official acts of states non-party to the statute can illegitimate ICCs judicial power. However, Morris's article didn't take into account the latest development of ICL which makes a crime committed by Non-Party State officials as subjects of the Rome statute. In the case between *FAG v. Getachew Assefa et al.* most of the alleged crimes have been committed in the official capacity of the suspects. Danilenko has also made in-depth investigations of the general normative frameworks while the study is not quite specific to address the problem under this study.

7. Methodology

This study has employed doctrinal methods of inquiry. Both primary and secondary data are used in this research. The primary data are key informant interviews, legislation, and precedents of international law. Moreover, secondary data are also collected from surveys, reports, electronic sources, and researches. In doing key informant interviews judgmental/ purposive sampling is employed.

²¹Danilenko (n 3).

8. Organizations of The Study

The paper has six chapters. Chapter one is introductory, chapter two is a scrutiny of the facts alleged on the charge in line with the Rome statute, chapter three is devoted to deal the admissibility of the case, chapter four examines the available mechanisms of setting justice in motion before the ICC without Ethiopia being a party to the statute and chapter five has held in the conclusion and recommendations of the study.

9. Limitation of The Study

The case between *FAG v. Getachew Assefa et al.* is a very contentious and politically sensitive pending trial for the last two years. The sensitivity of a case coupled with the absence of sufficient written materials to be referred and the unwillingness of the FPC and FAG to give the necessary interviews have troubled the writer throughout conducting this paper.

Chapter Two: A Scrutiny of the Facts Alleged On the Charge In Line With the Rome Statute

Under this chapter, a scrutiny of the alleged material facts of the charge in tandem with the basic ingredients of a crime against humanity of the Rome Statute has been examined. In so doing a summary of the alleged material facts of a charge, an analysis of the elements of a crime against humanity as defined under Article 7 of the Rome Statute and an in-depth evaluation of the alleged facts on the charge in the light of the very notion of a crime against humanity have been made.

Section One:

1. Summary of the Alleged Facts

A summary of the alleged material facts of a charge is provided under this section. However, to avoid redundancy the summary has confined its scope in providing facts on the two counts only. The two counts have opted due to the following reasons.

- i. The counts have hold in accusations against the higher officials of the NISS who are alleged to be the moral offenders of the alleged crimes.
- ii. Seemingly most of the crimes, the suspects and victims are provided on the two counts undoubtedly.

In its file Number 198/2011, the FAG has made a charge²² against Getachew Assefa and the other 25 suspects on the ground that they have caused gross human rights violations.

I. Count Number One

The first count which has made against Getachew Assefa asserts that when the accused was the chief of NISS, with an intent to infringe the human rights of citizens, contrary to the enabling act of the NISS²³ and other pertinent laws of the country, he has authorized the establishments of illegal squads and secret prisons in different parts of the country. The secret prisons are established in Addis Ababa, Gonder, Bahirdar, Nekemit, Jimma, Shashemene, Bishoftu, and Hawassa under the financial, logistic, and professional supports of the Government.

²² In Its Charge The FAG Alleged That Getachew Assefa et al Have Caused Gross Infringements Of Human Rights In Violations Of Arts 32(1) (A) (B), 407(1) (B) (C), And (407) (3) Of Ethiopian Criminal Code And Articles 9 (1) (B), (C), 9 (3) Of Proclamation No 881/2015. See *FAG Vs Getachew Assefa et al. Attorney General* (n 6).

²³ National Intelligence And Security Service Re-Establishment Proclamation, 2013

Without having a legal blessing, the squad has caused the enforced disappearances, the death, and, the torture of citizens during the unlawful interrogations. Until 25/07/2007 E.C many individuals have been subjected to these human rights violations. In 2006 E.C several individuals have been arrested on suspicion that they had planned to bomb Addis Ababa stadium during Ethiopia Vs Nigeria soccer match. They had been put in jail of *Maekelawi*. When they were in *Maekelawi*, the victims have been subjected to human rights violations. The human rights violations include but not limited to the enforced disappearance of persons, torture particularly flogging the inside of victims' foot, extracting their nails, so, and so forth. Following the order of Getachew Assefa, the victims were moved into one of the secret detention centers of NISS which was found in Addis Ababa, *Kirkos* sub-city, behind the *Kera* Mosque. When they were there Mohammed Ibrahim passed away on 23/3/2006 E.C following the very severe and prolonged interrogations by the 7th and the 15th accuses (Tesfaye Gebretsadik and Nega Kassie respectively) along with unknown members of NISS and FPC on the close order of Getachew Assefa.

II. Count Number Forty One

Undercount number 41 which has been made against the 24th accused Derso Ayenew, the charge alleged that the accused with full knowledge to violate the human rights of citizens, contrary to the enabling act of the NISS and other pertinent laws of the country, has caused the enforced disappearance and torture of uncounted numbers of individuals. On the night of 12/05/2006 and, 24/02/2007 E.C the accused in collaboration with the unknown members of NISS, have caused the enforced disappearance of Abebe Kassie and Netsanet Fentahun in North Gonder. The victims were taken in suspicion of violating the Anti-Terrorism Proclamation and jailed for five days long in the NISS office in Gonder City. They were later dispatched by the accused to *Maekelawi*. When they were there, their hands had been locked with chains, their eyes blindfolded and severely tortured. The torture includes but not limited to severe beatings of different parts of the victim's body with electric wire, wood, and plastic, prohibiting them from accessing food, draping on, and colliding them with the wall. To the worst, one of the interrogators urinated in the mouth of Abebe Kassie.

Section Two:

2. Analyzing The Elements of a Crime Against Humanity of the Rome Statute

The statute has defined the term "crime against humanity" and developed a well-founded jurisprudence. Article 7 (1) of the statute provides for a series of specific heinous crimes, such as murder, enslavement, torture, rape and enforced prostitution, and then emphasized that these acts are to be considered crimes against humanity when they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The provision holds in a dual of stringent contingents which need to be fulfilled to count a certain criminal act as a crime against humanity. These pre-conditions are first, the act must fall within the list of inhumane acts itemized in the statute.²⁴ Second, the act must fulfill the so-called 'contextual element'.²⁵

2.1. Integrity Rights Violations

There are no much contentions on the integrity rights violations. A particular act which falls under one of the listed crimes added with the contextual element would constitute a crime against humanity. However, there are different arguments concerning the exhaustive nature of the list. Some argue that the list of a crime against humanity is not limited to the above.²⁶ The drafters of the statute understood that human beings will always come up with novel atrocities,²⁷ and for that reason, the catch-all clause of the statute, referring to "other inhumane acts" provides another basis for a potentially broad understanding of those crimes that constitute crimes against humanity.²⁸ The ICC, on the other hand, has suggested, unsurprisingly, that it will read this clause cautiously.²⁹

²⁴ Massimo Renzo, 'Crimes Against Humanity And The Limits Of International Criminal Law' (2012) 31 Law And Philosophy 443, 444.

²⁵ Ibid

²⁶ Bernhard Kuschik, 'Humaneness, Humankind, and Crimes Against Humanity' (2010) 2 Goettingen Journal of International Law, 501, 510.

²⁷ David Luban, 'A Theory Of Crimes Against Humanity' (2004) 29 Yale Journal of International Law 85, 100.

²⁸ Kuschik (n 26) 510.

²⁹ *Prosecutor V Katanga* [2014] International Criminal Court ICC 01/04-01/07 A3 A4 A5, [2014]

2.2. The Contextual Element

The contextual element is a grand condition without which the existence of crime against humanity cannot be proved.

2.2.1. The “Widespread or Systematic” Requirement

2.2.1.1. The “Widespread” Requirement

Though there is no explicit definition of the term "widespread" in the statute the scrutiny of its Article 7(2) (a) added with the precedents would reflect that “widespread” is replaced with “...multiple commissions of acts...”³⁰. The statute tends to show that the impact of the alleged attack must be extensive, or of a very large extent, to qualify as “widespread”.³¹ This was an adoption of the reading in the case of *Prosecutor vs. Akayesu*³² which defined widespread as “... a massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims”. This is intended to ensure that only serious violations are the concerns of the international community and as a result, single, isolated or random acts do not qualify as such.³³ The term large scale’ is sufficiently broad to cover various situations involving a multiplicity of victims, for example, as a result of the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.³⁴ In the case related to the post-election situation in the Republic of Kenya³⁵, the ICC Pre-Trial Chamber held that the attacks must not be random occurrences but targeted at a perceived group. Even though the Court has tried to interpret the term "widespread"

*“To what extent is the magnitude of the atrocities that must be committed or the number of people that must be killed, raped or exterminated, etc., to qualify for a “large scale action” ...”*³⁶ Remain unanswered.

³⁰ Dube Brian, ‘Understanding the Content of Crimes against Humanity: Tracing Its Historical Evolution from the Nuremberg Charter to the Rome Statute’ [2015] 9 African Journal of Political Science and International Relations 181. Emphasis Added

³¹ Moruf O Mimiko, Olaposi A Olaseeni, and Akin Olawale Oluwadayisi, 'Unresolved Jurisprudence of Crime against Humanity under Article 7 of the Rome Statute of the International Criminal Court' (2016) 07 Beijing Law Review 420, 423.

³² *The Prosecutor V Jean-Paul Akayesu* [1998] International Criminal Tribunal for Rwanda 96-4, [1998]

³³ Ibid

³⁴ Christopher Roberts, ‘The Definition Of Crimes Against Humanity And Other Widespread Or Systematic Human Rights Violations’ (2017) 20 University of Pennsylvania Journal of Law and Social Change 1, 21.

³⁵ *The Prosecutor V Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* [2011] International Criminal Court ICC 01/09-02/11, [2011]

³⁶ Mimiko and others (n 31) 424.

2.2.1.2. The “Systematic” Requirement

The definition of systematic has been subject to more controversy.³⁷ The statute has also failed to provide a defect-free definition for the term. Before discussing the rulings of the ICC, it is better to have some insights on the theoretical discourses to flashlight on this ambiguous term. Robinson has identified and come up with the prevailing four theories associated with the State or organizational policy requirement that serves as a key component of the ICC definition of the offense.³⁸ The starting point is *the plain textual requirement* that there must be a State policy to commit the attacks.³⁹ That said, he shows that some scholars argue that no policy element is required, while others insist that there must be a policy.⁴⁰ Similarly, regarding the organizational aspect, some theorists claim that in the absence of a State policy there must be an organization, but only a "State-like" organization having some type of policy would qualify.⁴¹ Finally, there is the even broader pro-human rights suggestion that crimes against humanity should encompass any entity with the capacity to carry out crimes against humanity. Despite the theoretical debates the rulings of the ICTY have tried to resolve the contentions. It has defined the term "Systematic" as including a policy element thus *Tadic* states that a violation will be considered systematic where it is committed according to a preconceived plan or policy.⁴² The implementation of this plan or policy could result in the repeated or continuous commission of inhuman acts.⁴³ As far as the identities of the policymakers are concerned the concept of systematic may be defined as thoroughly organized and following a regular pattern based on a common policy involving substantial public or private resources.⁴⁴ There is no requirement that this policy must be adopted formally as the policy of a state.⁴⁵ There must however be some kind of preconceived plan or policy.⁴⁶ Besides where harms are widespread, moreover, the systematic nature of the harms in question may be presumed.⁴⁷ In both the decision authorizing an

³⁷ Roberts (n 34) 21.

³⁸ Darryl Robinson, “Essence Of Crimes Against Humanity Raised At ICC” [2011] European Journal of International Law.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ *The Prosecutor V Omar Hassan Ahmad Al Bashir* [2009] International Criminal Court ICC 02/05-01/09, [2009] Para. 580

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Roberts (n 34) 22.

investigation into the situation in Kenya,⁴⁸ the ICC Pre-Trial Chamber found that it had jurisdiction over the case based on its conclusion that the crimes appeared to have been committed according to organizational policy. According to the majority's interpretation, the "State or organizational policy" requirement under Article 7(2) (a) can be satisfied by any organization that is capable of committing widespread or systematic attacks against a civilian population.⁴⁹

2.2.2. The Civilian Population⁵⁰ as Object of Attack

"Civilians" under IHL, "are persons who are not members of the armed forces"⁵¹ Article 13(2) of Additional Protocol II of 1977⁵² forbids the killing of civilians or the making of them objects of attack.

2.2.3. The Knowledge Requirement

As per article 7 (1) of the statute the accused person must know the consequences of his act. In the case of *Prosecutor vs Kordic and Cerkez*⁵³ it was held that an accused person may not be held accountable for crimes against humanity unless he or she was aware that his acts form part of the collective attack on the group.

Section Three

3. Evaluations Of The Fact Alleged On The Charge In Tandem With The Elements Of A Crime Against Humanity

Under this section, the facts alleged on the charge have been scrutinized in light of the ingredient elements of a crime against humanity of the Rome Statute. In doing so the facts which are summarized under the first section of this paper have identified and analyzed in lights of the basic features that would make a certain act a crime against humanity under the statute.

⁴⁸ *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* [2011] International Criminal Court ICC 01/09-01/11, [2011]

⁴⁹ *Ibid* (Implying That If A Systematic Attack Occurs, That Very Fact Should Be Evidence Of The Existence Of A State Or Organizational Policy).

⁵⁰ The Term 'Civilian Population' Has Been Used Interchangeably With The Word 'Civilians' Or 'A Civilian' It Has Nothing To Do With The Size Of The Victims.

⁵¹ Customary International Humanitarian Law Rule 5

⁵² The Two Protocols Of 1977 Are Additional To The Four Geneva Conventions Of August 12, 1949.

⁵³ *Prosecutor V. Dario Kordi & Mario Erkez* [2001] International Criminal Tribunal for the former Yugoslavia IT-95-14/2-T, [2001]

3.1. An Analysis of the Alleged Fact In Light of the Pre-request of Integrity Rights Violation

As noted before the pre-condition of integrity rights violation is the most important element of a crime against humanity. The pre-eminent element of integrity rights violation dictated that the alleged act should fall under one of the listed crimes of article 7(1) of the same statute. This provision hold in a series of acts the violations of which added with the contextual elements would constitute a crime against humanity. To be concise the acts that are deemed to have an affinity with the facts alleged on the charge have been pinpointed and analyzed.

A. Murder

According to Article 7(1) (a) of the statute, murder is among the acts which would raise a crime against humanity. Even though the statute has failed to explicitly define the term "murder", it is the killing of a human being by a sane person, with intent, malice aforethought, and with no legal excuse or authority.⁵⁴ Malice aforethought can also exist if the killer: intentionally inflicts serious bodily harm that causes the victim's death, or behaves in a way that shows an extreme, reckless disregard for life and results in the victim's death.⁵⁵ It has been criminalized in the national criminal justice system of most States including Ethiopia.⁵⁶ The scope of this study is confined to the two counts in *FAG Vs. Getachew Assefa et al.* and is not intended to show all of the alleged systematic and widespread assassination of civilians by the then EPRDF regime. Taking it into account the plain readings in the first count of the charge which was made against *Getachew Assefa* divulge that when the victims were in the secret and unlawful prison Mohammed Ibrahim passed away on 23/3/2006 E.C following the very severe and prolonged interrogations by the 7th and the 15th accused along with unknown members of NISS and FPC upon a close order of Getachew Assefa.

B. Imprisonment Or Other Severe Deprivation Of Physical Liberty In Violation Of Fundamental Rules Of International Law

According to Article 7(1) (e) of the statute imprisonment or other severe deprivation of physical liberty in violation of international law is among the acts which would constitute a crime against humanity. The right to liberty requires persons not to be subject to arrest and detention except as

⁵⁴<https://Dictionary.Law.Com/Default.aspx?Selected=1303> Accessed On December 18/2019

⁵⁵ Sara J Berman, 'What Is Murder? Is Murder Different From Homicide?' (*www.nolo.com*, October 10, 2011) <<https://www.nolo.com/legal-encyclopedia/homicide-murder-manslaughter-32637.html>>. Accessed On June 9/2020

⁵⁶ Ethiopian Criminal Code 2004, arts 58 (1), And 539.

provided for by law and provided that neither the arrest nor the detention is arbitrary. The in-depth reading of article 7(1) (c) of the statute depicted that the deprivations of the right to liberty should not only be as per the principle of legality beside the law shall be enacted and interpreted in tandem with international human rights instruments to which the concerned state is a party. The lawful encroachment in the right to liberty of a person is granted when a person who is infringing the right to liberty of individuals has been duly recognized and authorized to do so. However, under the first count of the charge when the accused was the chief of NISS, he has authorized the establishments of unlawful squads and secret prisons in different parts of the country. The secret prisons are found in Addis Ababa, Gonder, Bahirdar, Nekemit, Jimma, Shashemene, Bishoftu, and Hawassa to detain and interrogate the alleged suspects of terrorism without having a legal blessing to do so.

The NISS has established to protect and safeguard the national security of the country by providing quality intelligence and reliable security service.⁵⁷ The power and duties of NISS have delineated under articles seven and eighth of the proclamation. When there is a suspicion that the national security is endangered the entity must work with the concerned authority to make the arrest and further investigation of the crime. The FPC has the authority to arrest and investigate the commissions of crimes.⁵⁸ However, as noted in the first count of the charge in 2006 E.C the victims have been arrested on suspicion that they had planned to bomb Addis Ababa Stadium and have been put in jail of *Maekelawi*. Later, the victims were moved into one of the secret detention centers of NISS which was found in Addis Ababa, *Kirkos* sub-city following the close order of Getachew Assefa. Besides the alleged fact under count 41 depicted that the victims are alleged to have been transgressed the anti-terrorism proclamation of the country. However, a close examination of the Proclamation's definition in light of international standard definitions reveals that in respect to some elements the definition in the proclamation is broader.⁵⁹ Although broadness does not, *per se*, make the definition in the proclamation incompatible with the standard definitions, it might ultimately render the definition to be constitutionally, and from a

⁵⁷ (n 23) art 6.

⁵⁸ Ethiopian Federal Police Commission Establishment Proclamation, 2011 arts 1, 2, 4, 5(c), and 18.

⁵⁹ Wondwossen Demissie, 'The Scope of Definition of a Terrorist Act under Ethiopian Law: Appraisal of Its Compatibility with Regional and International Counterterrorism Instruments' (2015) 8 Mizan Law Review 371, 405.

human rights perspective, suspicious.⁶⁰ As a result, it is not awkward to argue that the Anti-Terrorism proclamation is in violations of the human rights and fundamental freedoms of individuals which are granted under different international human rights instruments under which Ethiopia is a party. The alleged facts on the charge-coupled with the very notions of the aforementioned laws depicted that the alleged suspects of a charge without having a legal entitlement to make the arrest and interrogations have made arbitrary deprivations of liberty. In so doing the victims have been arrested in illegal and secret prisons on suspicions of violating the controversial anti-terrorism law which is still considering as anti-human rights instruments to which Ethiopia is a party.

C. Torture

According to Article 7(1) (f) of the statute, torture is among the acts which would raise a crime against humanity. Article 7(2) (e) of the same statute has also expressly defined that "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions. The crime torture always presupposes the intentional act of inflicting severe physical or psychological pain on victims as a punishment to force them to do or not to do something. Likewise as mentioned in the first count of the charge when the victims were in *Maekelawi* they have been subjected to multifold human rights violations. The human rights violations include but not limited to torture particularly severe beating with a stick, boxing, electric wire, flogging the inside of victims' foot, extracting their nails, so, and so forth. Count number 41 of the charge has also divulged that when Abebe Kassie and Netsanet Fentahun were under the custody of the accused their hands have been locked with chains; their eyes have been blindfolded and severely tortured. The torture includes severe beatings on different parts of the victim's body with electric wire, draping on and colliding them with the wall, and to the worst, the interrogators have peed in the mouth of Abebe Kassie. It is apparent that due to the physical injury the victims have also sustained a psychological injury in violations of article 7(1) (f) of the statute.

D. Enforced Disappearance Of Persons

According to Article 7(1) (i), of the statute, the enforced disappearance of persons is among the acts which would raise a crime against humanity. Enforced disappearance of persons always

⁶⁰ Ibid

presupposes the direct involvements of a State or the acquiescence of it to shield the victim from the previews of the law for a long time without notifying their whereabouts. Likewise, count 41 depicted that on the night of 12/05/2006 and 24/02/2007 E.C the accused in collaboration with the unknown members of NISS, have caused the enforced disappearance of Abebe Kassie and NetsanetFentahun in North Gonder.

A scrutiny of the alleged material facts on the charge in light with the basic ingredients of a crime against humanity puts them under the listed acts of a crime against humanity of the Rome statute. The act includes murder, imprisonment or other severe deprivation of physical liberty, torture and enforced disappearance of persons which are found in article 7 (1), (A), (E), (F) and (I) of the Rome statute respectively.

3.2. An Analysis of the Alleged Fact In Light of the Contextual Element

A close examination of the alleged facts in tandem with the pre-conditions of the contextual element has been made under this part.

3.2.1. The “Widespread or Systematic” Requirement

3.2.1.1. The “Widespread” Requirement

As noted earlier, there is no explicit definition of the term "widespread" under the statute. However, the jurisprudence of ICC has tried to flashlight on this undefined and controversial term. The overall examination of the ICC's jurisprudence found that to qualify as "widespread" the impact of the alleged attack must be extensive, or of a very large extent. Despite a single, isolated or random acts massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims are the concerns of the international community. The term a *large scale* presupposes the effects of the act would adversely affect a multiplicity of victims. In *Prosecutor vs. Milutinovic*, *Prosecutor vs Katanga & Ngudjolo* and *Prosecutor vs. Al Bashir* the expression or phrase "widespread" was interpreted to reflect the numerical assessment of the impacts of the act. The most important element of the term is the number of victims not the number of acts. A single act will be adequate to raise a crime against humanity if it is of extraordinary magnitude.

In the charge at hand even though there is a rampant jurisprudential loophole concerning the number of victims which needs to fulfill the "widespread" requirement, in the first count of the charge the FAG alleged that Getachew Assefa has authorized the establishments of illegal squads

and secret prisons almost in all corners of the country. The secret prisons are found in Addis Ababa, Gonder, Bahirdar, Nekemit, Jimma, Shashemene, Bishoftu, and Hawassa. Thus prisons are established to kidnap and unlawfully interrogate the victims with a risk of subjecting many individuals in the aforementioned cities victims of the alleged human rights violations. Beside the catch-all clauses of the charge emphasizes that *Getachew Assefa et al* are suspects of infringing the human rights of a large number of individuals. Under the first count of the charge until 25/07/2007 E.C *many individuals have been subject to grave human rights violations*. Even though the charge has abstained from unequivocally specifying the exact number of victims, the phrases in different counts of the charge with no doubt divulged that the impact of the alleged human rights violations has affected "many" individuals. Besides, the FAG also has no obligation to provide for the exact number of the victims since the jurisprudence of ICC has failed to determine the magnitude of the atrocities in specific numerical values. The geographical extent of the secrete prisons coupled with the catch-all clause of each count of the charge divulged that the effects of the alleged human rights violations of the charge have extraordinary magnitude the effects of the which could adequately fulfill the criteria of "widespread".

