Letter from Qaliti Prison

## A Brief Note on the June 11, 2007 Hearing and its Legality
## Professor Mesfin Wolde-Mariam

On June 1, the court ordered that we shall complete viewing and listening to the all of the prosecution's video and audio evidence and prepare our defence in respect of all the evidence and the trial was adjourned for today. In addition, the court was scheduled to rule on the objection made by the accused civil society leaders against the prosecution's demand for the list of defense witnesses. The defendants had argued that some of their potential witnesses have already refused to testify because of intimidation and that the court had sustained the prosecutor's objection in respect of similar demands made on their side. Hence, they contended that they should not be forced to do what the prosecutor did not have to do.

When we were ordered to defend the case on April 9, we had petitioned the following per the Ethiopian Constitution, the Ethiopian Criminal Procedure Code and the International Human Rights instruments that Ethiopia has accepted and ratified:

1. The prosecution's video and audio evidence and description of the issues
2. The transcript of the Court's ruling and the testimony of witnesses
3. The return of all the computers along with the files contained in them, other documents, and other material and personal and organizational property taken from our office and residences
4. Since our incarceration, a variety of documents and texts, including the notes that we have been taking during each trial session, memos and diaries and other documents prepared for the trial were confiscated from us. We had requested that these be returned to us because they belong to us and because we needed them for our defense.
5. We are charged with criminal conspiracy and we were told that evidence presented against one of us applies to all the others and that we are collectively responsible. Therefore we had requested that we be allowed to convene and confer with each other.

NOTE: We initially presented this request to the court on April 9, immediately after the ruling stating that we should defend ourselves was read, but the judges refused to hear our request and walked out of the court room. After our return to prison, we prepared and submitted a formal petition through the prison administration. However, the prison administration assumed the power of the court to review and decide upon our petition. The response was that we could only submit such applications individually and not collectively. This response had two fundamental problems. One, the prison administration has no power to respond to a petition addressed to a court. Whichever way it wishes to decide, the decision only belongs with the court. According to the Criminal Procedure Code, the responsibility of the prison administration is only to deliver our petition to the court. Second, Article 37 of the Constitution unequivocally states that we have a right to submit such a petition. In addition, the court had

consistently defended the prosecution's position that the conspiracy charges and therefore all of the evidence and documentation, would collectively apply to all of us. So the same people who insisted that we have collective responsibility, then insisted that a collective petition amounts to conspiracy and refused to deliver the petition to the court or return it back to us.

During the court session on April 30, 2007, the presiding judge Adil Ahmed asked us why we had not presented the list of defense evidence. We got up to describe the injustice we had experienced in the hands of the prison administration and verbally repeated our request to the court. We explained that the prison administration had taken our written request. The court then adjourned having stated that the situation would be duly investigated and to reconvene on May, 2, 2007.

On May 2, 2007, the court gave three types of responses. One was positive, stating that these requests would be granted: the second was negative and that this request would not be granted and that we would just have to defend ourselves anyway; and the third was a tacit denial neither acknowledging nor openly denying our request.

1. We were granted access to the transcript of the court's ruling and the video and audio evidence, but it was decided that neither the defendants nor their lawyers would be given copies. We were allowed to view these in groups under the supervision of the prison's authorities.
2. We were openly denied access to the transcript of the testimony of and he material that was taken from our homes and offices. In addition to the fact that these are private property, they are critical to our defense. Yet, we were denied access to these.
3. Those materials confiscated from us in prison, writings, documents, and notes taken in court and other evidence, in addition to other audio evidence presented by the prosecution, were not even mentioned.

The materials taken away from us by the prison administration are materials that were prepared by us and relevant to our defense. It was difficult for us to challenge the audio and video documentary evidence, simply on the basis of what we saw and heard, without taking notes, documentation and knowledge of what specific crimes the prosecutor was accusing us of on the basis of the video evidence. Knowing this, the court did not grant our request because that would mean that would understand and optimal defend the case against us. It couldn't openly deny our request, because the documents are clearly relevant. Therefore, the court simply evaded the question.

Moreover, the court had disregarded the testimony witnesses in its ruling. It simply considered the prosecution's summary of what the evidence was about and relied on it as if this was the same as actual testimony of the witnesses. However, the witnesses' testimony is different. So, they took away the notes that we had taken during the trials. Then, they refused our request for a copy of the transcript of the testimony from the trial records.

On May, 2, 2007, right after this response from the court, we raised our hands to ask the court the following questions : " For those things that you have denied our request, we understand that that has been denied, but you have not even acknowledged some of our request. In fact you had also stated the court's intention to investigate the prison administration's refusal to convey our petition to the court. What was the result of that investigation? Why is it that the prison administration examines and rules on our petition? What mandate does it have? Why does it not convey our petitions to the courts?" To this and another two questions we presented to the court, we have received neither a negative nor a positive response.

When we were denied the opportunity to speak, we respectfully mentioned that the court had overlooked to respond to a request, and we asked to be heard. They told us we would speak at the end, and adjourned and got up to leave. As we were standing, pleading for their attention, they got up and walked out.

