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*Federal Democratic Republic of Ethiopia
Permanent Mission to the United Nations
Geneva*

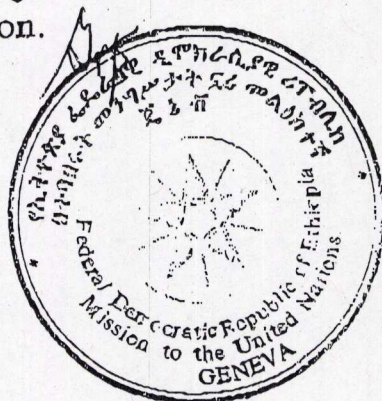
124/2012-A

14 December 2012

The Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and other International Organisations in Switzerland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to forward herewith the response from the Government of the Federal Democratic Republic of Ethiopia to the communication from the Chair-Rapporteur of the Working Group on Arbitrary Detention, No. G/SO 218/2, dated 27 July 2012, concerning the arrest of Mr. Eskinder Nega for committing the crime of terrorism.

The Permanent Mission of the Federal Democratic Republic of Ethiopia to the United Nations Office at Geneva and other International Organisations in Switzerland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure



The Office of the United Nations High Commissioner
For Human Rights
Geneva

OHCHR REGISTRY

14 DEC 2012

Recipients : W.G.A.D. (Encl.)
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The Government of the Federal Democratic Republic of Ethiopia
Reply on the Allegations Concerning Mr. Eskinder Nega

1. This reply covers the allegations concerning Mr. Eskinder Nega as contained in the summary attached to the letter by the Chairperson of the Working Group on Arbitrary Detention dated, 27 July 2012.
2. Ethiopia is a country governed by of rule of law. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law guarantees to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.¹ No one can be deprived of his liberty for exercising his freedom of expression or being a critique of the Government. The Constitution of Ethiopia strictly prohibits deprivation of rights or liberty without due process of law except on such grounds and in accordance with clearly established law.² This has been witnessed during the trial process of Mr. Eskinder Nega.

Background of the case and pretrial detention

3. Mr. Eskinder Nega was found guilty by court of law for involvement in a conspiracy to commit a crime of terrorism as an accomplice with a clandestine and terrorist organization named Ginbot 7 which has publically declared its intention to overthrow the democratically elected Government of Ethiopia through assassination of Government officials, destroying public property, destabilizing peace and Constitutional order of Ethiopia.
4. The Federal Prosecutor, after meticulously investigating Mr. Eskinder's Nega's participation in terrorism and ensuring the presence of ample evidence, requested the Federal First Instance Court in Addis Ababa for an arrest and search warrant.

¹ Constitution of the Federal Democratic Republic of Ethiopia article 25.

² Ibid, art. 17(1)

5. Cognizant of its responsibility not to arrest, search or seize a person's property contrary to the law³, police arrested the defendant, searched and seized the relevant property of evidentiary significance after securing arrest and search warrant from the Federal First Instance Court.
6. His house was searched and relevant evidences found were seized by court warrant issued by the Federal Court in accordance with article 26 (3) of the Constitution and article 19 of the Ethiopian Anti-Terrorism Proclamation.
7. The defendant promptly brought before a court of law within 48 hours in accordance with article 14(3)(c) of the International Covenant on Civil and Political Rights and article 19 and 20(1) of the FDRE Constitution and tried without undue delay.

The charge brought against the defendant

8. The defendant was charged for conspiracy to commit acts of terrorism in accordance with Article 32(1), Article 38(1), Article 248 and 252 of Ethiopian criminal Code for the crime of espionage by engaging in collecting and leaking political, diplomatic and military intelligences to the Government of Eritrea and groups promoting a destabilizing agenda against Ethiopia. And in contravention of Article 3(1), 3(2), 3(4), 4, 6, and 7(6) of Anti-Terrorism Proclamation.⁴ (see annex)

The trial

9. The public trial of Mr. Eskinder Nega was held in his presence, with due respect and observance of the Constitution of the Federal Democratic Republic of Ethiopia and the relevant provisions of the Criminal Procedure Law. He was informed of the nature of the charges brought against him and was given the same in writing, in accordance with the Criminal Procedure Code of Ethiopia. The defendant pleaded not guilty. Upon the

³ Article 422 and 423 of the Criminal Code of Ethiopia.