3.2.1.2. The “Systematic” Requirement

The "systematic" requirement presupposes the organized nature of the acts of violence and the improbability of their random occurrence. The determinant factor is whether the crime was committed by a pre-determined policy. The existence of the plan or policy involving substantial public or private resources could result in the repeated or continuous commission of inhuman acts. However, in the case between *the Prosecutor Vs Jean-Paul Akayesu*, there is no requirement that this policy must be adopted formally as the policy of a state. Likewise, the first count of the charge alleged that *Getachew Assefa* has authorized the establishments of illegal squads and secret prisons under the financial, logistic, and professional supports of the Government. The suspect is accused of taking part and leading a systematic organization contrary to the pertinent laws of the country, to get information with the torture of the victims by using the resources of the NISS. Besides, he has borrowed different houses in Addis Ababa from the then Government Rental Houses Agency to make the NISS functional in detaining and torturing the victims. He also appointed physicians to follow up on the health of the victims; he facilitated the provisions of food and appoints employees to administer the secrete detention centers with the regular budget of NISS.

Even though there is no concrete evidence on the charge that the alleged human rights violations are the results of a formal policy of Ethiopian Government, in the case between *Prosecutor V Jean-Paul Akayesu*, the Court has provided no mandatory pre-request for the formal adoption of the policy as the policy of a State. Instead what the jurisprudence dictates is that the existence of the plan or policy of States could result in the repeated or continuous commission of inhuman acts. Likewise, under the first count, the FAG alleged that from 1994-2010 EC Getachew Assefa had committed grave human rights violations by using State's human and material resources. From the alleged facts of the charge, we can understand that the alleged human rights violations have traced more than a decades without any judicial or administrative intervention to curtail the alleged human rights violations.

Though the allegation has failed to provide for the existences of an explicit state policy to direct human rights infringements, the regular pattern and the improbability of human right infringements random occurrence coupled with the de facto while well-structured and organized pattern which has used state machinery and budget has made the alleged human rights violation systematic.

3.2.2. The Civilian Population as Object of Attack

As noted early the Rome statute has failed to explicitly define the term "civilian population". However, the well-enriched jurisprudence of the IHL defined that "civilians" are persons who are not members of the armed forces including hors de combatant. In the charge at hand, none of the victims is a combatant. All of the victims are civilians with no military engagements. Even though those victims who were members of the Patriot *Ginbot 7* or OLF were combatants and had taken arms to overthrow the ruling party, they were under the captivity of the Government and deserve the case of *hors de combatant* that proves legal protection.

3.2.3. The Knowledge Requirement

Article 7 (1) of the ICC Statute also has the knowledge requirement. In the Kenyan situation, the ICC Pre-Trial Chamber has established causation of the politician's knowledge with the militia deeds on the basis that they knew what the militia was doing and condoned the acts and the acts were benefiting the accused politicians. Similarly, the first count of the charge alleged that the accused with full knowledge to violate the victim's human rights has authorized the establishments of illegal squads and secret prisons. Similarly, other alleged material facts of the charge in unequivocal words depicted that the suspects have been alleged to have committed a

crime against humanity with full knowledge and intent to commit it. In nutshells, the scrutiny of the alleged material facts of the charge in line with the pre-requests of integrity rights violations and the contextual elements divulge that the facts alleged on the charge constitute a crime against humanity as defined under Article 7 of the Rome Statute.

Chapter Three: The Admissibility of Federal Attorney General v. Getachew Assefa et al. Before The International Criminal Court

Under this chapter, both primary and secondary sources have been employed to see if *FAG v. Getachew Assefa et al.* could be admissible before the ICC.

Section One:

3.1. Analyzing The Element of Article 17 of the Statute

The issues in the admissibility of a case before the ICC is one of the most important while the foremost controversial matters that indeed affecting the prospective responsibilities of the court. Whether the court ever becomes a 'real' court and not just a 'ghost institution' mostly depends, besides the jurisdictional issue, on the provisions of admissibility of a case before it.⁶¹ The ICC assumption of judicial power always raises questions of jurisdiction, complementarity, and the admissibility of a case. Especially the issues of admissibility and jurisdiction in the sense of competence in the pending case have to be distinguished even though both concepts are closely related.⁶² An in-depth inquiry on the questions of admissibility has presented in the upcoming discussions. However, as provided under Article 58(4) of the rule of procedure and evidence of the ICC the court shall rule on any challenge to its jurisdiction first before dealing with the matter of admissibility. Taking it into account a bit of clue has been presented here below.

3.1.1. Jurisdiction

Article 1, 5, 12, and 13 of the Rome statute provides for grounds under which the ICC may able to establish a valid jurisdiction. The ICC shall have personal jurisdiction over natural persons who are alleged to have committed one of the core crimes under the subject matter jurisdiction of the Court in the territory of State party or if the crime has been committed by the nationals of Member States. However, it is not always true. According to Article 13 (b) of the statute beside referral by a State party and the *proprio motu* referrals, there is an exceptional leeway to trigger the ICC extra-territorial jurisdiction through the UNSC referral.

⁶¹ Jan Denecke, 'The Admissibility Of A Case Before The International Criminal Court: An Analysis Of Jurisdiction And Complementarity' (LLM thesis, University of Stellenbosch 2002) <<https://core.ac.uk/download/pdf/37376077.pdf>> accessed June 12, 2020.

⁶² Gerald Fitzmaurice, *The Law, and Procedure of the International Court of Justice*, vol 82 (Cambridge University Press 2017) 438, 439.

3.1.2. Admissibility

In light of the principle of complementarity, the statute establishes a presumption of inadmissibility whenever a state is exercising or has exercised, its national jurisdiction over a case. Articles 17 of the statute in conjunction with the double jeopardy clause of article 20 provide for the grand parameters under which the admissibility or otherwise of the case can be tested. Under this section, the pre-conditions of admissibility of cases before the ICC have been identified and the in-depth inquiries of the ICC's jurisprudence have also presented.

3.1.2.1. Article 17 of the Rome Statute

Article 17, para. (1) provides for four different alternatives on which the Court shall determine a case as inadmissible. First, the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigations or prosecution. Second, the case has been investigated by a state, which has jurisdiction over it and the state has decided not to prosecute the person concerned unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute. Third, the person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, Para. (3). Fourth, the case is not of sufficient gravity to justify further action by the Court. The first two alternatives of article 17, Para. (1) are combined with exceptions.⁶³ A case is not admissible unless the investigation or prosecution of that state, which has jurisdiction, is or was not affected by "unwillingness" or "inability". Determining the inability or unwillingness of national jurisdiction is not an easy task of the ICC.

Even though the State which has jurisdiction to preside over the case has investigated or prosecuted the alleged crime it can nevertheless be admissible before the ICC if the state is unwilling or unable genuinely to carry out the investigation or prosecution. As per the wording of Article 17, the court will always examine the situation in a state merely concerning a specific case, rather than make a general and all-embracing examination of the system as such.⁶⁴

Nevertheless, the terms "unwilling" and "unable" make clear that the Court will not simply notaries the exercise of jurisdiction by a state.⁶⁵

⁶³ Denecke (n 61) 73.

⁶⁴ Markus Benzing, *The Complementarity Regime Of The International Criminal Court: International Criminal Justice Between State Sovereignty And The Fight Against Impunity*, vol 7 (Max Planck Yearbook Of United Nations Law Online 2003) 592, 603.

⁶⁵ Ibid

They require a certain degree of scrutiny of the quality and standard of national proceedings.⁶⁶ A primary question regarding the unwillingness and inability of the national criminal justice system is the meaning of the term "genuinely" which would bar the ICC complementary jurisdiction. No precedent in international law for the use of the term was quoted during the negotiations.⁶⁷ Commentators observe that it proved to be the least subjective concept considered during the negotiations.⁶⁸ Textually, the term qualifies and objectifies the act of investigating or prosecuting, rather than the ability or willingness to do so.⁶⁹ It underlines that only those national criminal proceedings undertaken with the serious intent of eventually bringing the offender to justice shall bar the exercise of jurisdiction by the Court.⁷⁰

3.1.2.1.1. The Unwillingness or Inability Test

3.1.2.1.1.1. Unwillingness

Article 17(2) of the statute provides for the criteria to determine whether a state is unwilling to genuinely carry out the investigation and prosecution. The plain reading of Article 17(2) of the statute unequivocally requires the Court to take into account the factors listed under paras (a) to (c). However, it is questionable whether the court, in determining unwillingness, is limited to these criteria, or whether it may refer to other, unnamed factors.⁷¹ The close reading of the provision has no leeway for the references of other unmentioned factors which would make the criteria's closed and exhaustive. The word "consider", however, has been interpreted as having been deliberately chosen in order not to tie the Court's hand in respect to the criteria but to allow it to take other factors into consideration.⁷² The difficulty during the creation of the Statute of finding a fitting definition for "unwillingness" was that such a definition always would be directed at the national judicial systems.⁷³ Many delegations were sensitive to the potential for the Court to function as a kind of court of appeal, passing judgments on decisions and

⁶⁶ Politi Nesi (ed), 'The Rome Statute of the ICC: Rays of Light and Some Shadows,' *The Rome Statute of the International Criminal Court. A Challenge to Impunity* (2001) 21

⁶⁷ John T. Holmes, 'Complementarity: National Courts Versus The ICC', Antonio Cassese, Paola Gaeta and John RWD Jones (eds). *The Rome Statute of the International Criminal Court: a commentary* (Oxford University Press 2002) 666, 667.

⁶⁸ Ibid 675.

⁶⁹ Benzing (n 64) 605.

⁷⁰ Andreas Zimmermann, *The Creation Of A Permanent International Criminal Court*, vol 2 (Max Planck Yearbook Of United Nations Law Online 1998) 169.

⁷¹ Markus Benzing Supra Note 60, P. 606

⁷² D Robinson, 'Serving The Interest of Justice: Amnesties, Truth Commissions And The International Criminal Court' (2003) 14 *European Journal of International Law* 481.

⁷³ Denecke (n 61) 74.

proceedings of national judicial systems.⁷⁴ Hence, the problem was to find objective criteria on which the Court should base its determination.⁷⁵ To solve this problem the phrase "in accordance with the norms of due process recognized by international law" was added in the Chapeau of Article 17.⁷⁶ It was thought that this paragraph, which dealt with proceedings not being conducted impartially or independently, was the natural place for including objective criteria.⁷⁷ Among the principal due process rights, the due process rights of the accused, who must be protected from victor's justice takes paramountcy. However, in doing so all necessary measures shall be taken to curtail the impunity of culprits of ICL. As per article 17(a) of the statute in determining state unwillingness to genuinely carry out the investigation or prosecution the Court may question the motive behind a state's decision to initiate proceedings and determine whether this was done to shield the person concerned from criminal liability. The intention of a state to shield a person from criminal liability must be devious.⁷⁸ Article 17(2) (b) of the statute has also provided that in situations where there have been unjustified delays in the proceedings, the Court has to determine whether or not this is evidence of a state's unwillingness to bring the person concerned to justice. Besides, as per article 17(2) (c) of the statute, the Court may also have to inquire into the independence and impartiality of those that the state has entrusted with the conduct of the proceedings and the manner which they have gone about their tasks, both at the investigation and trial stages. If under certain circumstances there are grounds to suggest lack of transparency, the appearance or likelihood of bias, or other factors indicate real partiality towards the accused, all this will be evidence that the Court may use to pronounce on the state's unwillingness to genuinely bring lawbreakers to justice.⁷⁹

⁷⁴ Holmes 'The Principle Of Complementarity', In Lee (Ed.). *The International Criminal Court The Making Of The Rome Statute Issues, Negotiations, Results* (The Hague: Kluwer Law International, 1999.) 49.

⁷⁵ Denecke (n 61) 74.

⁷⁶ The Rome Statute (n 1) art 17 (2).

⁷⁷ Holmes (n 74) 49.

⁷⁸ S.A. Williams, 'Article 17', In: Otto Triffterer (Ed.), *Commentary On The Rome Statute Of The International Criminal Court: Observers' Notes, Article By Article* (Hart Publishing 2008.) 382, 393.

⁷⁹ Ibid 76.

3.1.2.1.1.2. Inability

As per article 17(3) of the Statute, a State would be considered unable if “due to a total or substantial collapse or unavailability of its national judicial system, it is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings”. Thus, the fact that the domestic authorities are considered unable is conditioned on the attainment of two cumulative sets of considerations first, the ‘collapse’ or ‘unavailability’ of the national judicial system and, second, whether the state is unable to obtain the accused, or the evidence and testimony, or otherwise unable to carry out the proceedings.⁸⁰ Ahmed Samir Hassanein⁸¹ has come up with a new reading of the inability scenario that establishes a clear distinction between two different forms of inability under Article 17(3) of the Statute. An in-depth analysis of Article 17(3) of the statute would depict the dual forms of inability. These forms are physical and legal forms of inability. Physical inability always presupposes either the total or substantial collapse of the State’s judicial system.

A. Physical Inability

i. Total Collapse

The total collapse of a state's judicial system refers to a situation where the state authorities have lost control over its territory to an extent that the justice machinery has broken down completely that makes disposing of genuine justice impossible. This is a situation where the judicial system has disintegrated in its entirety.⁸² In this case, the whole state would be considered a 'failed state'.⁸³ Despite the large body of scholarly writings on the subject, there is no agreement on the definition of state failure.⁸⁴ Not only the definition but also the indicators used to gauge should be taken into consideration.⁸⁵ Most of the scholars are quite skeptical of the analytical value of the concept on epistemological grounds, arguing that it is difficult to objectively define, identify,

⁸⁰ ‘Informal Expert Paper: The Principle Of Complementarity In Practice’ (2003) <(ICC-01/04-01/07- 1008-Anxa)>.

⁸¹ Ahmed Samir Hassanein, ‘Physical And Legal Inability Under Article 17(3) Of The Rome Statute’ (2015) 15 International Criminal Law Review 103.

⁸² Jann Kleffner, *Complementarity In The Rome Statute And National Criminal Jurisdictions* (Oxford Scholarship Online 2000) 115.

⁸³ Claudia Cardenas Aravena, *The Admissibility Test Before The International Criminal Court Under Special Consideration Of Amnesties And Truth Commissions*, Jann K Kleffner And GerbenKor Eds, (Ed.), (Tmc Asser Press 2006) 125.

⁸⁴ Valentin Cojanu And Alina Irina Popescu, ‘Analysis Of Failed States: Some Problems Of Definition And Measurement’ (2007) X The Romanian Economic Journal 115.

⁸⁵ Aravena (n 83) 125.

and analyze failed states with methodological rigor.⁸⁶ However, Cojanu and Popescu have already characterized a failed state as an entity where the basic functions of the state are no longer performed.⁸⁷ There are several indicators in different disciplines used to gauge whether a given state is a failed state or not. Leaving the discourses in other disciplines untouched let me explain some of the most reputed indicators to gauge state failure in international law. Under international law, a failed state has three decisive attributions.⁸⁸

1. An absence of bodies efficiently representing the state.
2. Intensive violence.
3. Need for humanitarian intervention.

ii. A substantial Collapse

A substantial collapse refers to a situation where state authorities, even though not completely dysfunctional, are not generally capable of ensuring the investigation of the case and the prosecution of responsible individuals⁸⁹ whether by shifting resources or transferring the trial to another venue.⁹⁰ A substantial collapse would occur in reality when the national authorities initiate an investigation against members of an armed opposition group during an internal armed conflict where the national judicial system has collapsed in the areas under the effective control of that group, the situation which made capturing the perpetrators or collecting evidence very dangerous or even impossible.⁹¹

⁸⁶ Turkan Firinci Orman, 'An Analysis Of The Notion Of A 'Failed State' (2015) 4 International Journal Of Social Science Studies 84.

⁸⁷ Valentin Cojanu And Alina Irina (n 84) 115.

⁸⁸ Bianic, I., Gligorov, V., & Krastev, I., 'State, Public Goods, And Reform. Global Development Network Southeast Europe' *Research Area: Understanding Reform* (2003) <<https://wiiw.ac.at/state-public-goods-and-reform-dlp-3291.pdf>> accessed June 14, 2020, 15.

⁸⁹ Benzing (n 64) 614.

⁹⁰ Hassanein (n 81) 104

⁹¹ *Prosecutor V. Saif Al-Islam Gaddafi And Abdullah Al-Senussi*, [2012] 5 International Criminal Court ICC-01/11-01/11, Para. 41. In Its Submission, The OTP Of The ICC Noticed That "... Despite The Applicant's Predictions At The Time, It Filed Its Challenge On 1 May 2012, It Does Not Appear That Saif Al-Islam Has Received A Defence Lawyer Within Libya, A Precondition To Presenting To Him The Charges And Completing The Investigation Under Libyan Law. This Lack Of Progress Could Be Related To The Restrictions Established Because of The Zintan Militia Exercise Custody Over Him.

B. legal Inability

The other type of inability is legal inability. The legal inability has hold in two sub notions. The first is the substantive legal inability (the ordinary crimes approach) and the procedural legal inability.

i. Substantive Legal Inability

In a substantive legal inability the national judicial system, which did not adopt the ICC crimes or adopted it but prosecuted the conduct as an ordinary crime. However, there are different arguments concerning the stepping in of the ICC in cases where the national criminal law of the country has considered the act as mere "ordinary crimes". Some argue that such a situation may be said to constitute a case where the state is "otherwise unable to carry out its proceedings" due to the "unavailability" of its national judicial system since the principle of complementarity at least compel states to have adequate legislation to discharge their international obligations. However, others argue that such interpretation would undermine the respect for national sovereignty as formulated by the complementarity principle.⁹² Article 17(3) is much broader in ambit and also accommodates prosecution of behavior failing into the categories of article 5 for crimes where the charges are not classified as "genocide", "war crimes", or "crime against humanity".⁹³ Taking this into account, it may be argued that a more flexible approach is called for than merely stating that the prosecutions of such acts as "ordinary crimes" automatically and without further requirements entail an exception to the rule of double jeopardy.⁹⁴ On the other hand procedural inability refers to a procedural barrier to institute a charge against the alleged suspects.

⁹² Ma Newton, 'Comparative Complementarity: Domestic Jurisdiction Consistent With The Rome Statute Of The International Criminal Court' (2001) 67 Military Law Review. 70.

⁹³J Holmes (n 67) 676.

⁹⁴ Benzing (n 64) 616.

3.1.2.1.1.3. Ne bis in idem (Art 17 (1) (C))

The cumulative readings of Article 17(1) (c) and 20(2) of the statute provided for a situation where a person has already been tried by another domestic court and bar the stepping in of the ICC.

3.1.2.1.1.4. Gravity Of The Offence Article 17 (1) (D)

The meaning of “sufficient gravity” is not defined by the statute.⁹⁵ However, the concerns leading to the rule was that the Court may be flooded with cases; it thus serves purposes of practicability but is also an expression of the will of states to tackle for the impunity of the "most serious crimes of concern to the international community as a whole" as provided under paragraph four of the preamble.

Section Two: Finding and Analysis of Data

3.2. Finding From Qualitative Sources

The following data was generated from an interview held with the judges of FHC. As indicated in table 1 the interview was held with four judges all of whom are male. Frequent attempts have been made to interview the concerned officials of FPC and FAG. However, they were not willing to provide the necessary information. To fill the prevailing gap secondary sources such as media outlets has employed in the analysis part.

⁹⁵ L. Sadat Waxler, *A First Look At The 1998 Rome Statute For A Permanent International Criminal Court: Jurisdiction, Definition Of Crimes, Structure, And Referrals To The Court*, In M.C Bassiouni, *International Criminal Law*, Vol. 3, 2nd Edition, 1999 67.

1.1. The Interviewees Responses Towards the Legality or otherwise of The Pending in Abstentia Proceeding

Question	Code of the interviewees	Response
<p>Despite the official statements of the PM and the FAG on the explicit whereabouts of the alleged suspects, the Court has commenced trial- in abstentia. Please explain the legality of the pending in abstentia proceeding.</p>	1552	<p>As per Art. 160 of the Ethiopian Cri. PC the suspect ought to be brought before the Court upon the service of summon. While arrest warrant shall be put in place once the suspect has served with summon and failed to appear before the Court. If the suspect has not been served with summon trial- in abstentia shall be stepping in. In the case at hand, the alleged suspects have not been served with summon. Therefore, trial in abstentia has commenced.</p>
	1562	<p>As per art. 161(2) (a) of the Cri. PC trial- in abstentia shall be commenced if the alleged crimes are punishable not less than 12 years of rigorous imprisonment or the suspects are alleged to have committed one of the crimes under Art. 161(2) (b) of the same code which shall be punishable with rigorous imprisonment.</p>
	1572	<p>Upon exhausting all the available means of serving summon to the alleged suspect, and if the police have able to prove that it has not been able to found the suspect trial- in abstentia shall be conducted under art. 161(1) of the Cri. PC.</p>
	1582	<p>Upon exhausting all the available means of serving summon to the alleged suspect including nationwide media outlets and if the police proved that it has not been able to found the suspect trial- in abstentia shall be conducted under art. 161(1) of the Cri. PC.</p>

1.2. The Interviewees Responses Towards the Adequacy of A Measures Taken By The Court To Verify The Genuinely or Otherwise Of All Action Taken By FPC

Question	Code of the interviewees	Response
How far did the Court go to verify the trustworthiness of all measures taken by the FPC? Besides, briefly explain the rectifying measures of you if any.	1552	The Court has ordered the FPC to serve the suspects with summon. Despite the allowed reasonable period to put the suspects in default the Police expressly stated that it has not been able to find the suspects and serve the summon. As a result, the Court is conducting a trial in the absence of the suspects. Besides the Court has made a reasonable inquiry. Since the executive wing of the Government has not made a statement about the exact whereabouts of the suspects, the Court has not presumed the statement of the Police as a false. I believe that examining the trustworthiness of the Court's order execution based on some official statement is not eligible.
	1562	The Court has ordered the FPC to serve the suspects with summon in any places where the suspects have presumed to be found. In doing so the police shall come up with the signed confirmation letter that the suspect had served with summon. The Court is monitoring whether the police is discharging its responsibility.
	1572	Per Art. 9 and 13 of the FDRE Constitution, its establishment proclamation and other pertinent laws the FPC have established to prevent the commission of crimes, to maintain the peace and security of the state, and to promote the human rights. Unless the contrary has proved by the concerned individuals or entities the Commission has presumed to behave following the aforementioned legislation and objectives. In the absence of those complaints, the Court has proceeded with conducting a trial in absentia without doubting the trustworthiness of the Police's statement.
	1582	FPC is an institution. Unless there is an explicit complaint against the actions of the Police, it has presumed to discharge its duty per the law. When the Court has ordered the Police to serve summon. The Court will examine whether the Police have obeyed the order or no and will take a measure accordingly.