> *Between May 2, and June 11, 2007, Muluneh and Andualem were at risk for their lives. Since Muluneh in particular was too weak, he was not able to attend court on June 11. The prison administration's representative lied saying that Muluneh declined to appear in court claiming he was sick and that he was not willing to appear in court. So, defendants raised their hands to say: "This is a complete fabrication and that the truth is that Muluneh's life is in danger because of atrocities committed against him by the prison. He is in serious danger. The court has a responsibility to see to it that defendants that it has ordered held, be held in humane conditions and that their well-being be monitored". However, Judge Adil refused, demanding that defendants not raise their hands. Even though we said that we need to explain Muluneh's situation and that what the court heard was a fabrication, he told us, that we would not be granted the opportunity to speak. More hands were raised requesting that the outstanding issues from past sessions be heard. The judge stated, that complaints would be heard last.

During the May 2nd session, he told us that complaints would be last, and they walked out while we were standing to speak. We said, "In the name of justice, please listen to our complaints and respond to them". We trusted them when they told us to be seated and that our complaints would be heard later at the end of the session. In the end however, they ruled that the videos be viewed in their entirety (those mentioned above in preparation for the June 11th session) and got up to leave. We got up and stated that there were outstanding complaints and that Muluneh's life is in danger, but they left anyway. Having promised that they would hear us, in the end they cheated us just like regular hooligans would.

Between June 1st and June 11th when the CUD Chairman was admitted in the hospital for eye surgery, we were told to convene on June 5th. Since the Chairman has several documentary evidences and because of his critical role to the case against us, we requested rather that we be allowed to convene once he was discharged from the hospital. They came to us on Thursday morning June 7th, and informed us that the court had decided that whether Engineer Hailu Shawl [the Chairman] was present or not would be

irrelevant, and that we would have to convene that day or lose the opportunity. So, we had to convene in his absence. Even then, the prison administration informed us that the court had not sent to it, two of the videos that were documented as evidence and therefore we did not get to watch them and are thus not aware of their content. Since the documentation of the video and the audio evidence was not given to us, we never found out what the prosecution wanted from us. Since we did not receive the documentary evidence from Engineer Hailu Shawl, we did not get to discuss them. Since we were not given the documents from the witness testimony, we could not have meaningful discussions regarding our defense with respect to the witness testimony. We had extreme difficulty considering the fact too that all of the evidence and documentation seized from our homes and from us in prison.

Above all else, the court has denied us the chance to have our complaints and our petition heard. It has denied us the opportunity to convene to discuss the prosecution's case against us. It has refused to consider our complaints against abuse, and consistently disregarded our repeated petition for access to documents that are critical to our defense. The judges kept promising to hear us in the end and then walking out on us. Let alone present a defense-related question, we couldn't even get complaints or anything heard. We weren't even granted basic respect and dignity as human beings.

On June 11, 2007, as the court was seated, we stood up to ask the court to give us a response on the outstanding petitions and requests. The session proceeded without the judges attempting to find out why we were standing. We said we had a complaint. The judge told us to be quiet and asked the prison administration representative if the video had been viewed. The representative lied, saying that they had shown us all of the video and audio. The truth may have been that the prison administration had given access to all the video that had been submitted to it. However, two videotapes that we were told we would have to defend ourselves against were not viewed. The most amazing thing is that on June 11, 2007, the prison administration failed to state that though it had shown us the video in its possession, we had claimed that there were 2 tapes missing, when in fact on June 7th, it had refused to convey our additional petition for same to the court. It did not even mention the petition. So, we said that not all of the video had been viewed by us; that all of our requests, motions and petitions since April 18th had not been ruled upon; that the court had repeatedly refused to listen to us. We requested that the court listen to us for a few minutes. We requested that on this day, we be granted permission for one defendant among us to take a few minutes to present to the court all of our complaints. The court ignored us; in fact two of the judges began to take turns and threaten us. We remained standing, still respectfully demanding that the court hear us, in the name of the law and in the name of justice. Then they announced that they would adjourn for 10 minutes and left.

Though they said they would be back in 10 minutes, they came back after two hours and thirty minutes and said they had reached a decision. They announced, saying, "Since we had offered you the opportunity to defend and you have declined, all of you have been found guilty" [of crimes that are punishable by death and life in prison].

There were some defendants who had already retained legal counsel and submitted their papers on June 8, 2007, prior to the session on the 11th. Three publishing agencies had also submitted their papers. The same is true of one defendant who is free on bail. The court had received all of this information, and had not heard from us that we would not defend ourselves. We were pleading in vain with the court that we had two more videos we still needed to view. Neither did the court feel compelled to ask why we had failed to submit our list of evidence for the defense, nor did it find it appropriate to ask why its own orders that we be allowed to view all of the evidence had not been complied with. We were still pleading with the court to hear our complaint about a relevant part of the process—the defense, when without it, it announced we were found guilty of the crimes. This is the first time in the history of the Ethiopian courts that a defendant whose right to submit defense evidence is curtailed is later found guilty, based solely on fabricated evidence from the prosecution .

This shows clearly the condition of the justice system and where its loyalty lies. The existence of a strong, independent judiciary is fundamental to the establishment of a peaceful democratic system. It is precisely for this reason,-- the protection of the Ethiopian people from abuses through such shameful and embarrassing verdicts-- that we felt it would be important to include the existence of an independent judiciary in the set of preconditions presented on October 9, 2005, [for the CUD] to join Parliament.

What today's judges have done is not just abusive, but shameful and embarrassing to Ethiopia in the eyes of the international community.