1.3. The Interviewees Responses Towards the existence or otherwise of a legal avenue for the Court to order the use of force against the shielding regional states.

Question	Code of the Interviewees	Response
<p>In one of his speeches at Walta TV, the head of the FPC Public Relations Department stated that The FPC is unable to bring the alleged suspects before the Court because some regional states are not willing to cooperate with the police. He added that Upon the refusal of these regional states the FPC has done nothing to bring the suspect before the Court to maintain the Constitutional autonomy of the regional states. On the other hand, the Chief justice of FDRE in her speech hinted that the Government could take forceful measures to arrest the suspects, taking necessary measures/steps against the shielding arms of these regional states and bring them before the Court.</p> <p>Is there any legal avenue for the Court to order the use of force against the shielding regional states and not to go the suspects unpunished?</p>	1552	<p>Appearing and defending the charge is the due process right of the accused. The accused may intentionally or negligently fail to appear before the Court and defend the charge. In this instance, the accused has waived his right and he should be bound by the verdict which will render in his absence. The statement of the chief justice should be a mere personal opinion without legal backing. The forceful measures should follow the convictions of the alleged suspects.</p>
	1562	<p>When a crime under the subject matter of the Federal Government is alleged to have been committed, the Court may order the FPC to serve summon and to bring the alleged suspects before the Court. Besides the Court may also order other concerned agents to collaborate with the Court. However, there is no explicit law to dictate the executives of the Regional states to bring the alleged suspects before the Court.</p>
	1572	<p>Under the federal form of government, the Federal and regional governments have a strong cooperation scheme. Prevention of crimes is the most important scheme of cooperation. Under FAG Establishment Proclamation No. 943/2008, the two tiers of government have a collision committee to work on immunity and other related issues. Once the Court has issued a summon to serve the suspects and the later failed to appear before the Court with no good cause the court should order warrant of the indictment.</p>
	1582	<p>The Federal and the Regional tiers of Government have their own responsibility per its enabling acts. They are working together on common issues. The Court can order the executive to take all necessary measures under the law.</p>

Section Three:

3.3. Analysis of the Data in lights of The Admissibility Yardsticks

3.3.1. Jurisdiction

Before discussing the admissibility of *FAG Vs Getachew Assefa et al.* before the ICC establishing the jurisdiction of the ICC takes paramountcy. As well noted in the previous section the ICC shall have jurisdiction over natural persons who are alleged to have committed one of the core crimes in the territory of State party or if the crime has been committed by the nationals of Member States. However, article 13 (b) of the statute provides for an exceptional mechanism to trigger the ICC extra-territorial jurisdiction on the crimes which have been committed neither on the territory nor by the nationals of state party through the UNSC referral. In the case at hand, Ethiopia is neither a party to the statute nor the alleged crimes are alleged to have been committed by the nationals of a state party. However, in *FAG Vs Getachew Assefa et al.* justice can be set in motion before the ICC upon referral of the UNSC.

3.3.2. The Unwillingness or Inability Test

Though the State with its first instance jurisdiction to adjudicate the case has investigated or prosecuted the alleged crime it can be admissible before the ICC if the state at hand is unwilling or unable genuinely to carry either the investigation or prosecution. The plain meaning of the term "genuine" qualifies the act despite the "willing" or "ability" of states to investigate or prosecute the case. It underlines that only those domestic criminal proceedings undertaken with real and stringent intent of eventually bringing the offender to justice can be considered as genuine investigation or prosecution. Having this much in mind, let me examine the Ethiopian failure to bring *Getachew Assefa et al.* before the Court in light of the "unwillingness" and "inability" test.

3.3.2.1. The "Inability" Test

As noted early a State would be considered unable if due to physical or legal inability the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings. Physical inability always presupposes either the total or substantial collapse of the State's judicial system and legal inability is also connoted the substantive and procedural forms of legal inability.

A. Physical Inability

i. Total Collapse

The total collapse of a state's judicial system refers to a situation where the state authorities have lost control over its territory to an extent that the justice machinery has broken down completely that makes disposing of genuine justice impossible. The judicial system, in particular, could be considered totally collapsed when it is not able to fulfill its fundamental activities. In this case, the whole state would be considered a 'failed state'.⁹⁶ In international law, a failed state has three decisive attributions.⁹⁷ The attributions are an absence of bodies efficiently representing the state, intensive violence, and the need for humanitarian intervention. However, unlike neighboring Somalia, the Ethiopia government has relative stability in the region. The Government is undertaking several foreign relations deals with the States and other international organizations on the behalf of Ethiopia.

The Government is also discharging its international responsibility in maintaining the peace and security of the globe by deploying the necessary peacekeepers at the regional and continental levels. However, there is violence here and there. Most of the violence began when political protests rapidly evolved into clashes fuelled by ethnicity and religion.⁹⁸ The violence is sporadic and prevailed over a specific part of the country; however, it does not constitute intense violence the effect of which would be disintegrating the entire country though determining the degree of intense violence is too awkward. Sporadic violence is an indispensable element of statehood in every corner of the globe. Ethiopia will not be the first and the last to engage in such violence. Even in America, individuals and group's rights are violated every day.⁹⁹ Besides, the here and there violence cannot be out of the government power to maintain peace and security and constitute a treat to international peace and security which would urge humanitarian intervention.

⁹⁶Aravena (n 83) 125.

⁹⁷Bianic, I., Gligorov, V., & Krastev, I. (n 88) 15.

⁹⁸ Jason Burke, 'Deadly Unrest In Ethiopia Hampers Pm's Political Reform Attempts' *The Guardian* (London, November 1, 2019) <<https://www.theguardian.com/world/2019/nov/01/ethiopia-unrest-abiy-ahmed-jawar-mohammed-nobel-peace-prize>> Accessed April 26, 2020.

⁹⁹ Tibebe Samuel Ferenji, 'Facts Why Ethiopia Does Not Fit 'The Failed State' Status : Response To Major Dawit Woldegiorgis: (Part 2)' *Borkena Ethiopian News* (May 10, 2019) <<https://borkena.com/2019/05/10/facts-why-ethiopia-does-not-fit-the-failed-state-status-response-to-major-dawit-woldegiorgis-part-2/>> Accessed April 26, 2020.

Similarly, in 2020 the World Population Review has out a list of states on the verge of failing¹⁰⁰ while Ethiopia has not included.

ii. Substantial Collapse

The substantial collapse would occur indeed when the domestic authorities instituted an investigation against members of an armed opposition group during an internal armed conflict where the national judicial system has collapsed in the areas under the effective control of that group, the situation which made arresting the alleged suspects or collecting evidence very impossible. However, the FAG has instituted a prosecution against *Getachew Assefa et al.* before the FHC, and the later has ordered the FPC to bring the alleged suspects before the court. However, despite the order of the Court the FPC has failed to make the appearance of the suspects in the court possible. That is not because the suspects are shielded in the territory where the Government is unable to reach due to the substantial collapse of the statehood. Instead, the Tigray regional state which is one member of the federation has refused to hand over the former intelligence-chief despite the arrest warrant issued by the FHC.¹⁰¹ As noted before Tigray is a member of the federation which has constitutional powers and duties. In doing so it has constitutional ties with the federal government in all aspects including legislative, administrative, and judicial arenas. Unlike the situation in Libya, the Tigray regional state is under the control of the Federal Government since the region has not been occupied by the rebel groups and the constitutional chain have not been broken with the effects of which would make the government unable to capture the suspects and to collect the necessary pieces of evidence.

¹⁰⁰Worldpopulationreview.Com, 2020) <[Https://Worldpopulationreview.Com/](https://Worldpopulationreview.Com/)>.

¹⁰¹ Jeylan Abdi, Director Of Federal Police Commission Public Relation Directorate, On Walta TV, ሻይ ቡና ቶክ ሾው. See ‘Ethiopia - ወሳኝ ጥያቄ ለፌዴራል ፖሊስ’ (Youtube, February 18, 2020) <[Https://youtu.be/Ielmrrwrp-G](https://youtu.be/Ielmrrwrp-G)> Accessed April 26, 2020.

B. Legal Inability ‘Unavailability of National Judicial System

As noted before the legal inability has hold in two sub notions. The first is the substantive legal inability and procedural legal inability.

i. Substantive Legal Inability

If the national judicial system, which did not adopt the ICC crimes or adopted it but prosecuted the conduct as an ordinary crime, is able to obtain the accused, the necessary evidence and testimony; furthermore, if it is intact inasmuch as it is able to carry out the proceedings genuinely, then this state cannot be considered unable to proceed. Likewise, under the Ethiopian criminal law, a crime against humanity is not criminalized. However, the mere fact of prosecuting the alleged crimes as an ordinary crime such as abuse of power is allowed unless it makes the disposition of genuine justice impossible. The punishment should be proportional to the committed crimes and should have a deterrence effect to achieve the objectives of the statute. In the case at hand, the FAG alleged that *Getachew Assefa et al.* are alleged to have violated Article 32(1) (A) (B), 407(1) (B) (C), and (407) (3) of Ethiopian Criminal Code and Articles 9 (1) (B), (C), 9 (3) of Proclamation No 881/2015. The provisions have entailed rigorous imprisonment up to 25 years which is adequate to achieve the purpose of the statute. As far as procedural legal inability is concerned, the suspects are alleged to have been hiding in Ethiopia and the questions over this kind of inability cannot be raised. In a nutshell, the close examination of the Ethiopian government's failure to bring the alleged suspects in light of the dual fold yardsticks of inability depicted that the government is not unable to bring the alleged suspects before justice.

3.3.2.2. The “Unwillingness” Test

As stated under section two of this chapter article 17(2) paras (a) to (c) of the statute provides for the grand exhaustive yardsticks under which the Court may rely on in determining whether a state is unwilling to genuinely carry out the investigation and prosecution.

A. Article 17 of the Statute

Article 17(2) (a) of the statute provided for the milestone to scrutinize the *raisons d 'etre* for state initiation of judicial proceedings and determine whether this has been done to shield the suspects from the preview of law. However, the intention of a state to shield the suspects from criminal liability should emanate from its malicious intent to evade justice. In other words, initiating a domestic proceeding with the intent to preclude the stepping in of the ICC while justice has

served with the national justice machinery would not make the intention of that state malicious. Therefore, the point here is the state's intention is not to bring the suspects either before its national Court or has undertaken it in the manner that precludes the disposition of a genuine justice before it or has impeded the stepping in of the ICC. As noted early the FAG has made a charge against *Getachew Assefa et al.* before the FHC and the court has issued an arrest warrant against the suspects. However, despite the court order, the government has not made a bit of progress to make the appearance of the suspects before the court possible. To their disobedience of the Court order, the executive wing of the government through the PM and the FAG has expressly complained that the Tigray Regional State has refused to hand over the alleged suspects to the Government.¹⁰² In one of his speeches, the president of Tigray Regional States expressly stated that the filed charge is an indication of external power intervention to weaken the Tigray regional state and his government is strongly opposing the charges.¹⁰³

In the coming pages, an attempt is made to examine the position of Tigray Regional State and the reactions of the Federal Government in light of the pertinent legislation of the country and determine whether the national proceedings are being undertaken to shield the suspect from criminal liability.

Article 7 (1) of Proclamation No. 434/2005 indicated that the FHC has first instance jurisdiction over corruption offenses falling under the jurisdiction of the Federal Government. The court can preside, adjudicate and render judgment over corruption offenses in the situations where Ethiopia has able to establish jurisdiction in one or more ways of jurisdictional triggering principles unless the state supreme courts have to preside over it through delegation.

Following the aforementioned provisions, the FAG has filed a charge against *Getachew Assefa et al.* before the FHC. Following the charge, the alleged suspects did not appear before the court and the later has issued the compulsory appearance of the suspects according to articles 26, 53, and 160 of the Cri.PC. As per article 6(4) of FPC Establishment Proclamation No. 720/2011, the FPC has the power and duties to prevent and investigate crimes falling under the jurisdiction of Federal Courts. In so doing the regional state authorities in general and the state police commission, in particular, must cooperate.¹⁰⁴ However, despite this normative backing

¹⁰² (n 10)

¹⁰³ አያሉ በሌሉበት የተከሰሱት አቶ ጌታቸው አሰፋ' *BBC News አማርኛ* (London, May 9, 2019) <<https://www.bbc.com/amharic/news-48198783>> Accessed April 26, 2020.

¹⁰⁴ (n 58) arts 18 (C), (E), (F) And 22, FDRE Constitution 1995, art 13(1).

the FPC has failed to apprehend the alleged suspects and brought before justice. For its failure to obey the order of the court the FPC blamed that the Tigray regional state is shielding, refused to cooperate, and hand over the alleged suspects.¹⁰⁵ Following the refusal, the commission has abstained from taking a furthermore action due to the constitutional autonomy of the regional states.¹⁰⁶ After hearing the response of the FPC, the FHC has decided to hear the mater in the absence of the suspects. Article 160 and the followings of the Ethiopian Cri.PC has provided for the circumstances under which trial in abstentia might be conducted. The cumulative readings of Article 160 and 161(2) of the Cri.PC provided that trial in abstentia is justified in the situations where the alleged crime is punishable with rigorous imprisonment for not less than twelve years and the warrant of the indictment cannot be executed. The warrant of the indictment cannot be executed in situations where the whereabouts of the alleged suspects are completely unknown or the suspects have been fled in the country where Ethiopia has no extradition accords. However, in the case of *FAG v. Getachew Assefa et al.*, the FPC has expressly stated the Tigray regional state is shielding, refused to cooperate and hand over the alleged suspects. Beside the FAG expressed that the Government knows the former intelligence chief is still in Tigray, but said ‘we do not want to risk people’s lives to get him.’¹⁰⁷

Despite these important facts the Court has decided to proceed with the case in the absence of the accused. Regarding the legality of the ongoing trial in abstentia, the writer has questioned the presiding judges on the bench. One of the interviewees responded that as per Art 125 of the Cri. PC. the warrant of indictment shall be put in place once the suspect has been served with summon, and failed to appear before the Court. If the suspect has not been served with summon trial- in abstentia shall be stepping in. In the case at hand, the alleged suspects have not been served with summon. Therefore, trial in abstentia has commenced.¹⁰⁸ However, as noted before trial in abstentia is justified in the situations where the alleged crime is punishable with rigorous imprisonment for not less than twelve years and the warrant of the indictment cannot be executed. The cumulative presence of the dual fold conditions is mandatory. The mere fact of punishing crime with rigorous imprisonment for not less than twelve years is insufficient unless

¹⁰⁵ Jeylan (n 101).

¹⁰⁶ Ibid

¹⁰⁷ (n 10).

¹⁰⁸ Interview with 1552, judge, Federal High Court, (Addis Ababa, 27 June 2012 EC).

it has been backed by the unenforceability of the arrest warrant. From the outset, the warrant of the indictment cannot be issued unless the defendant has been served with summon and failed to appear before the court. A trial in abstentia cannot be conducted without putting the defendant in default and effectively proving the unenforceability of the warrant of the indictment. It is quite obvious that trial in abstentia has been conducted since the FPC has reported to the court that it has not been able to bring the alleged suspects before the court on the pretext that their whereabouts are unknown. However, as noted before the FPC and the FAG had adequate information about the alleged suspects. They stated that Getachew Assefa and others are still in Tigray and the later is shielding them from the shadow of justice.

Instead of making a deep inquiry on whether the police are genuinely enforcing the court order per relevant legislation the Court has accepted the reports of the police as it is and proceeds on the in abstentia proceeding. Regarding the adequacy of measures taken by the court to verify the genuinely or otherwise of all actions taken by the FPC, the writer has questioned the presiding judges on the bench. One of the interviewees believes that the Court has made a reasonable inquiry. He added that the executive wing of the Government has not made a statement about the exact whereabouts of the suspects, as a result, the Court has not presumed the statement of the Police as a false. Beside he believes that examining the trustworthiness of the Court's order execution based on some official statement is not eligible.¹⁰⁹As well noted above the PM, the FPC and the FAG have expressly stated that the suspects are still living in Tigray under state sponsor shield. Another respondent has also stated that the police have not come up with the signed confirmation letter that shows the suspect's service of summon. Therefore, trial in abstentia has commenced.¹¹⁰ The writer believes that the court must focus on the process of serving summon and execution of a warrant of indictment instead of the result of it. Last but not least the other two interviewees responded that unless and until the contrary has been proved by the parties or entities the police have to be presumed to behave following the aforementioned legislation and objectives. In the absence of those complaints, the Court has proceeded with conducting a trial in abstentia without doubting the trustworthiness of the Police's statement.¹¹¹ It is not clear who is supposed to confront the statements of the police before the court unless the

¹⁰⁹ Ibid

¹¹⁰ Interview with 1562, judge, Federal High Court, (Addis Ababa, 27 June 2012 EC).

¹¹¹ Interview with 1572 and 1582, judges, Federal High Court, (Addis Ababa, 27 June 2012 EC).

court itself is able to challenge the trustworthiness or otherwise of the police report by taking judicial notice of adjudicative facts. In other jurisdictions, the court may by its own motion take judicial notice of a fact that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.¹¹² Likewise, the judges on the bench can take the explicit statement of the PM, the FAG, and the FPC on the whereabouts of the alleged suspects which has been broadcasted in the state and private mainstream media. Even though there is no codified law of evidence in Ethiopia the court may take the aforementioned judiciary notice of facts and verify whether the police is acting in tandem with the law. Besides as per article 143 of the Cri.PC the court may at any time before giving judgment call any witness including the PM and the FAG or the chief of justice and verify their public statement to assure disposition of genuine justice. It is remembered that in one report to the parliament, the PM has mentioned that though the Government has not been able to cause the arrest of Getachew Assefa and others they cannot be immune from self-imposed detention which is the worst jail than the formal prisons.¹¹³ The Court can infer from the speech of the PM and understand how the executive is reluctant to enforce the order of the court.

If the court has been duly inquired the deeds of the police and found that the warrant of indictment has not been executed since the Tigray regional state is not willing to hand over the alleged suspects the existence or otherwise of the legal avenue to use force is in question. In one of her speeches, the FDRE Supreme Court chief of justice remarked that during a nation-building process all measures will be taken to enforce the rule of law.¹¹⁴ In doing, so she cited *Brown v. Board of Education, 347 U.S. 483 (1954)*. Under the cited case the Supreme Court has ordered the defense force to be deployed and enforce the rule of law in the federation. Having a bit of insight from other jurisdictions the writer has questioned the presiding judges on the existence or otherwise of any legal avenue to order the use of force to snatch away the suspects from the shielding arms of these regional states and bring them before the Court. One of the interviewees believes that appearing and defending the charge is the due process right of the accused. The accused can waive his procedural right to defend the accusation while he should be bound by the

¹¹² Rule 201, Judicial Notice Of Adjudicative Facts, arts B (2), And C (1).

¹¹³ (n 11).

¹¹⁴ Meaza Ashenafi Remark About Defense Force Intervention In Tigray' *Borkena Ethiopian News*, (August 5, 2019) <<https://Borkena.Com/2019/08/05/Meaza-Ashenafi-Remark-On-Holding-Criminals-In-Tigray-Turns-Out-To-Be-Playing-Card-For-Ethnic-Tigray-Nationalists/>> Accessed April 26, 2020.

verdict which will be rendered in his absence. He has also emphasized that the forceful measures should follow the convictions of the alleged suspects.¹¹⁵ While the close readings of articles 26, 53, and 160 of the Ethiopian Cri.PC provides for the legal leeway under which the alleged suspects may forcefully bring before justice though the verdict has not been reached. Besides the other interviewee's emphasis that the Court may also order other concerned agents to collaborate with the Court per the relevant legislation.¹¹⁶ Another interviewee has also added that the Court can order the executive to take all necessary measures under the law.¹¹⁷

However, as well noted before the PM, the FAG and FPC have expressly stated that the Tigray regional state is shielding refused to cooperate and hand over the alleged suspects. These apparatus of governments are disobeying the order of the court because they complained that they do not want to risk people's lives to get the alleged suspects. The Government believes that it cannot be able to make the appearance of the alleged suspects before the court possible without bloodshed. It is remembered that the government sent the members of federal police to arrest the alleged suspects however; they were being detained by the Regional force of Tigray.¹¹⁸ It is quite obvious that if the Government is highly committed to enforce the order of the Court sending some members of FPC is not adequate. Instead what is necessary was ordering the necessary operation like that of a campaign to apprehend Abdi Aliy the then President of Somali Regional State.

As noted in the previous discussions of this paper one can remember that the Government would only be unable to adjudicate the case if the State is either physically or legally collapsed. However, as noted early neither form of inability can justify Ethiopian failure to bring *Getachew Assefa et al.* before justice. If it is so, the only reason under the table of the Rome statute is unwillingness. The writer of this paper believes that the court is avoiding the available legal avenue to verify the genuine or otherwise of the police reports in the trial and tacitly allowing the Government to employ other political solutions which would be a tacit evasion of justice. Besides, the overall scrutiny of the aforementioned data coupled with the suspicion that Getachew Assefa has been able to take cardiovascular diagnosis in Britain

¹¹⁵ (n 108).

¹¹⁶ (n 110).

¹¹⁷ (n 111).

¹¹⁸ 'Former Intelligence Chief Became Fugitive as Ethiopia Issues Arrest Warrant' *Borkena Ethiopian News* (August 22, 2018) <<https://borkena.com/2018/08/21/ethiopia-issued-arrest-warrant-on-former-intelligence-chief-getachew-assefa/>> accessed June 10, 2020.

and return home under the blessing of the PM¹¹⁹ depicted that the apparatus of the government is not committed to arrest the suspects. Even though the reliability of the PM blessing might be in question unless and until the contrary has been proved by the Government commitments to execute the warrant of the indictment the medical diagnosis news of Getachew Assefa cannot be a surprise.

The writer remarks that from the limited available sources the government's commitment to bring *Getachew Assefa et al.* before the court of law is highly questionable which would shed doubt on the Government's willingness to dispose of genuine justice. As far as the *Ne bis in idem* yardstick is concerned the Statute entered into force on 1 July 2002. In the case between *FAG v. Getachew Assefa et al.*, the alleged human rights violations on the charge including the murder are alleged to have been committed from 2006 EC onwards. Therefore the case *FAG v. Getachew Assefa et al.* can be admissible before the ICC. As far as the gravity of the offense yardstick is concerned a bit of discussion has presented in the next chapter.

¹¹⁹Temesgen (n 12).

Chapter Four: Examining The Available Mechanisms Of Setting Justice In Motion Before The ICC Without Ethiopia Being A Party To It.

Section One

4.1. The Raisons D 'etre For The Extra-Territorial Jurisdiction of the ICC

The ICC has been established to achieve certain objectives that may be simultaneously contradictory and mutually enforcing.¹²⁰ Among the raisons d 'etre for the establishment of the ICC ending impunity¹²¹ takes paramountcy. The scrutiny of the ICCs jurisprudence has come up with well-founded precedents to exercise jurisdictions over non-party States in situations triggered by the UNSC. The UNSC, by resolutions 1593 (2005) and 1970 (2011), referred the situations in Darfur, Sudan, and Libya to the ICC.¹²² A brief examination of the legal yardsticks as to which the UNSC may trigger prosecution before the ICC has presented in the coming section.

Section Two:

4.2. Legal Yardsticks Based On Which The Security Council Makes A Referral

Under this section, a scrutiny of the *FAG v. Getachew Assefa et al* in tandem with the legal parameters has provided to determine whether the required yardsticks have fulfilled to refer the matter before the ICC. There are different mechanisms under which the UNSC may get relevant information as to whether any of the statute core crimes have occurred. The Council may collect the necessary information either from the agents of the UN such as the reports of the Secretary-General or the Commission of Inquiry and other relevant sources but is not required to do so, or wait for such reporting before it acts.¹²³ Upon the collection of the relevant information about the commission of a core crime, the UNSC should examine the fulfillment or otherwise of a necessary legal yardstick before referring the situations to the ICC. The parameters have briefly discussed here below.

¹²⁰ *Judgment On The Prosecutor's Application For Extraordinary Review Of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave To Appeal* [2012] International Criminal Court Appeals Chamber ICC-01/04-168

¹²¹ Lovisa Bbdaggrd And Mark Klamberg, 'The Gatekeeper Of The ICC - Prosecutorial Strategies For Selecting Situations And Cases At The International Criminal Court' (2016) 48 SSRN Electronic Journal 649.

¹²²(n 4).

¹²³ Jennifer Trahan, 'The Relationship Between The International Criminal Court And The U.N. Security Council: Parameters And Best Practices' (2013) 24 Criminal Law Forum 422.

4.2.1. A threshold for Action

In terms of a threshold for action, the UNSC may act when one or more ICC crimes appear to have been committed.¹²⁴ The threshold could suggest a somewhat low.¹²⁵ One murder in the proper context arguably can constitute a crime against humanity.¹²⁶ However, the cumulative presence of the murder (Integrity Rights Violations) along with the contextual element and knowledge to attack a civilian population is compulsory. In the case of *FAG v. Getachew Assefa et al*, the first count of the charge which was made against Getachew Assefa depicted that when the victims were in the secret and unlawful prison Mohammed Ibrahim passed away on 23/3/2006 E.C following the very severe interrogations. It is quite obvious that an act of killing the victim would fall the alleged act under article 7(1) (a) of the Rome statute. As far as the contextual element is concerned even though there is a rampant jurisprudential loophole concerning the number of victims which need to fulfill the "widespread" requirement the accused has authorized the establishments of illegal squads and secret prisons almost in all corners of the country. Similarly, the catch-all clause of each count in the charge emphasizes that *Getachew Assefa et al* are suspects of infringing the human rights of a large number of individuals. Besides even though the alleged count of the charge has failed to provide for the existences of an explicit state policy to direct human rights infringements, the regular pattern and the improbability of human right infringements random occurrence coupled with the de facto while well-structured and organized pattern which has used state machinery and budget has made the alleged human rights violation against civilians systematic. Therefore, the UNSC shall set its chapter VII power in motion and act accordingly since the ICC crimes appear to have been committed.

4.2.2. Acting Under Chapter VII of The U.N. Charter

The other and the most important requirement for UNSC referral is that the UNSC must act under Chapter VII of the U.N. Charter. To set article 13(b) of the statute in motion and refer a situation to the ICC by using Chapter VII of the UN charter the committed criminal act should be a threat to the peace, breach of peace, or act of aggression.¹²⁷ As Terhanhas noted commission of

¹²⁴ Ibid 420.

¹²⁵ Ibid

¹²⁶ Jennifer Trahan, Le Rwanda And Human Rights Watch, *Organisme, Genocide, War Crimes And Crimes Against Humanity : A Digest Of The Case Law Of The International Criminal Tribunal Of Rwanda*. (Human Rights Watch 2010) 90.

¹²⁷ The UN Charter, art. 39

an isolated war crime might not involve a threat to the peace, breach of peace, or act of aggression.¹²⁸ The commission of one of the core crimes in any corner of the globe is a "threat to the peace" or a "breach of the peace." Besides, the doctrine of the responsibility to protect suggests that the UNSC does have an emerging legal obligation to act in the face of large-scale atrocity crimes.¹²⁹

Section Three:

4.3. Examining The Feasibility of the Available Trigger Mechanisms

4.3.1.1. State Sovereignty

The assertion of treaty-based jurisdiction over nationals and territories of States not party to the statute may be seen as apparently conflicting with the *pacta tertiis nec nocent nec prosunt* rule.¹³⁰ This has been also codified in VCLT.¹³¹ Under customary international law, the *pacta tertiis* rule forbids a treaty to infringe the 'legal rights' of third States.¹³² The preclusion of the ICC's unwarranted assumption of jurisdiction on the sovereignty of states that neither ratified nor consented to the Rome statute is emanated from the principles of the sovereignty and equality of States.¹³³ The *pacta tertiis* rule has also given rise to another jurisdictional principle. Among other things, the *Monetary Gold Principle* is the most important one. The *Monetary Gold Principle* prohibits international judicial proceedings to go on the merits of a case if it implies determining the rights and obligations of States who are not consenting to the proceedings.¹³⁴ Even though the ICC has competency only over individual suspects, in case of 'context crimes' such as the crime of aggression require a complete examination of a State's act and incidentally a legal determination as to the lawfulness of such an act to prove that the crimes have been committed¹³⁵ which would be a violation of state sovereignty. However, there are various well-

¹²⁸ Trahan (n 4) 422.

¹²⁹ Anne Peters, 'The Security Council's Responsibility To Protect' (2011) 8 International Organizations Law Review 15.

¹³⁰ Alexandre Skander Galand, *UN Security Council Referrals To The International Criminal Court: Legal Nature, Effects And Limits*, Vol 5 (Brill Nijhoff 2019) 49 <<https://Cadmus.Eui.Eu/Bitstream/Handle/1814/60069/UN-Security-Council-Referrals-To-The-International-Criminal-Court.Pdf?Sequence=4&Isallowed=Y>> Accessed March 15, 2020.

¹³¹ VCLT 1969 art. 34. It Provides That "A Treaty Does Not Create Either Obligations Or Rights For The Third State Without Its Consent".

¹³² Roger O'Keefe, 'The United States And The ICC: The Force And Farce Of The Legal Arguments' (2011) 24 Cambridge Review Of International Affairs 343.

¹³³ Galand (n 130) 49. Emphasis added

¹³⁴ Ibid 50.

¹³⁵ Ibid 51. Emphasis added

founded counterarguments against the so-called "absolute sovereignty" objection. Some counter-argue that absolute sovereignty is incompatible with the UN's existence and functioning. States had to accept that a part of their sovereignty had been relinquished to the UN.¹³⁶ The consent of States is, moreover, something that the UNSC can dispose of. Clearly, according to Article 24, UN members States agree that in carrying its primary responsibility the UNSC acts on their behalf. Others added that the UN Member States have acquiesced in this power. This is confirmed by the wide ratification of the Rome Statute, and the unanimous referral of the situation in Libya to the ICC.¹³⁷

The UNSC referral has derived its sources exclusively from its power to maintain international peace and security¹³⁸ as a result, its interplay with the sovereignty of non-consenting States needs to be assessed in light of the UN Charter. To activate Chapter VII of the UN Charter, the UNSC must determine that there is a situation that constitutes a "threat to the peace", a "breach of the peace" or an "act of aggression."¹³⁹ However, the UNSC does not operate in a complete vacuum; this determination has to remain within the limits of the Purposes and Principles of the Charter.¹⁴⁰ As per article 1 (3) of the UN Charter "promoting and encouraging respect for human rights and fundamental freedoms" is one of the purposes of the UN¹⁴¹ Furthermore, Article 55 (c) of the same statute provides that the UN shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all", and all UN Member States pledge in Article 56, "to take joint and separate action in co-operation with the Organization" to achieve that purpose. The commission of one of the core crimes in any corner of the globe is a "threat to the peace" or a "breach of the peace." In the establishment of the ad hoc tribunals, the general view is "that commission of core crimes threatens international peace and security, thus international accountability contributes to international peace and security".¹⁴² Once the core crimes have been committed against the peace and security of the universe the UNSC declared that the

¹³⁶ Ricardo J. Alfaro, *Report On The Question Of International Criminal Jurisdiction* (International Law Commission 1950).

¹³⁷ Galand (n 130) 53.

¹³⁸ Madeline Morris, 'High Crimes And Misconceptions: The ICC And Non-Party States' (2001) 64 *Law And Contemporary Problems* 13.

¹³⁹ UN Charter (n 127) art. 39.

¹⁴⁰ *Ibid* Art. 24(2).

¹⁴¹ Jane Stromseth, David Wippman And Rosa Brooks, *Can Might Make Rights? Building The Rule Of Law After Military Interventions* (Cambridge University Press 2006) 24.

¹⁴² Mistry And Ruiz Verduzco, *The UNSC And The ICC* (Chatham House 2012) 4.

establishment of an international tribunal would contribute to the process of national reconciliation and the restoration and maintenance of international peace and security.¹⁴³

Although the ultimate purpose of the UNSC when establishing the ad hoc tribunals was to restore and maintain international peace and security, the means were to deter further violations, fight impunity, and contribute to national reconciliation.¹⁴⁴ It seems that as the slogan ‘no peace without justice’ suggests, that prosecuting the core crimes is the ultimate function of the UNSC’s function of maintenance of international peace and security.¹⁴⁵

The UNSC after determining that a situation under Article 39 of the UN Charter exists may decide what measures may be taken to maintain or restore international peace and security.¹⁴⁶

Once an international crisis has been determined to be a threat to international peace and security the UNSC may set aside otherwise existing rights of any State to the extent that this is necessary to remove the threat.¹⁴⁷ Since measures under Chapter VII “are to be employed to give effect to its decisions”,¹⁴⁸ they are generally referred to as ‘enforcement measures’. The UNSC can decide to take measures either involving the use of armed forces or other types of coercive measures. Indeed, the list of measures contained in Articles 41 and 42 of the UN Charter is not exhaustive but illustrative.¹⁴⁹ It is believed that article 41 is sufficiently broad to encompass the competence to confer adjudicative jurisdictional power to an already existing criminal court.¹⁵⁰

Besides the UNSC has also explicitly stated in Resolution 1970 referring the situation in Libya to the ICC that it was “acting under Chapter VII of the Charter and taking measures under its Article 41”.¹⁵¹ As far as the *Monetary Gold Principle* is concerned the Chapter VII conception implies that in referring the situation to the Court, the consent of the concerned State has been waived by the UNSC decision under Chapter VII.¹⁵² This waiver is operated via Article 25 UN

¹⁴³ Security Council Resolution 955 1994 Para. 8.

¹⁴⁴ Galand (n 130) 82.

¹⁴⁵ Krisch, Nico, ‘Article 41’ in Simma, Bruno et al., *The Charter of the United Nations: A Commentary* (Oxford University Press, 2012) 1320.

¹⁴⁶ Galand (n 130) 52.

¹⁴⁷ B Martenczuk, ‘The Security Council, the International Court, and Judicial Review: What Lessons from Lockerbie?’ (1999) 10 *European Journal of International Law* 544.

¹⁴⁸ UN Charter (n 127) art. 41.

¹⁴⁹ *The decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* [1995] International Criminal Tribunal for the former Yugoslavia Tadić (IT-94-1) Par. 35.

¹⁵⁰ Andreas Zimmermann, *The Creation Of A Permanent International Criminal Court* (Max Planck Year Book Of United Nations Law).

¹⁵¹ (n 4)

¹⁵² Galand (n 130) 54.

Charter, which states that “[t] he Members of the UN agree to accept and carry out the decisions of the UNSC under the present Charter.”

1.4.1.4. Cooperation

Since the ICC does not have its own police force to secure the arrests of individuals or to secure production of evidence, the States obliged by the resolution are required to enact domestic legislation to fulfill this enforcement function.¹⁵³ To that effect, both referrals of the situation in Darfur and Libya explicitly required that the authorities of the territory where the situation is taking place "cooperate fully with and provide any necessary assistance to the Court and the Prosecutor according to this resolution".¹⁵⁴ In cases of UNSC referrals, containing an obligation such as the one provided in the UNSC Resolutions 1593 and 1970, Article 86 must be adapted to include States, not a party, which shall, per the relevant resolution of the UNSC cooperate fully with the Court in its investigation and prosecution of crimes committed in the context of the situation referred.¹⁵⁵ Once the UNSC has passed a resolution against states not parties to the statute and refer the matter to the ICC the statutory duty to cooperate with the court remain intact since the UNSC referrals put the targeted State in an analogous position to a party to the Statute.¹⁵⁶ The most important question which deserves an in-depth examination is whether the obligation to cooperate fully with the ICC extends to states not parties to the ICC? There are lots of controversies in the jurisprudence of the ICC. As noted above in the UNSC referrals of the situations in Darfur and Libya the UNSC has not placed obligations on any States other than Sudan and Libya.¹⁵⁷ That being said, the UNSC could have decided to bind all UN Member States to cooperate with the Court ¹⁵⁸ since UNSC is acting under Chapter VII of the UN Charter. The UN Charter has empowered the UNSC to take all necessary measures to maintain international peace and security including extending the obligation to cooperate with the ICC beyond the targeted state. In so doing the UNSC referral would compel other nonparty states to fully cooperate with the court.

¹⁵³ (n 4)

¹⁵⁴ Ibid

¹⁵⁵ Galand (n 130) 71.

¹⁵⁶ Dapo Akande, ‘The Legal Nature Of Security Council Referrals To The ICC And Its Impact On Al Bashir’s Immunities’ (2009) 7 *Journal Of International Criminal Justice* 299. Emphasis Added

¹⁵⁷ Luigi Condorelli And Annalisa Ciampi, ‘Comments On The Security Council Referral Of The Situation In Darfur To The ICC’ (2005) 3 *Journal Of International Criminal Justice* 590.

¹⁵⁸ Ibid

Chapter Five: Conclusion And Recommendations

5.1. Conclusion

In a nutshell, the study found that the overall examinations of the alleged material facts of the charge in tandem with the Rome statute divulged that the crimes which are alleged to have been committed against civilians constitute a crime against humanity as defined under the Rome statute. The alleged crimes include murder, arbitrary imprisonment, torture and enforced disappearance of persons are criminalized under article 7 (1), (A), (E), (F), and (I) of the Rome statute respectively. In addition to the unequivocal fulfillment of the integrity right violation prerequisite, a close reading of the alleged material facts of the charge has also depicted that the alleged crimes are a “context” crimes. The crimes are alleged to have been intentionally committed against civilians in a widespread and systematic manner.

As far as the scrutiny of the case in lights of the admissibility yardsticks in general and the unwillingness test of the statute, in particular, is concerned, the study has reached on the following remark.

From the limited available sources, the study found that the Government’s commitment to bring *Getachew Assefa et al.* before the court of law is highly questionable. Moreover, the FHC is reluctant to verify the truthfulness or otherwise of the police report following the pertinent laws of the country which would shed doubt on the Government's willingness to dispose a genuine justice and ease the path for admissibility of the case before the ICC.

Even though the extra-territorial application of the ICC’s jurisdiction has been backed by very stringent parameters of the statute the study found that the alleged material facts in the case *FAG Vs Getachew Assefa et al* constituted a crime against humanity which could trigger the chapter VII power of the UNSC. However, the referral of the case to the ICC is not an easy task. It may clash with other well-founded norms of international law such as the sovereignty of States, not a party to the Rome statute. However, the study found that the very notion of absolute sovereignty is incompatible with the UN’s existence and functioning. States had to accept that a part of their sovereignty had been relinquished to the UN since they have consented to empower the UNSC to maintain the peace and security of the world on their behalf. In so doing the UNSC would activate the 'enforcement measures' of chapter VII. The writer argues that the "enforcement measures' of the charter are illustrative. As a result, a referral of the case to the ICC under Article

13 (b) of the statute can be conceived as an enforcement measure of the UNSC which could be a moderate accumulation of the prevailing computing norms of international law.

Besides the study found that the previous referrals of the situation in Darfur and Libya did not extend the duty to cooperate with the court beyond the targeted non-party state while the UNSC resolutions have the power to trump the sovereignty of the states non-parties to the ICC and narrow the possible impunities of the perpetrators.

5.2. Recommendation

The researcher believes that the following recommendations will help to avoid the possible impunities of the alleged suspects in the case between *FAG Vs Getachew Assefa et al.*

☞ The Secretary-General, the Commission of Inquiry, or other relevant agents of the UN should bring the case of *FAG Vs Getachew Assefa et al* on the table of the UNSC.

☞ The UNSC shall activate its Chapter VII power of the charter and refer the case to the ICC.

☞ In so doing contrary to its previous referrals the UNSC shall extend the duty to cooperate with the court beyond the targeted third states and bind the nonparty states as a general obligation for all States.

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Appendix

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ጠቅላይ ሚኒስትር
የፍትሕ ሚኒስቴር
የሥነ ምግባርና የጥበቃ ሚኒስቴር

የፌዴራል ኮርትና የፍትሕ ሚኒስቴር
የሥነ ምግባርና የጥበቃ ሚኒስቴር
የሥነ ምግባርና የጥበቃ ሚኒስቴር

የፌ/ጠ/ሰ/ሰ/የ/ወ/ጠ/ቁ. 198/2011
የፌ/ፖ/ወ/ጠ/ቁ. 408/2011

ላሽ-----የፌዴራል ጠቅላይ ሰዎች
ዘጠኝ፡-

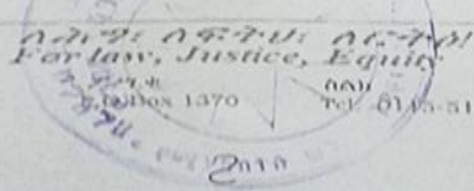
1. አቶ ጊ/ቲ/ወ አሰፋ አበራ ስድሚያ---
አድራሻ፡- ትግራይ ክልል
2. አቶ ያራድ ዘራውን ሸጉሜ ስድሚያ 45 ዓመት
አድራሻ፡- አዲስ አበባ ን/ሰ/ላ/ሰ/ሰ/ቲ/ግ ወረዳ 3 የቤ.ቁ.177
3. አቶ መለሸ ዚላኔ አሰግሃው ስድሚያ 54 ዓመት
አድራሻ፡- አዲስ አበባ ቱርቶስ ክ/ቡ/ቲ/ግ ወረዳ 4 የቤ.ቁ.---
4. አቶ አማኑኤል ዚርሰ መድሀን ስድሚያ 46 ዓመት
አድራሻ፡- አዲስ አበባ ኮሌጅ ተ/ሰ/ሰ/ሰ/ቲ/ግ ወረዳ 2 የቤ.ቁ.105
5. አቶ ደርበው ደመላሽ ሸንጎ ስድሚያ 48 ዓመት
አድራሻ፡- አዲስ አበባ ን/ሰ/ላ/ሰ/ሰ/ቲ/ግ ወረዳ 3 የቤ.ቁ.965
6. አቶ ተስፋዬ ኡርጂ ነገሥ ስድሚያ 49 ዓመት
አድራሻ፡- አዲስ አበባ ኮሌጅ ተ/ሰ/ሰ/ሰ/ቲ/ግ ወረዳ 7 የቤ.ቁ.---
7. አቶ ተስፋዬ ገብረጻዲቅ ረዳ ስድሚያ 53 ዓመት
አድራሻ፡- አዲስ አበባ ቱርቶስ ክ/ቡ/ቲ/ግ ወረዳ 4 የቤ.ቁ.---
8. አቶ ንግሥት ገ/ሕይወት ገ/ሰላሴ ስድሚያ 54 ዓመት
አድራሻ፡- አዲስ አበባ ኮሌጅ ተ/ሰ/ሰ/ሰ/ቲ/ግ ወረዳ 7 የቤ.ቁ.---
9. አቶ አዕበን ገይይ ወልደማሪያም ስድሚያ---
አድራሻ፡- ትግራይ ክልል
10. አቶ ቢኔያም ማሙሸት መኮንን ስድሚያ 49 ዓመት
አድራሻ፡- አዲስ አበባ ን/ሰ/ላ/ሰ/ሰ/ቲ/ግ ወረዳ 4 የቤ.ቁ.429
11. አቶ አሰፋ ሰላይ መኮንን ስድሚያ---

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የብርሃን ቁጥር
ቀን
ዓ.ም.

- 12. አቶ ሸሻይ ልክ-ል ተልደ ዕድሜ-----
አድራሻ:- ትግራይ ክልል
- 13. አቶ ሸዊት በላይ ዓለማየሁ ዕድሜ 49 ዓመት
አድራሻ:- አዲስ አበባ ቁርቆስ ክ/ከተማ ወረዳ 7 የቤ.ቁ.455/9
- 14. አቶ የላንሰ (ገብረእግዚአብሔር) ውበት ገብረማሪያም ዕድሜ 47 ዓመት
አድራሻ:- አዲስ አበባ አራዳ ክ/ከተማ ወረዳ 6 የቤ.ቁ.057
- 15. አቶ ነጋ ካሴ አሰራት ዕድሜ 51 ዓመት
አድራሻ:- አዲስ አበባ ጉለሌ ክ/ከተማ ወረዳ 9 የቤ.ቁ.---
- 16. አቶ ተመስገን በርሔ አብርሃ ዕድሜ 31 ዓመት
አድራሻ:- አዲስ አበባ ልደታ ክ/ከተማ ወረዳ 1 የቤ.ቁ....
- 17. አቶ አዲሱ በዳሳ ነመራ ዕድሜ 49 ዓመት
አድራሻ:- አዲስ አበባ ቁርቆስ ክ/ከተማ ወረዳ 21 የቤ.ቁ.102/45
- 18. አቶ ሳሙኤል ጊዲሳ ጃለታ ዕድሜ 37 ዓመት
አድራሻ:- አዲስ አበባ ን/ሰ/ላ/ ክ/ከተማ ወረዳ 1 የቤ.ቁ.....
- 19. አቶ አሀመድ ገዳ ገልማ ዕድሜ 35 ዓመት
አድራሻ:- ጎሮሚያ ክልል ፊንፊኔ ዙርያ ልዩ ዞን ሰበታ ከተማ
- 20. አቶ እዮብ ተወልደ ትኩዕ ዕድሜ 45 ዓመት
አድራሻ:- አዲስ አበባ አዲስ ክ/ከተማ ወረዳ 7 የቤ.ቁ.174
- 21. አቶ ሰይፈ በላይ ወርቅነህ ዕድሜ 45 ዓመት
አድራሻ:- አዲስ አበባ ን/ሰ/ላ/ክ/ከተማ ወረዳ 1 የቤ.ቁ.22
- 22. አቶ ተሾመ ሀይሌ ፈንታሁን ዕድሜ 48 ዓመት
አድራሻ:- አዲስ አበባ አዲስ/ክ/ከተማ ወረዳ 8 የቤ.ቁ.210
- 23. አቶ አሸናፊ ተስፋ-ሁን ላተው ዕድሜ 34 ዓመት
አድራሻ:- ጎሮሚያ ክልል ጎንደር ከተማ ተበሌ 12 የቤ.ቁ.304
- 24. አቶ ደርዕ አየነው ተፈሪ ዕድሜ 38 ዓመት



43ሰ
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ጽ/ቤት/ሰነድ/፡ _____
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- አድራሻ፡- አዲስ አበባ ኮሌጎ/ቀ/ ክ/ከተማ ወረዳ 9 የቤ.ቁ-----
25. አቶ ሀዱሽ ካሳ ደስታ ፊደ.ሚ 51 ዓመት
አድራሻ፡- አዲስ አበባ ን/ሰ/ላ/ ክ/ከተማ ወረዳ 5 የቤ.ቁ.448
26. አቶ ማርክስ ፀሓይ ተክሉ ፊደ.ሚ 42 ዓመት
አድራሻ፡- አዲስ አበባ ን/ሰ/ላ/ ክ/ከተማ ወረዳ 6 የቤ.ቁ----



ለሕግ፣ ፍትህ፣ ለግብርና፣ ለብቃት፣
For law, Justice, Equity



1ኛ ክስ በ1ኛ ተከላሽ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እና 407/1/ (ለ) (ሐ) እና 407/3/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀል ዝርዝር

ተከላሽ ከየካቲት 1994 ዓ.ም ጀምሮ እስከ 2010 ዓ.ም ድረስ በቀድሞ የደህንነት፣ የኢሚግሬሽንና ሰደተኞች ጉዳይ ባለስልጣን ዋና ስራ አስኪያጅ እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት በሚኒስትር ማዕረግ በዳይሬክተር ጀነራልነት ተሾሞ የአገልግሎቱ ዋና ሀላፊ በመሆን አጠቃላይ የተቋሙን ስራዎች በሚመራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማቅረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ ተቋሙን ማደራጀትና መምራት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማስብ በባለስልጣኑም ሆነ በአገልግሎቱ ማቋቋሚያ እና በሌሎች ህጎች፣ በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ አስሮ የመመርመር እና አስሮ ቤቶችን በማዘጋጀት የሚያዙትን ሰዎች አስሮ ለማቆየት የሚያስችል የተሰጠው ምንም አይነት ስልጣን ሳይኖር በህግ አግባብ ከተቀመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው ታስረው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሏቸው ለማድረግ፣ በስሩ በሚመራቸው የተቋሙ ስራተኞች አማካኝነት ዜጎች ክትትል ተደርጎባቸው በሀይል ታፍነው እንዲያዙ እና ታስረው እየተመረመሩ እንዲቆዩ ለማድረግ የሚያስችል አደረጃጀት በተቋሙ ውስጥ በማዘጋጀትና በበላይነት በመምራት፤

የሚያዙት ሰዎችም ታስረው የሚቆዩበት አስሮ ቤት እንዲዘጋጅ በማድረግ በዚህም አዲስ አበባ ከተማ ውስጥ ጦርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ግቢ ውስጥ የሚያዙት ሰዎች በድብቅ የሚታሰሩበትንና የሚመረመሩበትን ድብቅ አስሮ ቤቶችን እና መመርመሪያ ክፍል እንዲዘጋጅ በማድረግ፤

በተጨማሪም ከመንግስት ኪራይ ቤቶች ኤጀንሲ (በአሁኑ የፌዴራል ቤቶች ኮርፖሬሽን) ለስራ አገልግሎት በሚል በአዲስ አበባ ከተማ ውስጥ በተለያዩ ክፍል ከተሞች ውስጥ የሚገኙ መኖሪያ ቤቶችን በመውሰድ የሚያዙት ሰዎች በድብቅ እንዲታሰሩበት ያደረገ ሲሆን፣ በዚህ መልኩ ሰዎች በድብቅ ሲታሰሩባቸው ክንበፍት ቤቶች ውስጥ፡-

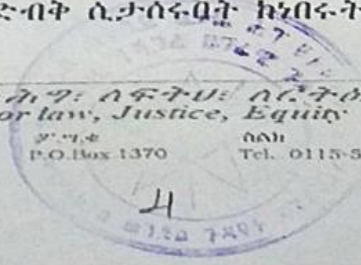
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Addis Ababa - Ethiopia





ቁጥር
E.C.No.
ቀን
Date

ክፍል ከተማ በቀድሞ ወረዳ 20 የቤ/ቁጥር 480 ቀጠላ መደብረኛ

- 2. ኮልሬ ተራጊዮ ክፍል ከተማ በቀድሞ ወረዳ 24 የቤት ቁጥር 1182 ምናዬ ህንጻ አክባቢ
- 3. ቱርቆስ ክፍል ከተማ በቀድሞ ወረዳ 20 የቤት ቁጥር 313 ቁራ ቡልጋሪያ አክባቢ
- 4. ቱርቆስ ክፍል ከተማ በቀድሞ ወረዳ 20 የቤት ቁጥር 188 ቁራ መስጊድ አክባቢ
- 5. ንፋስ ሰልክ ላክፍል ከተማ በቀድሞ ወረዳ 23 የቤት ቁጥር 171 ካርል አደባባይ አክባቢ
- 6. ኮልሬ ተራጊዮ ክፍል ከተማ በቀድሞ ወረዳ 23 የቤት ቁጥር 351 ጦርሀይሎች አክባቢ
- 7. ቦሌ ክፍል ከተማ ወረዳ 17 የቤት ቁጥር 296 ቦሌ ድልድይ አክባቢ የሚገኙ ሲሆኑ፤

በዚህ በአዲስ አበባ ከተማ ውስጥ በሚገኙ ሰው-ሰው ለሰው ጤቶች ውስጥ የሚታሰሩትን ሰዎች እየሞረ ህክምና የሚሰጥ ሰው እንዲመደብ በማድረግ፤ የሚታሰሩትም ሰዎች በቆይታቸው ጊዜ ምግብ የሚያገኙበትን ሁኔታ በማመቻቸትና ለዚህም የሚሆን ገንዘብ ከተቋሙ በጀት ላይ እንዲከፈልና ይህንንም የሚያመቻች እና ሰው-ሰው ለሰው ጤቶችን የሚያስተዳድር ሰው እንዲመደብ በማድረግ፤

በሀገሪቱ በተለያዩ ከተሞች ላይ በተቋቋሙ የተቋሙ ቅርንጫፍ ቢሮዎች ውስጥም ሰዎች የሚታሰሩበት ሁኔታ እንዲመቻች በማድረግ፤ በአማራ ክልል ጎንደርና ባህርዳር ከተሞች ላይ፤ በአሮሚያ ክልል ነቀምቲ፤ ጅማና ሸሸመኔ፤ ቢሾፍቱ ከተሞች ላይ፤ በደቡብ ክልል ሀዋሳ ከተማ ላይ ሰዎች ተይዘው ሲታሰሩበት የነበረ በመሆኑ፤

በዚህም በወንጀል ድርጊት ተጠርጥረዋል በሚል በተለይም በወቅቱ በአሸባሪነት ከተፈረጁት የፖለቲካ ድርጅቶች ማለትም ከአነግ፤ አርበኞች ግንቦት ሰባት ጋር እንዲሁም ከሀይማኖት አከራሪነት ጋር በተያያዘ እና በአኮኖሚ ላይ ከሚፈጸሙ ወንጀሎች ጋር ግንኙነት አላቸው በሚል ሰዎች ክትትል ተደርጎባቸው እንዲያዙ ትዕዛዝ በመስጠትና ሂደቱን በበላይነት በመምራት በርካታ ሰዎች በተቋሙ የመረጃና የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው እና የሚታሰሩበትን ቦታ እንዲያውቁ በጨርቅ አይናቸው ተሸፍኖ ጦራሀይሎች አክባቢ በሚገኘው የክትትል መምሪያ ጊቢ ውስጥ በተዘጋጀው እስር ቤት እና ከላይ በተጠቀሱት ሰው-ሰው ለሰው ጤቶች ውስጥ እንዲሁም በተለያዩ የሀገሪቱ ከተሞች ውስጥ በሚገኙ የተቋሙ ቅርንጫፍ ቢሮዎች ውስጥ ለረጅም ጊዜ እንዲታሰሩና ምርመራ እንዲደረግባቸው ሲያደርግ የነበረ፤ እንዲሁም የተቋሙ ሰራተኞች በፖሊስ የወንጀል ምርመራ ቢሮዎች እና በማረሚያ ቤቶች በመገኘት በምርመራ ላይ በመሳተፍ ተጠርጣሪዎችን እና ታሳሪዎችን በተለያዩ መንገድ በማሰቃየት ምርመራ እያደረጉ አሰገድደው መረጃ እንዲቀበሉ ሲመራ የነበረ ሲሆን፤ በዚህ መልኩ ቁጥራቸው በውል የማይታወቅ በርካታ ሰዎች ተይዘው ታሰረው፤ በታሰሩበትም በተለያዩ መልኩ ድብደባ

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Addis Ababa - Ethiopia





ግብዓት በማሰታየትና በማሰጠት ምርመራ ሲደረግባቸው የነበረ ሲሆን ከነዚህም ወደሚጠራው ለንዲወሰዱ ሲደረጉ ለሎቹን ደግሞ ከታሰሩበት ጋር በማውጣት ለይናቸውን በጨርቅ በመሸፈን ታሰረው ከቆዩበት ድብቅ ለሰር ቤት ለከባቢ በማራት ተወስደው መንገድ ላይ የሚጣሉ ሲሆን በዚህ መልክ ለሰር ቤት 25 ተን 2007 ዓ.ም ድረስ ቁጥራቸው በውል የማይታወቁ በርካታ ሰዎች ጉዳት የደረሰባቸው ሲሆን ከነዚህም ውስጥ:

በ2006 ዓ.ም የኢትዮጵያ ለግብር ኢትዮጵያ ብሔራዊ ቡድን ከናይጄርያ አቅጣጫ ጋር በአዲስ አበባ ስቲዲዎም በሚያደርገው ግብር ላይ የነበረ ለማራገጥ አስጠየቀ በሚል በርካታ ሰዎች ተይዘው ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደ ሚጠራው ስፍራ ተወስደው በ10ኛ፣ 24ኛ እና 26ኛ ክሶች ላይ በተገለጸው መልክ ምርመራ ሲደረግባቸው የቆዩ ሲሆን፣ ተከላኸም ተኩ በውል ባልታወቀ ጥቅምት ወር 2006 ዓ.ም ምርመራው በደንብ አልተከናወነም በማለት በዚህ ጉዳይ ምርመራ ሲጣራባቸው ከነበሩት ሰዎች መካከል ሸክ አነስ ኡሰማን፣ መሀመድ ኢብራሂም፣ መሀመድ ሲደ፣ መሀመድ አሊና ሌላ ለጊዜው ስሙ ያልታወቀ ግለሰብ ከታሰሩበት የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር ተወስደው ለንዲታሰሩ ተፅዋዝ በመስጠት ምርመራው በ10ኛ፣ 24ኛ እና 26ኛ ክሶች ላይ በተገለጸው መልክ በልዩ ሁኔታ በጥቅም ለንዲከናወን ለ2ኛ፣ ለ7ኛ፣ ለ14ኛ፣ ለ15ኛ እና ለጊዜው ማንነታቸው ላልተለየ የደህንነት አባላት እና ለመርማሪ ፖሊሶች ትፅዋዝ በመስጠት የምርመራውን ውጤትም በየጊዜው በ7ኛ ተከላኸ አማካኝነት ለ2ኛ ተከላኸ እየተረበ 2ኛ ተከላኸ ደግሞ ለ1ኛ ተከላኸ እየተረበ በመገምገም ተጨማሪ የምርመራ አቅጣጫዎችን እየሰጡ ምርመራው ለረጅም ጊዜ ሲከናወን የነበረ ሲሆን፣ በምርመራው ሂደትም፣ መሀመድ ኢብራሂም የተባለውን ግለሰብ 7ኛ፣ 14ኛ፣ 15ኛ ተከላኸች ከሌሎች ማንነታቸው ያልተለየ የደህንነት አባላት እና ከፌዴራል ፖሊስ ወንጀል መርማሪዎች ጋር በመሆን በተደጋጋሚ ጊዜ ድብደባ እየፈጸሙበት ለረጅም ሰዓት አቁመው ሲመረምሩት ቆይተው በ23/3/2006 ዓ.ም በተመሳሳይ መልክ ለረጅም ሰዓት አቁመው ሲመረምሩት በቆመበት ተዘለፍልፎ ወድቆ ህይወቱ ያለፈ ሲሆን፣ ከዚህ በተጨማሪም በ6ኛ፣ 10ኛ፣ 16ኛ፣ 18ኛ፣ 22ኛ፣ 24ኛ፣ 26ኛ፣ 28ኛ፣ 30ኛ፣ 32ኛ፣ 35ኛ፣ 36ኛ፣ 37ኛ፣ 39ኛ እና 41ኛ ክሶች ላይ በተገለጹት ተበዳዮች ላይ በክሶቹ ላይ በተገለጸው መልክ ከፍተኛ የሰብአዊ መብት ጥሰት ለንዲፈጸምባቸው ያደረገ በመሆኑ፣ በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በፈጸመው በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከሷል።

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የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ጠቅላይ ሚኒስትር
የጠቅላይ ሚኒስትር ዳይሬክቶሬት
የፍትህ ሚኒስቴር
የፍትህ ሚኒስቴር
የፍትህ ሚኒስቴር

2ኛ ክስ በ1ኛ ተከላሽ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ህግ አንቀጽ 32 (1) ሀ እና ለ እንዲሁም የሙስና ወንጀሎችን ለመደንገግ የወጣውን አዋጅ ቁጥር 881/2007 አንቀጽ 9 /1/ (ለ) እና (ሐ) እና 9/3/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መረጃ።

የወንጀል ዝርዝር

ተከላሽ ከየካቲት 1994 ዓ.ም ጀምሮ እስከ 2010 ዓ.ም ድረስ በተደግሞ የደህንነት፣ የኢንፎርሜሽንና ስድተኞች ጉዳይ ባለስልጣን ሞያ ስራ አስኪያጅ እና በአሁኑ የብሔራዊ መረጃና ደህንነት አገልግሎት በሚረከቡ ማዕረግ በዳይሬክቶሬት ጀነራልነት ተሾሞ የአገልግሎቱ ሞያ ሀላፊ በመሆን አጠቃላይ የተቋሙን ስራዎች በሚመራበት ጊዜ በህግ አገልግሎት የተሰጠውን ስልጣን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ ተቋሙን ማደራጀትና መምራት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማስቀጠል፣ በባለስልጣኑም ሆነ በአገልግሎቱ ማቋቋሚያ እና በሌሎች ህጎች፣ በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ አስሮ የመመርመር እና እስር ቤቶችን በማዘጋጀት የሚያዙትን ሰዎች እስር ለማቆየት የሚያስችል የተሰጠው ምንም አይነት ስልጣን ሳይኖር በህግ አገልግሎት ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው ታስረው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሏቸው ለማድረግ፣ በስሩ በሚመራቸው የተቋሙ ሰራተኞች አማካኝነት ዜጎች ክትትል ተደርጎባቸው በሀይል ታፍነው እንዲያዙ እና ታስረው እየተመረመሩ እንዲቆዩ ለማድረግ የሚያስችል አደረጃጀት በተቋሙ ውስጥ በማዘጋጀትና በበላይነት በመምራት፤

የሚያዙት ሰዎችም ታስረው የሚቆዩበት እስር ቤት እንዲዘጋጅ በማድረግ በዚህም አዲስ አበባ ከተማ ውስጥ ጦርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ግቢ ውስጥ የሚያዙት ሰዎች በድብቅ የሚታሰሩበትንና የሚመረመሩበትን ድብቅ እስር ቤቶችን እና መመርመሪያ ክፍል እንዲዘጋጅ በማድረግ፤

በተጨማሪም ከመንግስት ኪራይ ቤቶች ኤጀንሲ (በአሁኑ የፌዴራል ቤቶች ኮርፖሬሽን) ለስራ አገልግሎት በሚል በአዲስ አበባ ከተማ ውስጥ በተለያዩ ክፍለ ከተሞች ውስጥ የሚገኙ መኖሪያ ቤቶችን በመውሰድ የሚያዙት ሰዎች በድብቅ እንዲታሰሩበት ያደረገ ሲሆን፤ በዚህ መልኩ ሰዎች በድብቅ ሲታሰሩበት ከነበሩት ቤቶች ውስጥ፡-

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ዘጠኝ የግብርና ሚኒስቴር ወረቀት 20 የቤት ቁጥር 480 ቀጠላ ሙሉ ማረጋገጫ

2. ዮሐንስ ተራጊኖ ክፍለ ከተማ በተደገፈ ወረቀት 24 የቤት ቁጥር 1182 ምንጭ ህንጻ አካባቢ
3. ቁርቆስ ክፍለ ከተማ በተደገፈ ወረቀት 20 የቤት ቁጥር 313 ቁሬ ቡልታሪያ አካባቢ
4. ቁርቆስ ክፍለ ከተማ በተደገፈ ወረቀት 20 የቤት ቁጥር 188 ቁሬ ሙሉ ማረጋገጫ አካባቢ
5. ገብረ ስልክ ላክግሌ ከተማ በተደገፈ ወረቀት 23 የቤት ቁጥር 171 ክርል አደባባይ አካባቢ
6. ዮሐንስ ተራጊኖ ክፍለ ከተማ በተደገፈ ወረቀት 23 የቤት ቁጥር 351 ጠርጠራ አካባቢ
7. ቦሌ ክፍለ ከተማ ወረቀት 17 የቤት ቁጥር 296 ቦሌ ድልድይ አካባቢ የሚገኙ ሲሆኑ

በዚህ ወረቀት አባባ ከተማ ውስጥ በሚገኙ ሰው ለሰው እስር ቤቶች ውስጥ የሚታሰሩትን ሰዎች እርምጃ ለማድረግ የሚሰጡ ሰዎች በቀደምት ጊዜ የሚገኙበትን ሁኔታ በማመቻቸትና ለዚህም የሚገኝ ገንዘብ ከተቋሙ በጀት ላይ እንዲከፈልና ይህንንም የሚመቻቹ እና ሰው ለሰው እስር ቤቶችን የሚያስተዳድር ሰው እንዲመደብ በማድረግ

በሀገሪቱ በተለያዩ ከተሞች ላይ በተቋሙ የተቋሙ ቅርንጫፍ ቢሮዎች ውስጥም ሰዎች የሚታሰሩበት ሁኔታ እንዲመቻቹ በማድረግ በአማራ ክልል ገንደርና ባርዳር ከተሞች ላይ በድርጊያ ክልል ነጥሎች ጅምር ሻሸመኔ ቢሮዎች ላይ በደቡብ ክልል ሀዋሳ ከተማ ላይ ሰዎች ተይዘው ሲታሰሩበት የነበረ በመሆኑ

በዚህም በወንጀል ድርጊት ተጠርጣሪዎች በሚል በተለይም በወትቱ በአሸባሪነት ከተረረጁት የፖለቲካ ድርጅቶች ማለትም ከአንገላ አርባዎች ግንቦት ሰዓት ጋር እንዲሁም ከወይማናት ለክፍሪነት ጋር በተያያዘ እና በአኮሞሪ ላይ ከሚፈጸሙ ወንጀሎች ጋር ግንኙነት አላቸው በሚል ሰዎች ክትትል ተደርጎባቸው እንዲያዙ ትዕዛዝ በመስጠትና ጊደቱን በበላይነት በመምራት በርካታ ሰዎች በተቋሙ የመረጃና የክትትል ሰራተኞች በወይል ታፍኑው ተይዘው እና የሚታሰሩበትን ቦታ እንዲያውቁ በጨርቅ አይናቸው ተሸፍኖ ሠራሀይሎች ለካባቢ በሚገኘው የክትትል መምሪያ ጊዜ ውስጥ በተዘጋጀው እስር ቤት እና ከላይ በተጠቀሱት ሰው ለሰው እስር ቤቶች ውስጥ እንዲሁም በተለያዩ የሀገሪቱ ከተሞች ውስጥ በሚገኙ የተቋሙ ቅርንጫፍ ቢሮዎች ውስጥ ለረጅም ጊዜ እንዲታሰሩና ምርመራ እንዲደረግባቸው ሲያደርግ የነበረው እንዲሁም የተቋሙ ሰራተኞች በፖሊስ የወንጀል ምርመራ ቢሮዎች እና በማረጋገጫ ቢሮዎች በመገኘት በምርመራ ላይ በመሳተፍ ተጠርጣሪዎችን እና ታሳሪዎችን በተለያዩ መንገድ በማስታየት ምርመራ እያደረጉ አስገድደው መረጃ እንዲቀበሉ ሲመራ የነበረ ሲሆን በዚህ መልኩ ቁጥራቸው በውል የማይታወቅ በርካታ ሰዎች ተይዘው ታስረው በታሰሩበትም በተለያዩ መልኩ ድብደባ

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የሥነ-ምግባር
አዎንታዊ
1991

የምርመራ እያደረጉ አስገደደው መረጃ እንዲቀበሉ ሲመሩ የነበረ ሲሆን በዚህ በተለያዩ መልኩ ደብዳቤ ለማድረግ በርካታ ሰዎች ተይዘው ታስረው በታሰሩበትም ምርመራ በር በተለምዶ ማዕከላዊ ተብሎ ወደ ፌዴራል ፖሊስ ወንጀል ደግሞ ከታሰሩበት በታ በማውጣት እይናቸውን በጨርቅ በመሸፈን ታስረው ከቆዩበት እስከ መጋቢት ወር 2007 ዓ.ም ድረስ በ6ኛ፣ 10ኛ፣ 16ኛ፣ 18ኛ፣ 22ኛ፣ 24ኛ፣ 26ኛ፣ 28ኛ፣ 30ኛ፣ 32ኛ፣ 35ኛ፣ 36ኛ፣ 37ኛ፣ 39ኛ እና 41ኛ ክሶች ላይ በተገለጹት ተብዳዮች ላይ በከሰቱ ላይ በተገለጸው መልኩ ከፍተኛ የሰብአዊ መብት ጥሰት እንዲፈጸምባቸው ያደረጉ በመሆኑ በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በፈጸሙት በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከሰቶል።

4ኛ ክስ በ2ኛ፣ በ3ኛ እና በ4ኛ ተከሳሾች ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ህግ አንቀጽ 32 /1/ (ሀ) እና (ለ) እንዲሁም የሙስና ወንጀሎችን ለመደንገግ የወጣውን አዋጅ ቁጥር 881/2007 አንቀጽ 9/1/ (ለ) (ሐ) እና 9/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀል ዝርዝር

ተከሳሾች በተደግሞ የደህንነት፣ የኢሚግሬሽንና ስደተኞች ጉዳይ ባለስልጣን በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ተቋም ውስጥ 2ኛ ተከሳሽ ከሆኑ 1 ቀን 1987 ዓ.ም፣ 3ኛ ተከሳሽ ከየካቲት 1 ቀን 1984 ዓ.ም፣ 4ኛ ተከሳሽ ከየካቲት 1 ቀን 1984 ዓ.ም ጀምረው በተለያዩ የስራ ሀላፊነት ላይ ተመድበው ሲሰሩ በህግ አግባብ የተሰጣቸውን ስልጣን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የስራ ሀላፊነታቸውን መወጣት ሲገባቸው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማስብ፤

2ኛ ተከሳሽ ከየካቲት 1 ቀን 2002 ዓ.ም እስከ የካቲት 28 ቀን 2008 ዓ.ም ድረስ የውስጥ ደህንነት ጥበቃ ዋና መምሪያ ዳይሬክተር፣ ከየካቲት 29/ 2008 ዓ.ም እስከ ግንቦት 30/2010 ዓ.ም ድረስ ተቋሙ ምክትል ዳይሬክተር ጀነራል ሆኖ ሲሰሩ፤

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ግዴታ
ጋዜጣ

ህግ ቁጥር 6/2003 ዓ.ም ጀምሮ በዳይሬክተር ደረጃ የአፕራሽናል ጉዳዮች ሀላፊ ሆኖ ሲሰራ፤

4ኛ ተከላኸ ከ2000 ዓ.ም ጀምሮ የውስጥ ደህንነት ጥበቃ ዋና መምሪያ የአፕራሽናል መምሪያ ጊዜያዊ ሀላፊ እና የውስጥ ደህንነት ጥበቃ ዋና መምሪያ ምክትል ዳይሬክተር ሆኖ፤ ከመጋቢት ወር 2008 ዓ.ም ጀምሮ የውስጥ ደህንነት ጥበቃ ወና መምሪያ ዳይሬክተር ሆኖ ሲሰራ፤

በባለስልጣንም ሆነ በአገልግሎቱ ማቋቋሚያ አዋጆች እና በሌሎች ህጎች የተሰጣቸው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖራቸው የተሰጣቸውን የሰራ ሃላፊነት ወይም ስልጣን ያለአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪላቸው በመሆን መረጃ እንዲያቀብሏቸው ለማድረግ በማሰብ፤

ከ1ኛ ተከላኸ ጋር በመሆን ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ በተቋሙ ውስጥ በሚመሯቸው ሰራተኞች አማካኝነት ዜጎች ክትትል ተደርጎባቸው በሀይል ታፍነው እንዲያዙ እና ታስረው ተገደው እየተመረመሩ እንዲቆዩና መረጃ እንዲሰጡ ለማድረግ የሚያስችል አደረጃጀት በተቋሙ ውስጥ በማዘጋጀትና በበላይነት በመምራት፣ የሚያዙት ሰዎችም ታስረው የሚቆዩበትን እስር ቤቶች እንዲዘጋጁ በማድረግ በዚህም በአዲስ አበባ ከተማ መርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ግቢ ውስጥ እስር ቤቶችና መመርመሪያ ክፍሎች እንዲዘጋጁ በማድረግ፣ እንዲሁም ከተድሞ የመንግስት ኪራይ ቤቶች ኤጀንሲ ከአሁኑ ፊዴራል ቤቶች ኮርፖሬሽን ለሰራ አገልግሎት በሚል በአዲስ አበባ ከተማ በተለያዩ ክፍለ ከተሞች ውስጥ ለተቋሙ የተላለፉለት እና ከላይ በአንደኛ ክስ ላይ በተገለጹት ቤቶች ውስጥ በተጨማሪም በሀገሪቱ በተለያዩ ከተሞች ላይ በተቋቋሙ የተቋሙ ቅርንጫፍ ቢሮዎች ውስጥም ሰዎች የሚታሰሩበት ሁኔታ እንዲመቻች በማድረግ፣ በአማራ ክል ጎንደርና ባህርዳር ከተሞች ላይ፣ በኦሮሚያ ክልል ነቱምቱ፣ ጅማ፣ ሻሸመኔ እና ቢሾፍቱ ከተሞች ላይ፣ በደቡብ ክልል ሀዋሳ ከተማ ላይ፣ በወንጀል ድርጊት ተጠርጥረዋል በሚል በተለይም በአሸባሪነት ከተፈረጁት የፖለቲካ ድርጅቶች ማለትም ከአነግ፣ አርበኞች ግንቦት ሰባት ጋር እንዲሁም ከሀይማኖት አክራሪነት ጋር በተያያዘ እና በአኮኖሚ ላይ ከሚፈጸሙ ወንጀሎች ጋር ግንኙነት አላቸው በሚል ሰዎች ክትትል ተደርጎባቸው እንዲያዙ ትዕዛዝ በመስጠትና ሂደቱን በበላይነት በመምራት ቁጥራቸው በውል ያልታወቀ በርካታ ሰዎች በተቋሙ የመረጃና የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው እና አይናቸው በጨርቅ ተሸፍኖ ከላይ በተገለጹት ድብቅ እስር ቤቶች እና ቢሮዎች ውስጥ ለረጅም ጊዜ እንዲታሰሩና ምርመራ እንዲደረግባቸው ሲያደርጉ የነበረ ሲሆን፤ እንዲሁም የተቋሙ ሰራተኞች በፖለቲካ ጣቢያና ማረሚያ ቤቶች በመገኘት በምርመራ ላይ በመሳተፍ ተጠርጣሪዎችን እና ታላሪዎችን በተለያዩ መንገድ

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ተከላኸ ከ1998 ዓ.ም እስከ 2002 ዓ.ም በውስጥ ደህንነት ጥበቃ ዋና መምሪያ ድረስ የእርሚያ ደህንነት መምሪያ ሀላፊ ሆኖ፣ ከ2003 ዓ.ም ጀምሮ የፀረ-ሽብር መምሪያ ሀላፊ ሆኖ ሲሰራ፤

በባለስልጣንም ሆነ በአገልግሎቱ ማቋቋሚያ አዋጆች እና በሌሎች ህጎች የተሰጣቸው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን እንዲሁም ለወንጀል ማስፈጸሚያነት የሚውልም ሆነ በህገ-ወጥ መንገድ የሚዘዋወርን ገንዘብ የመያዝም ሆነ በተቋሙ እንዲወረስ የማድረግ ስልጣን ሳይኖራቸው የተሰጣቸውን የሰራ ሃላፊነት ወይም ስልጣን ያለአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪላቸው በመሆን ከተለያዩ አካላት ጋር ግንኙነት በማድረግ ገንዘብ እንዲልኩ በማድረግና የሚላከውንም ገንዘብ በመተበል ለግል ጥቅማቸው በማዋል የማይገባ ጥቅም ለማግኘት ወይም ለማሰብ፤

ከ2003 ዓ.ም ጀምሮ እስከ 2010 ዓ.ም በወቅቱ በአሸባሪነት ከተፈረጀው የእርሞ ነጻነት ግንባር (እነግ) ድርጅት ጋር ግንኙነት አላችሁ በማለት የተለያዩ ግለሰቦችን በሽብርተኝነት ወንጀል ተጠርጥረዋል በማለት በሀይል አስገድደው አፍነው በመያዝ በህገ-ወጥ መንገድ ባዘጋጁት እስር ቤት ውስጥ በድብቅ ለረጅም ጊዜ እስር በማቆየት በተደጋጋሚ ጊዜያት እየመረመሯቸው በማስገደድ ወኪላቸው በመሆን መረጃ እንዲያቀሙና ከሀገር ውጭ ከሚገኙ የእነግ አመራሮችና አባላት ጋር ግንኙነት እንዲፈጥሩ በማድረግ በሀገር ውስጥ በእነግ አባላት የተለያዩ የትግል እንቅስቃሴዎች እየተደረጉ ያሉ በማስመሰል በተቋሙ የመረጃ ሰራተኞች እና በማስገደድ ወኪል ባደረጓቸው ሰዎች አማካኝነት የእርሞ ነጻነት ግንባር (እነግ) ባንዲራ እና የተለያዩ ከእነግ ጋር የተገናኙ ጽሁፎችና በራሪ ወረቀቶችን በአዲስ አበባ ዩኒቨርሲቲ እና በተለያዩ የእርሚያ ከተሞች ላይ ማለትም አዳማ(ናዝሬት)፣ ቢሾፍቱ(ደብረዘይት)፣ ዱክም፣ ሰበታ፣ ሱልጋ፣ ለገጣ፣ ቡራዩ፣ አምቦ ከተማ ላይ በሚገኙ ዩኒቨርሲቲዎች፣ ኮሌጆች፣ ሁለተኛ ደረጃ ት/ቤቶች፣ መሰሪያ ቤቶች እና የተለያዩ ቦታዎች ላይ በመስቀልና በመለጠፍ፣ ፎቶ በማንሳትና ሺዲዮ በመቅረጽ ፎቶውንና ሺዲዮውን ከሀገር ውጭ ለሚገኙ የእነግ አመራሮች እና አባላት እንዲላክ በማድረግ በዚህ መነሻነት በሀገር ውስጥ ያለውን እንቅስቃሴ ለማገዝ በሚል ከተለያዩ ውጭ ሀገራት በተለያዩ የእነግ አመራሮችና አባላት የተለያዩ መጠን ያለው ገንዘብ በተለያዩ ጊዜያት በህገ-ወጥ ሀዋላ ወደ ሀገር ውስጥ እንዲላኩ በማድረግ፣ 6ኛ ተከላኸ ለተቋሙ የመረጃ ሰራተኞች ሀሰተኛ መታወቂያዎች እንዲዘጋጁ በማድረግ እና ደህን ሀሰተኛ መታወቂያም በመጠቀም የሚላከውን ገንዘብ እንዲቀበሉና ለ2ኛ ተከላኸ እንዲያሰረክቡ ሲያደርግ የነበረ ሲሆን፤ 2ኛ ተከላኸም በዚህ መልኩ ባጠቃላይ ከአምስት ሚሊዮን ብር (5000000) በላይ በመተበል ለግል ጥቅሙ ያዋል ሲሆን፤ በአጠቃላይ በዋና ወንጀል አድራጊነት ተካፋይ

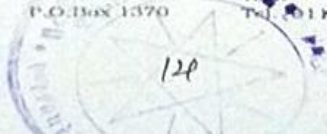
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Addis Ababa - Ethiopia





ሰነድ ቁጥር: 65/ከሰ/055/ተከሳሽ/ላይ
ቀን: 15/05/2009

በመሆን በረጅሙት በሰልጣን አላገባብ በመጠቀም የሚፈጸም ከባድ የሙስና ወንጀል ተከሳካል።

65/ከሰ/055/ተከሳሽ/ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እና 407/1/ (ለ) (ሐ) እና 407/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀል ዝርዝር

ተከሳሽ ከየካቲት 1 ቀን 1984 ዓ.ም ጀምሮ በተደገፈ የደህንነት፣ የኢሚግሬሽንና ሰደተኞች ጉዳይ ባለሰልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የሰራ ሃላፊነት ላይ ተመድቦ ሲሰራ በህግ አገባብ የተሰጠውን ስልጣን እና የሰራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የሰራ ሀላፊነቱን መወጣት ሲገባው ይህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ2005 ዓ.ም ጀምሮ እስከ የካቲት ወር 2008 ዓ.ም ድረስ የሀረ-ሰላላ መምሪያ ሀላፊ ሆኖ ሲሰራ፤

በህግ አገባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የሰራ ሃላፊነት ወይም ስልጣን አልአገባብ በመጠቀም በህግ አገባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማሰገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ይህን ህገ-ወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው በ1ኛ ክስ ላይ በተገለጸው መርህዎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊቢ ውስጥ በተሰራው እና ሌሎች ድብቅ እስር ቤቶች ውስጥ ተወስደው የሚታሰሩትን እና መረጃ እንዲሰጡ በሀይል በማሰገደድ የሚመረመሩ ሰዎች አያያዛቸውም ሆነ መያዛቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን፤ ከታሰረዎቹ በሀይል አስገደዶ መረጃ ለመቀበል በማሰብ፤ ከታሰሩበት ቦታ በማስወጣት ምርመራ ክፍል በማስገባት ለጊዜው ቁጥራቸው በውል የማይታወቁ በርካታ ግለሰቦችን እስከ መጋቢት ወር 2007 ዓ.ም በተለያዩ ጊዜያት ድብደባ

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የጥሬ ግብርና ሚኒስቴር
የጥሬ ግብርና ሚኒስቴር

የሥነ ምግባርና የጥሬ ግብርና ሚኒስቴር፣ ሌላ ስም ካርድ አለመገኘቱን በማሳየት ምረቃት የተሰጠውን ልብ ልብ በማሰጠት አስቀምጦ በማስፈተሽ ከዚያም ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ወደሚሰጠው ስፍራ እንዲገባ ያደረገ በመሆኑ፤

6. ጣሊር መሀመድ የተባለውን የግል ተባብሮ ለጊዜው ማንነታቸው ካልታወቁ ግብር አባርቆ ጋር በመሆን በ09/06/2005 ዓ.ም ከተኑ በግምት 8:00 ሰዓት ሲሆን በአዲስ አበባ ከተማ በተለምዶ ዮልፌ ተብሎ ከሚጠራው አካባቢ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረው በማለት በሌላ ከተረቀቀው ስርዓት ውጭ በሀይል አስገደደው በመያዝ ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ወደሚሰጠው ስፍራ እንዲገባ ያደረገ በመሆኑ፤

7. ፊደላል አርጋው የተባለው ለጊዜው ማንነታቸው ባልታወቁ በተቋሙ የነትትል ስራተኞች አግዛዥነት በ02/01/2006 ዓ.ም ከተኑ በግምት 8:30 ሰዓት በአዲስ አበባ ከተማ ልዩ ቦታው ስሜን ሆቴል ተብሎ በሚጠራው አካባቢ በሃይል በማራን አስገደደው ከነዚህ በኋላ መኪና ውስጥ አስገብተው የሚጠሩበትን ቦታ እንዲያውቅ እያንዳንዱ በጨርቅ በመሸረን በውል ወደማይታወቅ ድብት አስር ቤት ውስጥ ወስደው ከሰሩት በኋላ ተከላኝ ከ7ኛ ተከላኝ ጋር በመሆን ደምጸኝን ይሰማ በሚል የአስልምና ሀይማኖት ተከታዮች ሲያገሱ ከሰበረው ተታውሞ ጋር በተያያዘ ስላለው እንቅስቃሴ መረጃ አውጣ እያሉ አስገደደውት መረጃ ለመቀበል መራት ላይ በማስተኛት 7ኛ ተከላኝ በሚሆኑ አንገቱ ላይ በመቆም ተከላኝ እና ሌሎች ለጊዜው ማንነታቸው ያልታወቁና ያልተያዙ ግብር አባርቆቻቸው ደግሞ በጎረቤት መላ ሰውነቱን እየደበደቡ፤ ተከላኝ በተጨማሪ የግራ እጅን በብረት በመምታት የተለበት ጣቱ ተሰብሮ እንዲንጠሰጠስና ደም እንዲረሰው በማድረግ እያስታዩት በማስገደድ ሲመረምሩት ቆይተው ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ወደሚሰጠው ስፍራ እንዲገባ ያደረገና በአጠቃላይ ተባብሮ ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የረጸመባቸው በመሆኑ፤ በዋና ወንጀል አድራጊነት ተከፋይ በመሆን በረጸመው በስልጣንን አላገባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከላኝ።

7ኛ ክስ በ5ኛ ተከላኝ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ህግ አንቀጽ 32 /1/ (ሀ) እና (ለ) እንዲሁም የሙስና ወንጀሎችን ለመደንገግ የወጣው አዋጅ ቁጥር 881/2007 አንቀጽ 9 /1/ (ለ) (ሐ) እና 9/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መረጸም፤

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ቁጥር
/ፀ/

የወንጀል ዝርዝር

ተከላኝ ክፍተት 1 ተን 1984 ዓ.ም ጀምሮ በተደገፈ የደህንነት፣ የኢንፎርሜሽንና ስድታዎች ጉዳይ ባለሰልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የስራ ሃላፊነት ላይ ተመድቦ ሲሰሩ በህግ አግባብ የተሰጠውን ስልጣን እና የስራ ሃላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የስራ ሃላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ2005 ዓ.ም ጀምሮ እስከ የክፍት ወር 2008 ዓ.ም ድረስ የፀረ-ስለላ መምሪያ ሀላፊ ሆኖ፣ ከመጋቢት 2008 ዓ.ም እስከ ሰኔ ወር 2010 ዓ.ም ድረስ ደግሞ በውስጥ ደህንነት ጥበቃ ጥና መምሪያ ምክትል ዳይሬክተር ሆኖ ሲሰሩ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የስራ ሃላፊነት ወይም ስልጣን አልአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያተብሉ ለማድረግ በማሰብ፣ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ደህን ህገ-ወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው በ1ኛ ክስ ላይ በተገለጸው መርሀደሮች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊቤ ውስጥ በተሰሩው እና ሌሎች ድብቅ እስር ቤቶች ውስጥ ተወሰደው የሚታሰሩትን እና መረጃ እንዲሰጡ በሀይል በማስገደድ የሚመረመሩ ሰዎች ለያያዣቸውም ሆነ መያዣቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን፣ ከታላቅዎቹ በሀይል አስገድዶ መረጃ ለመቀበል በማሰብ፣ ከታሰሩበት ቦታ በማስወጣት ምርመራ ክፍል በማስገባት ለጊዜው ቁጥራቸው በውል የማይታወቁ በርካታ ግለሰቦችን ከመጋቢት 25 ቀን 2007 ዓ.ም ጀምሮ በተለያዩ ጊዜያት ድብደባ ለየፈጸመባቸው በማሰታየት ሲመረምራቸው እና መረጃ ሲቀበላቸው የነበረ ሲሆን፣ በዚህ መልኩ ጉዳት ካደረሰባቸው ሰዎች መካከል፣ የናስ ጋሻው ደመቱ የተባለውን ከሹብር ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት ጥር 05 ቀን 2009 ዓ.ም አዲስ አበባ ከተማ ሳሪስ አካባቢ ማንነታቸው ያልታወቁ የደህንነት አባላትና የፌዴራል ፖሊስ ጊዜውት እጁን ጮኑና በማሰር አይነት በጨርቅ በመሸፈን በውል ወዳልታወቀ ስፍራ ከወሰዱት በኋላ ተከላኝ ክ10ኛ፣ ክ23ኛ እና 26ኛ ጋር በመሆን ከግንቦት ሰዓት ጋር በተያያዘ መረጃ እንዲሰጣቸው ለማስገደድ በእንጨት ላይ በማሰርና በማንጠልጠል በዱላ በመደብደብ አሰረው ካቆዩት በኋላ ወደ አዲስ አበባ የፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ወደሚባለው ስፍራ

ለብቻ! ለቆይታ! ለርትዕ!
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አዲስ አበባ ኢትዮጵያ
Addis Ababa - Ethiopia



መሪዎች ክፍል በማስገባት ለጊዜው ቁጥራቸው በውል የሚያታወቁ በርካታ ግለሰቦችን እስከ መጋቢት ወር 2007 ዓ.ም በተለያዩ ጊዜያት ድብደባ እየረጸመባቸው በማሳተፍ ሲመረምራቸው እና መረጃ ሲተባባሩ የነበረ በመሆኑ በሞያ ወንጀል እድራጊነት ተካፋይ በመሆን በረጸመው በስልጣን አላገባብ በመገልገል የሚረጸም ከባድ የሙስና ወንጀል ተከሰደ።

9ኛ ክስ በ6ኛ ተከላኝ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የወንጀል ሀገ እንቀጽ 32/1 (ሀ) (ለ) እንዲሁም የሙስና ወንጀሎችን ለመደናገግ የወጣውን አጥጭ ቁጥር 88/1/2007 እንቀጽ 9/1 (ለ) (ሐ) እና 9/2/ ላይ የተደነገጠውን በመተላለፍ ከባድ የሙስና ወንጀል መረጸም።

የወንጀል ዝርዝር

ተከላኝ ከ1990 ዓ.ም ጀምሮ በተደግፎ የደህንነት፣ የአሜሪካ ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሔራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የስራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በሀገ አገባብ የተሰጠውን ስልጣን እና የስራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የስራ ሀላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ።

ከ1998 ዓ.ም እስከ 2002 ዓ.ም ድረስ በውስጥ ደህንነት ጥበቃ ዋና መምሪያ የአሮሚያ ደህንነት መምሪያ ሀላፊ ሆኖ፣ ከ2003 ዓ.ም ጀምሮ ደግሞ የፀረ-ሽብር መምሪያ ሀላፊ ሆኖ ሲሰራ።

በሀገ አገባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የስራ ሀላፊነት ወይም ስልጣን አልአግባብ በመጠቀም በሀገ አገባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሉ ለማድረግ በማሰብ፣ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልክ ይህን ህገ-ወጥ ተግባር ለመረጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው በ1ኛ ክስ ላይ በተገለጸው መርመራዎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊ.ቤ ውስጥ በተሰራው እና ሌሎች ድብት እስር ቤቶች ውስጥ ተወሰደው የሚታሰሩትን እና መረጃ እንዲሰጡ በሀይል በማስገደድ የሚመረመሩ ሰዎች

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ፌዴራል መረምራቸው እና መረጃ ሲተኮላቸው የነበረ በመሆኑ፤ በፈጸመው በዋና ወንጀል ልዩ ልዩነት ተካፋይ በመሆን በሰልጣን አላግባብ በመጠቀም የሚፈጸም ከባድ የሙስና ወንጀል ተከሰቷል።

26ኛ ክስ በ15ኛ ተከላኸ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዲ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም አንቀጽ 407/1/ (ለ) (ሐ) እና 407/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀል ዝርዝር

ተከላኸ ከካቲት 16 ቀን 1988 ዓ.ም ጀምሮ በተደገፈ የደህንነት፤ የኢ.ሚ.ግሬ.ሽንና ስደተኞች ጉዳይ ባለሰልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የሰራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ሰልጣን እና የሰራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማቅረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የሰራ ሀላፊነቱን መወጣት ሲገባው ይህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ11/7/2001 ዓ.ም ጀምሮ በውስጥ ደህንነት ጥበቃ ዋና መምሪያ የእነግ ዋና ክፍል ሀላፊ፤ ከ1/1/2006 ዓ.ም ጀምሮ በፀረ-ሽብር መምሪያ የእነግ ኮር አባላት ክትትል ተጠባባቂ የክፍል ሀላፊ እና የእነግ ዲሰክ ዋና ክፍል ሀላፊ ሆኖ ሲሰራ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፤ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የሰራ ሀላፊነት ወይም ስልጣን አለአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያተብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ይህን ህገ-ወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍኖው ተይዘው በ1ኛ ክስ ላይ በተገለጸው ጠርፀይሎች አከባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊቢ ውስጥ በተሰራው እና ሌሎች ድብቅ እስር ቤቶች ውስጥ ተወስደው የሚታሰሩትን እና መረጃ እንዲሰጡ በሀይል በማስገደድ የሚመረመሩ ሰዎች አያያዛቸውም ሆነ መያዛቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን፤ ከታላቅሪዎቹ በገይል አሰገድዶ መረጃ ለመተባበል በማሰብ፤ እስከ መገቢት

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Addis Ababa - Ethiopia



2007 ዓ.ም ድረስ በተለያዩ ጊዜያት ከታሰሩበት ፀታ በማስወጣት ምርመራ ክፍል በማስገባት እንዲሁም ፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ ድረስ በመገኘት ለጊዜው ተጠሪው ሙሉ የገደታወቁ በርካታ ገለበጾችን ድብደባ እየፈጸመባቸው በማሰታየት አሰገድዶ ሲመረምሩትም እኛ መረጃ ሲተባባሻቸው የነበረ ሲሆን፤ በዚህ መልክ ጉዳት ካደረሰባቸው ተበዳዮች መካከል፡-

1. ድራቅሳ ዳምጢ የተባለውን ተነ- ሙሉ ተለይቶ ባልታወቀ በሕዳር ወር 2003 ዓ.ም ከተነ- በገምት 4:00 ሰዓት ሲሆን በአዲስ አበባ ከተማ ጉሰል ክፍለ ከተማ እናት ት/ቤት ለከባቢ 16ኛ እና 18ኛ ተከላሾች ህልተያዩ ገብረአብሮቻቸው ጋር በመሆን በሰራተኛ ከተረቀቀው ስርዓት ውጭ በህይወት አስገድደው ከያዙት በኋላ ዓይኑን በጨርቅ በመሸራገጥ ሙሉ ወዳልታወቀ ስፍራ በመውሰድ በድብቅ አስረዉ ከአንድ ወር በላይ በማቆየት ሙሉ ተከላሽ ከ16ኛ እና 18ኛ ተከላሾች ጋር በመሆን ከአንገ ጋር ትገናኛለህ በማለት መረጃ እንዲሰጣቸው እያሰገደዱት፤ ያልተያዙት ገብረ አብሮቻቸውም በጫማ ጥራ በጠነሰ፤ ፀዳላ እየተረራረቁ በመደብደብ፤ በውሃ የተጥላ ሃይላንድ ብልቱ ላይ በማንጠልጠል፤ እድና እግሩን በኩቲና በማሰር ገልብጠውት ውስጥ እግሩን እየደበደቡት በማሰታየት አስገድደው ሲመረምሩት ከቆዩ በኋላ ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ወደሚባለው ስፍራ እንዲወሰድ ያደረጉ በመሆን፤
2. አለም ታክለ የተባለውን ጊዜው ሙሉ ባልታወቀ በክትትል ሰራተኞች ተይዞ ጦርህይድች ለከባቢ በሚገኘው የክትትል መምሪያ ጊቤ ውስጥ በተሰራው ድብቅ አሰር ቤት ውስጥ ታሰር የነበረውን ከታሰረበት ፀታ እያስወጣ ምርመራ ክፍል እያሰገባው ከአንገ ጋር በተያያዘ መረጃ እንዲሰጠው አሰገድዶ ሲመረምረው የነበረና ምርመራውም በድብቅ ካሚራ እንዲቀረጽ በማድረግ ምርመራውን ሲያከናውን የነበረ በመሆን፤
3. በ2006 ዓ.ም የኢትዮጵያ እግር ኳስ ብሔራዊ ቡድን ከናይጄሪያ አቻው ጋር በአዲስ አበባ ሰቲዲዩም በሚያደርገው ጫወታ ላይ በንብ ለማራገዳት አስበዋል በሚል በርካታ ሰዎች ተይዘው ወደ ፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ተብሎ ወደ ሚጠራው ስፍራ ተወስደው ምርመራ ሲደረግባቸው የቆዩ ሲሆን ተይዘው ምርመራ ሲደረግባቸው ከነበሩት ውስጥ ሼክ አነስ ዑስማን የተባለው እንዴ ሲሆን፤ ተከላሽም ምርመራው ላይ ለመሳተፍ ወደ ምርመራው ቢሮ በመሄድ ከወንጀል መርማሪ ፖሊስ አባላት ጋር በመሆን በሌሊት ከታሰረበት ክፍል በማስወጣት ምርመራ ክፍል ውስጥ በማስገባት መራት ላይ እንዲታኝ በማድረግ በእግር ጀርባውን በመርገጥ ልብሱን በማስወለቅ በኤሊትሪክ ገመድ በመደብደብ ሰውነቱ እንዲቆሰልና በአፋ ደም እንዲፈሰው በማድረግ መረጃ እንዲሰጠው አሰገድዶ ሲመረምረው የነበረ ሲሆን፤ ተነ- ሙሉ ባልታወቀ ጥቅምት ወር 2006 ዓ.ም ምርመራው በደንብ አልተከናወነም በማለት በ1ኛ ተከላሽ ተዕዛዝ ሰጭነት በዚህ

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ጉዳይ ምርመራ ሲጣራባቸው ከነበሩት ሰዎች መካከል ሼክ እንሰ ኡሰማንን መሀመድ ኢብራሂም፣ መሀመድ ሲዶ፣ መሀመድ አሲና ሌላ ለጊዜው ስሙ ያልቃወፉ ግለሰብ ከታሰሩበት የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በማሰወጣት ቁርቆስ ከ/ኩተማ ቁራ መሰጊድ ጀርባ ወደሚገኘው ድብቅ እስር ቤት ውስጥ ተወስደው እንዲታሰሩ በማድረግ ምርመራው በልዩ ሁኔታ በጥብቅ እንዲከናወን ለተከላኸ እና ለ2ኛ፣ ለ7ኛ፣ ለ14ኛ ተከላኸች እንዲሁም ለጊዜው ማንነታቸው ላልተለዩ የደህንነት አባላት እና ለመርማሪ ፖሊሶች ትዕዛዝ በመሰጠት የምርመራውን ውጤትም በየጊዜው በ7ኛ ተከላኸ አማካኝነት ለ2ኛ ተከላኸ እየተረበ 2ኛ ተከላኸ ደግሞ ለ1ኛ ተከላኸ እየተረበ በመገምገም ተጨማሪ የምርመራ አትጣጣሎችን እየሰጡ ምርመራው ለረጅም ጊዜ ሲከናወን የነበረ ሲሆን፣ በምርመራው ሂደትም፡-

1. ሼክ እንሰ ዑሰማን የተባለውን በድብቅ እስር ቤቱ ውስጥ ለሁለት ወር ያክል ያቆዩት ሲሆን በዚህ ጊዜ ውስጥም ተከላኸ ከ7ኛ እና 14ኛ ተከላኸች እንዲሁም ከሌሎች የደህንነት አባላት እና ከፌዴራል ፖሊስ ወንጀል መርማሪዎች ጋር በመሆን በተደጋጋሚ ጊዜ ተንና ሌሊት ከታሰረበት ክፍል ውስጥ እያሰወጡ አፋ ውስጥ ካልሲ በመክተት መራት ላይ በማስተኛት የውስጥ እግሩን በኢሊክትሪክ ሽቦ እየገረፉት መረጃ እንዲሰጣቸው አስገድደው ሲመረምሩት የነበረ በመሆኑ፣ ተከላኸም ከ7ኛ ተከላኸ ጋር እጆቹን በመያዝ ያልተያዘው የፖሊስ አባል ወርማሪ ደግሞ የእግሩን ጥፍር ሲነቅል፣ ተከላኸም ወገቡን በኢሊትሪክ በማሰነዘር (ጾክ በማድረግ) እያሰቃዩት አስገድደው ሲመረምሩት የነበረ በመሆኑ፡

2. መሀመድ ኢብራሂም የተባለውን ግለሰብ ተከላኸ ከ7ኛ፣ ከ15ኛ ተከላኸች እና ከሌሎች ማንነታቸው ያልተለዩ የደህንነት አባላት እና የፌዴራል ፖሊስ ወንጀል መርማሪዎች ጋር በመሆን በተደጋጋሚ ጊዜ ድብደባ እየፈጸሙበት ለረጅም ሰዓት አቁመው ሲመረምሩት ቆይተው በ23/3/2006 ዓ.ም በተመሳሳይ መልኩ ለረጅም ሰዓት አቁመው ሲመረምሩት በቆመበት ተዘለፍልፎ ወድቆ ህይወቱ ያለፈ ሲሆን በአጠቃላይ ተበዳዮች ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የፈጸመባቸው በመሆኑ በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በፈጸመው በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከሷል።

27ኛ ክስ በ15ኛ ተከላኸ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም የሙስና ወንጀል-ችን ለመደንገግ የወጣው አዋጅ ቁጥር 881/2007 አንቀጽ 9/1/ (ለ) (ሐ) እና 9/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

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የወንጀል ዝርዝር

ተከላኸ ከካቲት 16 ቀን 1988 ዓ.ም ጀምሮ በተደጥ የደህንነት፣ የኢ.ሚ.ግራ.ቨንና ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የስራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን እና የስራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የስራ ሀላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በስዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ11/7/2001 ዓ.ም ጀምሮ የአነጻ ጥና ክፍል ሀላፊ፣ ከ1/1/2006 ዓ.ም ጀምሮ በዐረ-ቩብር መምሪያ የአነጻ ኮር አባላት ክትትል ተጠባባቂ ክፍል ሀላፊ እና የአነጻ ደስክ ወና ክፍል ሀላፊ ሆኖ ሲሰራ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ላይኖረውና የተሰጠውን የስራ ሀላፊነት ወይም ስልጣን አልአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በህይወትና በማሰገድድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያተብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ይህን ህገ-ወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በህይወት ስሜት ተይዘው በ1ኛ ክስ ላይ በተገለጸው መልኩ ለርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊ.ቤ. ውስጥ በተሰራው እና ሌሎች ድብት እስር ቤቶች ውስጥ ተወስደው የሚታሰሩትን እና መረጃ እንዲሰጡ በህይወት በማሰገድድ የሚመረመሩ ሰዎች እያያዛቸውም ሆነ መያዛቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን፤ ከታላቅዎቹ በሃይል አስገድዶ መረጃ ለመቀበል በማሰብ፤ ከመጋቢት 25 ቀን 2007 ዓ.ም ጀምሮ በተለያዩ ጊዜያት ከታሰሩበት ቦታ በማስወጣት ምርመራ ክፍል በማሰገባት እንዲሁም የፌደራል ፖሊስ ወንጀል ምርመራ ቢሮ (ማዕከላዊ) እና የፌዴራል ማረሚያ ቤቶች ድረስ በመገኘት ለጊዜው ቁጥራቸው በውል የማይታወቁ በርካታ ግለሰቦችን ድብደባ እየፈጸመባቸው በማሰቃየት አስገድዶ ሲመረምራቸው እና መረጃ ሲቀበላቸው የነበረ ሲሆን፤ በዚህ መልኩ ጉዳት ካደረሰባቸው ሰዎች መካከል፡-

- 1. ሊንሮ አዱኛ ከበደ በ12/09/2007 ዓ.ም፣ ተረፈ አዱኛ ከበደ እና በላይ ፍቃዱ ከበደ የተባሉት ደግሞ በ13/09/2007 ዓ.ም በተቋሙ የክትትል ሰራተኞች ተይዘው የፌደራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ተብሎ ከሚጠራው ቦታ ታስረው የነበሩትን ምርመራው ላይ ለመሳተፍ ወደ ፌዴራል ፖሊስ ወንጀል

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- ምርመራ ቤር በመሄድ ከታሰሩበት ቦታ እያሰወጣቸው ምርመራ ክፍል እያሰገባቸው ከአንጻር ጋር በተያያዘ መረጃ እንዲሰጡ አስገደዶ ሲመረምራቸውና ምርመራውም በድብቅ ካሜራ እንዲተረጽ በማድረግ ምርመራውን ሲያከናውን የነበረ በመሆኑ፤
2. በዛ ጊዳቸው ጣፋ የተባለውን እና ሌላ ለጊዜው ማንነቱ ያልታወቀ ወጣት በክትትል ሰራተኞች ተይዘው ጠርቦይሎች አከባቢ በሚገኘው የክትትል መምሪያ ጊቤ ውስጥ በተሰራው ድብቅ አስር ቤት ውስጥ ታሰረው የነበሩትን ከታሰሩበት ቦታ እያሰወጣቸው ምርመራ ክፍል እያሰገባቸው ከአንጻር ጋር በተያያዘ መረጃ እንዲሰጡ አስገደዶ ሲመረምራቸውና ምርመራውም በድብቅ ካሜራ እንዲተረጽ በማድረግ ምርመራውን ሲያከናውን የነበረ በመሆኑ፤
3. በነሀሴ 28 ቀን 2008 ዓ.ም በአዲስ አበባ ማረጋገጫ ቤቶች በቱሊንጦ የተጠሮ ማረፊያ ቤት ላይ በደረሰው ታጠሎ ምክንያት በተጠረጠሩ ግለሰቦች ላይ ምርመራ የሚያጣራ የወንጀል ምርመራ ቡድን ተዋቅሮ በሸዋ ርዕሰ ግራም ቤት በመገኘት ከተቋቋመው የፖሊስ የምርመራ ቡድን ጋር ምርመራው ላይ በመሳተፍ ከመስከረም 20 ቀን 2009 ዓ.ም ጀምሮ ተጠርጣሪዎቹ እንዲያምኑ እና አንዳቸው በሌላቸው ላይ እንዲመሰክሩ ለማድረግ በማሰብ የግል ተቋማት አግባብ ሰጠኝ፤ ሰይፌ ግርማ፤ ሚስጥር ክፍር፤ ካሳ ሙሃመድ፤ ደረጀ መርጋ፤ ቶሎሳ በዳዳ፤ መሳይ ትኩ፤ ደህናሁን ቤዛ፤ የሐንሰ መንግስቱ፤ አንጋው ተገኝ፤ አሸናፊ መለሰ፤ ጊዳቸር አሸቱ፤ አንሙት የኔዋስ፤ ከበደ ጨመዳ፤ ያሬድ ሁሴን፤ ወባንተ ሙጭ፤ ሰላይ አበራ፤ ሸሃቡዲን ነስረዲን፤ ባህሀ በዘዘው፤ ቴዎድሮስ ዳንኤል፤ ቶሬት ሽኩር፤ ፍቅረ ማርያም፤ ጫላ ዴዴሳ እና ሌሎችን ተጠርጣሪዎች ከሌሎች ካልተያዙና በዚህ ወንጀል በሌላ ችሎት ከሰ ከተመሰረተባቸው ግብረ አበሮቹ ጋር በመሆን እያንዳንዱን ተቋማት እጃቸውን በኩቴና በማሰር፤ የእጃቸውን የተኝ እና የግራ አውራ ጣት በሲባን በማሰር፤ ክፍል ውስጥ ባለ ምሰሶ ላይ ለረዥም ሰዓት በማንጠልጠል፤ በአግርኛቸው መሀል እንጨት በማስገባትና በመገልበጥ የውስጥ እግራቸውን በዱላና በኤሌክትሪክ ገመድ በመደብደብ በዚህ ሁኔታ ለረዥም ሰዓት ተዘትዘተው እንዲቆዩ በማድረግ ከፍተኛ ስቃይ እንዲደርስባቸው በማድረግ፤ አንድ እግራቸው በገመድ ከጣሪያ ጋር እንዲታሰርና አንድ እግራቸው እንዲንጠልጠል በማድረግ፤ በአፋቸው ውስጥ ካልሲ በመጠቀም፤ በኤሌክትሪክ በማስነዘር (ጾክ በማድረግ) መረጃ እንዲሰጡና የተጠረጠሩበትን የወንጀል ድርጊት እንዲያምኑ እያቃዩዋቸው በማስገደድ ሲመረምሯቸው የነበረ ሲሆን በአጠቃላይ ተቋማት ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የፈጸመባቸው በመሆኑ በፈጸመው በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከፋይ፡፡

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28ኛ ክስ በ10ኛ ተከላኝ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም አንቀጽ 407/1/ (ለ) (ሐ) እና 407/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የመስና ወንጀል መረጃም፤

የወንጀል ዝርዝር

ተከላኝ ከመስከረም 5 ቀን 2001 ዓ.ም ጀምሮ በተደጥ የደህንነት፣ የኢ.ሚ.ግራፕንና ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የሥራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን እና የሥራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማቅረብና አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የሥራ ሀላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ11/7/2001 ዓ.ም ጀምሮ በውስጥ ደህንነት ጥበቃ ዋና መምሪያ የእነግ ዋና ክፍል ሀላፊ፤ ከ11/1/2006 ዓ.ም ጀምሮ በፀረ-ሽብር መምሪያ የእነግ ኮር አባላት ክትትል ተጠባባቂ ክፍል ሀላፊ እና የእነግ ዴሰክ ዋና ክፍል ሀላፊ ሆኖ ሲሰራ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የሥራ ሀላፊነት ወይም ስልጣን አለአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ይህን ህገ-ወጥ ተግባር ለመረጃም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው በ1ኛ ክስ ላይ በተገለጸው ጦርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊቢ ውስጥ በተሰራው እና ሌሎች ድብት እስር ቤቶች ውስጥ ተወስደው የሚታሰሩትን እና መረጃ እንዲሰጡ በሀይል በማስገደድ የሚመረመሩ ሰዎች አያያዛቸውም ሆነ መያዛቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን፤ ከታሰሩዎቹ በሀይል አሰገድዶ መረጃ ለመቀበል በማሰብ፤ እስከ መገቢት ወር 2007 ዓ.ም ድረስ በተለያዩ ጊዜያት ከታሰሩበት ቦታ በማስወጣት ምርመራ ክፍል በማስገባት እንዲሁም ፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ ድረስ በመገኘት ለጊዜው ቁጥራቸው በውል የማይታወቁ በርካታ ግለሰቦችን ድብደባ እየፈጸመባቸው በማሰቃየት



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ህግ አወጣጥ ለውጥ ለማድረግ ለተዘጋጀው የግብር ሲሆን፤ በዚህ መልኩ ጉዳት
 ካደረገው ተቀባይ መሆኑን ያሳያል።

1. ዲራባ ለውጥ የተደረገውን ተጠቃሚ የሆኑት ለውጥ ባልተደረገው በህግ ወር 2003 ዓ.ም
 ከፍተኛ ገቢ 400 ሰዓት ሲሆን በአዲስ አበባ ከተማ ውስጥ ጉልህ ክፍለ ከተማ ለናት
 ተደጋጅ ተከላኝ ከ185 ተከላኝ ካልተሰጡ ሌሎች ግብር አወጣጥ ጋር በመሆን
 ይህን ከተፈተኛው ስርዓት ውጭ በህይወት ለሚገኝ አዲስ አበባ ከተማ አስተዳደር
 በሚሰጠው ስልጠና ወይም ሌላ ሁኔታ ለውጥ ለማድረግ ለውጥ ለማድረግ ለውጥ
 ከ185 ለና 185 ተከላኝ ጋር በመሆን ከሌላ ጋር ትገናኛለሁ በማለት መረጃ
 እንዲሰጥባቸው ለማድረግ፤ ያልተሰጡ ሌሎች ግብር አወጣጥ በሚሰጡ ሁኔታ
 በሚከተለው ሁኔታ ለውጥ ለማድረግ፤ በውሃ የተሞላ ሃይላንድ ብልቱ ላይ
 በሚከተለው ሁኔታ ለውጥ ለማድረግ፤ በውሃ የተሞላ ሃይላንድ ብልቱ ላይ
 በሚከተለው ሁኔታ ለውጥ ለማድረግ፤ በውሃ የተሞላ ሃይላንድ ብልቱ ላይ
 በሚከተለው ሁኔታ ለውጥ ለማድረግ፤ በውሃ የተሞላ ሃይላንድ ብልቱ ላይ
2. ደግሞ ጉራፊ የተባለውን የግል ተቀባይ ተጠቃሚ የሆኑት ለውጥ ባልተደረገው በግንቦት
 ወር 2005 ዓ.ም ያልተሰጡ ግብር አወጣጥ ተቀባይ የሚባል የፈጠራ ትልቅ
 ስው የመረት ጉዳይ ስላለው አስጨርሰው ካሉት በኋላ ተቀባይ ሕጋዊ ሰነድ
 መቅረብ እንደሚገባ ሲገልጹት ለዚህ ያልተሰጡ ግብር አወጣጥ በተደጋጋሚ ጊዜ
 ጉዳይ አስጨርሰው በማለት ግዴታ ሲፈጥሩት፤ ተከላኝ ጉዳይን እንዲያስጨርሰው
 በሚከተለው ተቀባይ ለተባበሩ ባለሙያ ተከላኝ የተቀባይን መኖሪያ ቤትና በቤተሰብ
 ላይ ከትትል በማድረግ ዘንብ ዓለሙ ለተባበሩ የተቀባይ ለሁሉም ተቀባይ ለሰብሰባ አዲስ
 አበባ እንደሚፈለግ አስመስሎ በመንገር የሌላ ግንደሬና የትስተሳ ጽሁፍ ያልባቸውን
 ወረቀቶች በኮሚሽን ወረቀት ለውጥ ለውጥ እንደተደረገ አሰጣጥ በኋላ በገጠሙ ግንቦት
 14 ቀን 2005 ዓ.ም ከጠዋቱ በግምት 1:00 ሰዓት ሲሆን በደርግ ክልል ስቦታ ከተማ
 ተባብሮ 02 ውስጥ በሚገኘው የመኖሪያ ቤቱ ውስጥ የፈጠራ ፖሊስ አባላትን ይዞ
 በመሄድ በሽብርተኝነት ወንጀል ተጠርጥረው በማለት በቁጥጥር ስር በማዋል ቤቱን
 በመቀበር ተገኝተዋል የተባሉ የጦር መሳሪያና ሌሎች ወረቀት ውስጥ የገቡትን
 የሌላ ግንደሬና የትስተሳ ወረቀቶች ከቤቱ የተገኙ መሆኑን አምና እንዲፈርም በጥሬ
 የመታወቅ ሲሆን፤ ከዚያም ካልተሰጡ ግብር አወጣጥ ጋር በመሆን ዓይነት በጨርቅ
 ሽፍነው ወደ አዲስ አበባ ከተማ በማምጣት በውል ወዳልታወቀ ስፍራ ብቻውን በማሰር
 እጅና እግርን በሰጠው በማሰር በብረት ዳላ መላ ሰውነቱን ለሰጣት ቀናት በመደብደብ
 ካሰቃየው በኋላ ያልተሰጡ ግብር አወጣጥ ዓይነት ሽፍነው ወደማይታወቅ ሌላ ስፍራ
 በማሰር ለራት ቀናት አቆይተው ተከላኝ ወደ ስቦታ ፖሊስ ጣቢያ በመውሰድ ከአንድ
 ወር በላይ በህገ ወጥ መንገድ እንዲታወቁ በማድረግ ያልተሰጡ ግብር አወጣጥ መልሰው



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የጽ/ቤት አድራሻ
የጽ/ቤት ስልክ

ወደ አዲስ አበባ ከተማ በተለምዶ ማዕከላዊ ወደሚባለው የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር እንዲገባ በማድረግ ታስሮ ቆይቶ እንዲለቀቅ ያደረጉ ሲሆን፤ በአጠቃላይ ተበዳዮች ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የፈጸመባቸው በመሆን በፈጸመው በዋና ወንጀል አድራጊነት ተካፋይ በመሆን የሚፈጸም ከባድ የሙስና ወንጀል ተከፀል።

29ኛ ክስ 016ኛ ተከላኝ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም የሙስና ወንጀል-ችን ለመደንገግ የወጣው አዋጅ ቁጥር 881/2007 አንቀጽ 9/1/ (ለ) (ሐ) እና 9/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀል ዝርዝር

ተከላኝ ከካቲት 16 ቀን 1988 ዓ.ም ጀምሮ በተደጥሞ የደህንነት፣ የኢሚግሬሽንና ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የስራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን እና የስራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና እስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የስራ ሀላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

ከ1/1/2006 ዓ.ም ጀምሮ በውስጥ ደህንነት ጥበቃ ዋና መምሪያ በፀረ-ሽብር መምሪያ የአነጻጽ ኮር አባላት ክትትል ተጠባባቂ ክፍል ሀላፊ እና የአነጻጽ ዴሲክ ዋና ክፍል ሀላፊ ሆኖ፤ ከ2008 ዓ.ም ጀምሮ በፀረ-ሽብር መምሪያ የአልሻባብና አልቃይዳ ክትትል ተጠባባቂ ዋና ክፍል ሀላፊ ሆኖ፤ ከ2009 ዓ.ም ጀምሮ በፀረ-ሽብር መምሪያ ዋና ክፍል ሀላፊ ሆኖ ሲሰራ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረውና የተሰጠውን የስራ ሀላፊነት ወይም ስልጣን አለአግባብ በመጠቀም በህግ አግባብ ከተቀመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያቀብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ደህን ህገ-ወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በተቋሙ የክትትል ሰራተኞች በሀይል ታፍነው ተይዘው በ1ኛ ክስ ላይ በተገለጸው ጦርሀይሎች አካባቢ በሚገኘው የተቋሙ የክትትል መምሪያ ጊቢ ውስጥ በተሰራው እና ሌሎች ድብቅ እስር ቤቶች ውስጥ

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Addis Ababa - Ethiopia





የፌዴራል ስርዓት ሚኒስቴር
የፌዴራል ስርዓት ሚኒስቴር
15000

ወሰደው የሚታደሩትን እና መረጃ እንዲሰጡ በሀይል በማስገደድ የሚመረመሩ ሰዎች እያያዛቸውም ሆነ መያዛቸው እንዲሁም መረጃ እንዲሰጡ ተገደው መመርመራቸው ከመሰረቱ ህገ-ወጥ መሆኑን እያወቀ በዚህ ህገ-ወጥ ተግባር ላይ በሙሉ ፀላብና ድርጊቱ ተሳታፊ በመሆን፣ ከታላላቅ በሃይል አስገድዶ መረጃ ለመተበል በማሰብ፣ ከመጋቢት 25 ቀን 2007 ዓ.ም ጀምሮ በተለያዩ ጊዜያት ከታደሩበት ፀታ በማስወጣት ምርመራ ክፍል በማስገባት ለጊዜው ቁጥራቸው በሙሉ የማይታወቁ በርካታ ግለሰቦችን ድብደባ እየፈጸመባቸው በማሰታየት አስገድዶ ሲመረምራቸው እና መረጃ ሲተበላቸው የነበረ ሲሆን በዚህ መልኩ ጉዳት ካደረሰባቸው ሰዎች ውስጥ፡-

ድራብሳ ጸምጬ የተባለውን ግለሰብ 13ኛ እና 25ኛ ተከላኝነት ካልታወቀና ግብረ አበርቻቸው ጋር በመሆን ተነ በሙሉ ባልታወቀ ሰኔ ወር 2008 ዓ.ም ከቀን በግምት 9:00 ሰዓት ሲሆን በአሮሚያ ክልል በራዩ አሸዋ ሜዳ ተብሎ በሚጠራው አካባቢ በሀይል አስገድደው ከያዙት በኋላ ጦርሀይሎች አካባቢ በሚገኘው የክትትል መምሪያ ገቢ ውስጥ በተሰራው ድብት እስር ቤት ውስጥ ወሰደው አሰራውት በታሰረበት ፀታ ተከላኝ ከአንግ ጋር ትገናኝላህ በማለት አስገድዶ መረጃ እንዲሰጡ ለሁለት ቀን ሲመረምረው የነበረ ሲሆን፣ ማንነታቸው ያልታወቁ ሌሎች ግለሰቦችም በሌሊት ልብሱን በማስወለት ራቱን በማድረግ እጅና እግሩን በማሰር በዱላ፣ በጥራና በእርግጫ እየደበደቡት በማስገደድ ሲመረምሩት ቆይተው እጁን በማሰር አይነን በልጋት በመሸፈን ወደ ፌደራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ የተወሰደ ሲሆን፣ በአጠቃላይ ተባዳዮች ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የፈጸመባቸው በመሆኑ በፈጸመው በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በሰልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከታይ።

30ኛ ክስ በ17ኛ ተከላኝ ላይ

ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም አንቀጽ 407/1/ (ለ) (ሐ) እና 407/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም።

የወንጀል ዝርዝር

ተከላኝ ከሀምሌ 1 ቀን 1984 ዓ.ም ጀምሮ በተደጥሞ የደህንነት፣ የኢሚግሬሽንና ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የሰራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን እና የሰራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ በማትረብና አሰተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት

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2007 ዓ.ም ድረስ በተለያዩ ጊዜያት ለጊዜው ተጥራቸው በውል የማይታወቁ በርካታ ገለሰቦችን ከግብራቦርቹ ጋር በመሆን ከሀገ ውጭ በሀይል አሰገድዶ በመያዝ በድብት አሰር ድብደባ እየፈጸመባቸው በማሰታዩት አሰገድዶ ሲመረምራቸው እና መረጃ ሲተባባቸው የነበረ ሲሆን በዚህ መልኩ ጉዳት ካደረሰባቸው ሰዎች ውስጥ፦

1. አለባቸው ማሞ የተባለውን ለጊዜው ማንነታቸው ካልታወቁ ግብረ አባሮቹ ጋር በመሆን በ25/02/2007 ዓ.ም ከሌሊቱ በግምት 11:00 ሰዓት ሲሆን በአማራ ክልል ሰሜን ጎንደር ጎንደ ውሃ በተባለ ቦታ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በሀይል በማሰገድ አፍንው ከያዙት በጎላ እባው ከተማ ውስጥ በሚገኘው 6ኛ ፖሊስ ጣቢያ ውስጥ ለአራት ቀናት ታስሮ እንዲቆይ በማድረግ ወደ አዲስ አበባ የፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ቦታ እንዲወሰድ ያደረገ በመሆኑ፤
2. በላይኑስ ሲላይ የተባለውን ለጊዜው ማንነቱ ካልታወቀ ግብረአባሩ ጋር በመሆን በተን 25/02/2007 ዓ.ም ከሌሊቱ በግምት 10:00 ሰዓት ሲሆን በአማራ ክልል ሰሜን ጎንደር ጎንደ ውሃ በተባለ ቦታ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በሀይል በማሰገድ አፍንው በመያዝ ጎንደር ከተማ በሚገኘው 6ተኛ ፖሊስ ጣቢያ ውስጥ አሰገብተው ብቻውን እንዲታሰር በማድረግ በኮቲና እጅን በማሰርና በዱላ እና በኤልክትሪክ ገመድ እየደበደበው በማሰታዩትና በማሰገድ መረጃ እንዲሰጠው ለአራት ቀናት ሲመረምረው ከቆየ በጎላ ወደ አዲስ አበባ የፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ቦታ እንዲወሰድ ያደረገ በመሆኑ በመሆኑ፤
3. ሃጻነት ፋንታሁን የተባለውን ከ23ኛ ተከላኸ እና ለጊዜው ካልታወቁና ካልተያዙ ግብረ አባሮቹ ጋር በመሆን በ24/02/2007 ዓ.ም ከሌሊቱ በግምት 10:00 ሰዓት ሲሆን በአማራ ክልል ማዕከላዊ ጎንደር ዞን ጣቱላ ወረዳ ውስጥ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በሀይል አሰገድደው ይዘውት ወደ ጎንደር ከተማ በመውሰድ የደህንነት ቢሮ ውስጥ አሰገብተው በድብት በማሰር ዓይኑን በጨርቅ በመሸረገ፤ እጅን በኮቲና በማሰር፤ በጥፊና በእርግጫ እየደበደቡት፤ በጎማና በጣውላ የውስጥ እግሩንና ሌሎች አካሉን በመደብደብ፤ እንዲሁም የተኝ እጅ የመሀል ጣት እና የግራ እጅ አውራ ጣትና የመሀል ጣት ጥፍሮችን በመንቀል፤ ምግብ እንዳያገኝ በመከልከል እያሰታዩት መረጃ እንዲሰጣቸው በማሰገድ ለአምስት ቀናት እየመረመሩት ካቆዩት በጎላ ወደ አዲስ አበባ የፌዴራል ፖሊስ ወንጀል ምርመራ ቢሮ በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ እንዲወሰድ ያደረገ በመሆኑ፤

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አግባቡ ሰጠኝ የተባለውን ከ23ኛ ተከላኝ እና ማንነታቸው ካልታወቁ ግብረ አበሮቹ ጋር በመሆን በ25/02/2007 ዓ.ም ከተኑ በግምት 9:00 ሰዓት ሲሆን በአማራ ክልል ጎንደር ከተማ ውስጥ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረው በማለት በቦር መሰሪያ በማስፈራራት በሀይል አስገደደው በመያዝ እጃቸን በኩፍ በማሰር በመኪና ወደ 6ኛ ፖሊስ ጣቢያ በመውሰድ ለአራት ተናት አስረው ካቆዩት በጎላ እጅና እግሩን በማሰር እና ዓይኑን በጨርት በመሸፈን ወደ አዲስ አበባ ከተማ የፌደራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ እንዲወሰድ ያደረጉ በመሆኑ፤

5. አበበ ካሌ የተባለውን ከ23ኛ ተከላኝ እና ካልታወቁ ግብረ አበሮቹ ጋር በመሆን በ12/05/2006 ዓ.ም ከረፋዱ በግምት 4:00 ሰዓት ሲሆን በአማራ ክልል ጎንደር ከተማ ውስጥ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረው በማለት በሀይል አስገደደው ከያዙት በጎላ በከተማው ውስጥ በሚገኝ የደህንነት ቤር ወስጥ አስገብተው በድብቅ በማሰር መረጃ እንዲሰጣቸው ለማስገደድ ግድግዳ ላይ በማንጠልጠል፤ እጅና እግሩን አስረው እንጨት አሾልከው በማንጠልጠል፤ በዱላና በቦክስ መላ ሰውነቱን በመደብደብ፤ በኢሌክትሪክ ገመድ የውስጥ እግሩን በመገረፍ፤ ከግድግዳ ጋር በማጋጨት፤ ሽንታቸውን አፋ ላይ በመሸናት እያሰቃዩት በማስገደድ ለአምስት ተናት ሲመረምሩት ቆይተው ወደ አዲስ አበባ ከተማ የፌደራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ እንዲወሰድ ያደረጉ ሲሆን፤ በአጠቃላይ ተበዳዮች ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የረጸመባቸው በመሆኑ በረጸመው በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በስልጣን አላግባብ በመጠቀም የሚፈጸም ከባድ የሙስና ወንጀል ተከሷል።

42ኛ ክስ በ24ኛ ተከላኝ ላይ

ወንጀሉ

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዴ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም የሙስና ወንጀሉችን ለመደንገግ የወጣው አዋጅ ቁጥር 881/2007 አንቀጽ 9/1/ (ለ) (ሐ) እና 9/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

የወንጀሉ ዝርዝር

ተከላኝ ከጥር 1 ቀን 1989 ዓ.ም ጀምሮ በቀድሞ የደህንነት፣ የኢሚግሬሽንና ስደተኞች ጉዳይ ባለስልጣን እና በአሁኑ የብሄራዊ መረጃና ደህንነት አገልግሎት ውስጥ በተለያዩ የስራ ሀላፊነቶች ላይ ተመድቦ በሚሰራበት ጊዜ በህግ አግባብ የተሰጠውን ስልጣን እና የስራ ሀላፊነትን መሰረት በማድረግ ተቋሙ የተቋቋመለትን ጥራት ያለውን መረጃ

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89



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የሚከተሉት አስተማማኝ የደህንነት አገልግሎት በመስጠት የሀገሪቱን ብሔራዊ ደህንነት የመጠበቅ አላማን ከግብ በሚያደርስ ሁኔታ የሰራ ሀላፊነቱን መወጣት ሲገባው ደህንን ወደጎን በመተው በሰዎች መብት ላይ ጉዳት እንዲደርስ ለማድረግ በማሰብ፤

በአማራ ክልል በምዕራብና በማዕከላዊ ንጎደር ዞን በመረጃ ስራ፣ በኦርቲራ ተቃዋሚዎች ማስተባበሪያ መምሪያ በመረጃ ስራ በክፍል ሀላፊነት ሲሰራ፤

በህግ አግባብ የተሰጠው በማንኛውም ወንጀል የተጠረጠረን ሰው የመያዝ፣ የማሰርና የመመርመር ስልጣን ሳይኖረው የተሰጠውን የሰራ ሀላፊነት ወይም ስልጣን አለአግባብ በመጠቀም በህግ አግባብ ከተተመጠው ስርአት ውጭ ዜጎች በሀይልና በማስገደድ ተይዘው መረጃ እንዲሰጡና አልፎም ወኪል በመሆን መረጃ እንዲያተብሉ ለማድረግ በማሰብ፤ ከላይ በ1ኛ ክስ ላይ በተገለጸው መልኩ ደህን ህጉወጥ ተግባር ለመፈጸም በሚያስችል ሁኔታ በተዘጋጀው አደረጃጀት ውስጥ ተሳታፊ በመሆን በራሱና በኩትትል ሰራተኞች በሀይል አስገድደው ይዘው የሚያስገድዱትና የሚመረምሯቸው ሰዎች አያያዛቸውም ሆነ መያዛቸው ከመሰረቱ ህጉወጥ መሆኑን እያወቀ በዚህ ህጉወጥ ተግባር ላይ በሙሉ ሀሳቡና ድርጊቱ ተሳታፊ በመሆን ከታሰረዎቹ በሃይል አስገድዶ መረጃ ለመቀበል በማሰብ፤ ከመጋቢት 25 ቀን 2007 ዓ.ም ጀምሮ በተለያዩ ጊዜያት ለጊዜው ቁጥራቸው በውል የማይታወቁ በርካታ ግለሰቦችን ከግብራቦርቹ ጋር በመሆን ከህግ ውጭ በሀይል አስገድዶ በመያዝ በድብቅ አስር ድብደባ እየፈጸመባቸው በማሰቃየት አስገድዶ ሲመረምራቸው እና መረጃ ሲተባበሩት የነበረ ሲሆን፤ በዚህ መልኩ ጉዳት ካደረሰባቸው ሰዎች ውስጥ፡-

1. እንዳለው ፍቃድ የተባለውን ለጊዜው ማንነታቸው ካልታወቁ ግብራቦርቹ ጋር በመሆን በ18/05/2009 ዓ.ም ከቀን በግምት 11:30 ሰዓት ሲሆን በአማራ ክልል ምዕራብ ንጎደር ዞን ባህርዳር ከተማ ውስጥ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በሀይል አስገድደው ከያዙት በኋላ ባህርዳር ከተማ የአሜሪካኒን ቢሮ ውስጥ በድብቅ ለስድስት ቀናት በማሰር ክልሎች ማንነታቸው ካልታወቁ ግብራቦርቹ ጋር በመሆን መረጃ እንዲሰጡ ለማስደድ ፊቱን በጨርቅ በመሸፈን፤ በዱላ እየደበደቡት፤ የተቆረረ ጉድጓድ ጋር ወስዶ በማሳየት እዚህ ውስጥ ነው የምጨምርህ በማለት እያስፈራራው በማስገደድ ሲመረምረው የነበረ በመሆኑ፤
2. ወለላው ማስረጃ የተባለውን ከ23ኛ ተከላሽ እና ለጊዜው ካልታወቁ ግብራ አቦርቹ ጋር በመሆን በ02/06/2009 ዓ.ም ከቀን በግምት 10:30 ሰዓት ሲሆን በአማራ ክልል ንጎደር ከተማ ውስጥ ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በሀይል አስገድደው በመያዝ ዓይኑን በጨርቅ በማሰር፤ የመኖሪያ ቤቱን በመበርበር፤ እዘዞ መከላከያ ካምፕ ውስጥ አስገብተው በማሰር እና ካምፕ ውስጥ በተቆረረ ጉድጓድ ውስጥ አሰረው በማስገባት መረጃ እንዲሰጣቸው ለማስገደድ ለአስር ቀናት በዱላና በአርግጫ



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አደባቢ ሲመረምሩት ቆይተው፣ ወደ አዲስ አበባ ከተማ የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ እንዲወሰድ ያደረጉ በመሆኑ፤

3. ታዲያ ህይወት ፈለቀ የተባለውን ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት ተነ በውል ተለይቶ ባልታወቀ ሰኔ ወር 2007 ዓ.ም በአማራ ክልል መተማኝ ከተማ ውስጥ ተከላሽ ክልሉት ካልታወቁ ግብረ አበርቆ ጋር በመሆን በህይወት አስገደዶ በመያዝ ፊትን በጨርቅ በመሸፍን መተማኝ ከተማ ውስጥ በታወቀ ባልታወቀ ድብት እስር ቤት ውስጥ በማሰር፣ መረጃ እንዲሰጠው ለማስገደድ ሌሊት ሌሊት ወደታሰረበት ክፍል በመሄድ በዱላ እየደበደበው በማስገደድ ሲመረምረው ቆይቶ ከአስር ቀን በኋላ ወደ ጎንደር ከተማ በመውሰድ ለ23ኛ ተከላሽ ያስረከበው ሲሆን፣ 23ኛ ተከላሽም ተተብሎት በታወቀ በወል ያልታወቀ ድብት እስር ቤት ውስጥ ለአንድ ወር ያክል እስር በማጥፋት መረጃ እንዲሰጠው ለማስገደድ በተደጋጋሚ ጊዜ በኦሊምፒክ ገመድ እየገረፈው ሲመረምረው ከቆየ በኋላ ወደ አዲስ አበባ ከተማ የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ስፍራ እንዲወሰድ ያደረገ በመሆኑ፤

4. ደሳለኝ ማንደፍሮ የተባለውን ከ23ኛ ተከላሽና ካልታወቁ ግብረ አበርቆ ጋር በመሆን ከሽብርተኝነት ወንጀል ጋር በተያያዘ ተጠርጥረህል በማለት በቀን 13/08/09 ዓ.ም ከቀን በግምት 8:00 ሰዓት ሲሆን በአማራ ክልል ጎንደር ከተማ ውስጥ በህይወት አስገደደው ከያዙት በኋላ እዘዞች በሚገኘው የመከላከያ ወታደር ካምፕ ውስጥ ለሁለት ቀናት አሰረው መረጃ እንዲሰጣቸው ለማስገደድ በዱላ፣ በጥፊና በእርግጫ እየደበደቡት ሲመረምሩት ቆይተው ወደ አዲስ አበባ የፌዴራል ፖሊስ ወንጀል ምርመራ ቤር በተለምዶ ማዕከላዊ ተብሎ ወደሚጠራው ቦታ እንዲወሰድ ያደረጉ ሲሆን፣ በአጠቃላይ ተበዳኞች ላይ ከፍተኛ የሆነ የሰብአዊ መብት ጥሰት የፈጸመባቸው በመሆኑ በፈጸመው በዋና ወንጀል አድራጊነት ተካፋይ በመሆን በስልጣን አላግባብ በመገልገል የሚፈጸም ከባድ የሙስና ወንጀል ተከፀል።

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ወንጀል

በ1996 ዓ.ም የወጣውን የኢ.ፌ.ዲ.ሪ የወንጀል ህግ አንቀጽ 32/1/ (ሀ) (ለ) እንዲሁም አንቀጽ 407/1/ (ለ) (ሐ) እና 407/2/ ላይ የተደነገገውን በመተላለፍ ከባድ የሙስና ወንጀል መፈጸም፤

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Addis Ababa University
School of Graduate Studies
Faculty of Law

Research Structured Interview Questions Presented ToThe Judges Of Federal High Court

Dear interviewee, This interview is prepared for research conducted on **“Examining The Available Trigger Mechanisms To Prosecute *Getachew Assefa et al* Before The ICC”**, in the way to full fill my post graduate study in Addis Ababa University School of Graduate, Faculty of Law. The research is highly dependent on accuracy and relevancy information you provide. Thus, you are kindly required to answer the questions properly as per the spirit they ask. Please note that your information will be used only for the research and will be kept confidential.

Thank you in advance for your cooperation!!!

1. Interviewee’s General Information

Name _____

Position _____

Phone No. _____

1. Questions Concerning The Enforcement of The Arrest Warrant

- I. Despite the official statements of the PM and the FAG on the explicit whereabouts of the alleged suspects, the Court has commenced trial- in abstentia. Please explain the legality of the pending in abstentia proceeding.
- II. How far did the Court go to verify the trustworthiness of all measures taken by the FPC? Besides briefly explain the rectifying measures of you if any?
- III. In one of his speech at Walta TV the head of FPC Public Relation Department stated that The FPC is unable to bring the alleged suspects before the Court due to the fact that some regional states are not willing to cooperate with the police. He added that Upon the refusal of these regional states the FPC have done nothing to bring the suspect before the Court with a view to maintain the Constitutional autonomy of the regional states. On the other hand the Chief justice of FDRE in her speech hinted that the Government could take forceful measures to arrest the suspects, taking necessary measures/steps against the shielding arms of these regional states and bring them before the Court. Is there any legal avenue for the Court to order the use of force against the shielding regional states and not to go the suspects unpunished?