⁴ See annex

fulfilment of the requirements stipulated under the Criminal Procedure Code, the Court then ordered the prosecutor to produce evidence.

10. The Federal Prosecutor summoned witnesses, produced documentary and other demonstrative evidences before the criminal bench of the Federal High Court. It has also produced additional exhibits including electronic and telephone conversations and communications between the defendant and leaders of 'Ginbot 7' the outlawed terrorist organisation.
11. The evidence submitted before the court established the fact that the defendant from the outset, planned, organised and conspired with full intent and aligning himself with a terrorist organisation to commit a crime of terror.
12. The Federal High Court, after examining the sufficiency of the prosecution's evidence, dropped some of the charges brought against the defendant in accordance with Criminal Code Article 252(1) and (2) and ordered the prosecution to amend the charge in best interest of justice and to enable the defendant to defend himself properly pursuant to Article 19 of the Criminal Procedure code of Ethiopia .
13. The Public Prosecutor submitted the amended charge in accordance with the court order and within reasonable time specified by the court. The amended charge and lists of evidences were also given to the defendant in writing. The defendant pleaded not guilty to the amended charge and upon the fulfilment of the requirements under the Criminal Procedure Code, the court ordered the prosecution to produce evidence. The defendant was able to examine all the witnesses, documentary, audio and video evidences brought against him in accordance with article 14(e) of the International Covenant on Civil and Political Rights and article 20(4) of the FDRE Constitution as well as the Criminal Procedure Code of Ethiopia.

14. The evidences adduced before the Court to support the charge, proved beyond reasonable doubt how the defendant intentionally assisted the terrorist organization by participating in secret meetings to disrupt the peace and security of the state as well as by supplying financial, material and moral support to a terrorist organization.
15. The Federal High Court, after meticulously examining the sufficiency of the prosecution's evidence, ruled the accused to defend the amended charges.
16. The defendant made a statement in reply to the charges and produced his defence witnesses and furnished additional demonstrative evidence to defend himself in accordance with Article 142 (1) of the Criminal Procedure Code of Ethiopia. In addition, he fully exercised his right to defend himself on all the charges and evidences brought against him without any encumbrance.
17. After a scrupulous examination of the oral, documentary and demonstrative evidences, opinions on mitigating and aggravating factors produced by both the Federal Prosecutor and the Defence Council in accordance with relevant provisions of Criminal Procedure Code of Ethiopia, the Court found Mr. Eskinder Nega guilty of offences and sentenced him to 18 years of rigorous imprisonment.
18. The ruling against the defendant gave due regard to the defendant's antecedent and personal circumstances, that should be taken into consideration as mitigating factor before rendering the final ruling on sentence.
19. Mr. Eskinder exercised his right to appeal which is guaranteed under Article 20(6) of the FDRE constitution and Article 14 (5) the ICCPR. Accordingly, he lodged an appeal to the Federal Supreme Court, which has ruled that his case is appealable and set hearing for 19 December 2012 to hear the case.

Observance of the right to legal counsel

20. In accordance with article 14(3) of the International Covenant on Civil and Political Rights (ICCPR) and Article 20(5) of the FDRE Constitution, he has been informed of his right to be represented by a legal counsel of his choice. Accordingly, the defendant appeared before the Court with legal counsel of his own choice.

Observance of his right to be visited

21. Before and after the trial, the accused's right to communicate with, and be visited by, his spouse, close relatives, friends, religious councilors, medical doctors, human right defenders, diplomatic community and legal counsel, upon his request, has been duly observed by the Government in accordance with article 22(2) of the FDRE Constitution and Article 14(b) of the International Covenant on Civil and Political Rights (ICCPR). He has been visited by his spouse, friends, human rights defenders and diplomatic community up on his request. The Government has not received any complaint from the accused or his council regarding violation of this right.

The Ethiopian Anti-Terrorism Proclamation

22. The Anti-Terrorist legislation of Ethiopia 652/2009 is consistent with the Constitution of the Federal Democratic Republic of Ethiopia and Ethiopia's international obligations. In fact, it is a kind of legislation that is imperative for compliance with our obligations under the United Nations Security Council Resolutions 1373 and 1963. The passage of this law has not only enjoyed the extensive, rigorous and thorough participatory legislative process in Ethiopia, but also benefited from best practices from different countries having similar legislations.

23. It is worth mentioning that paragraph 2 of the United Nations Security Council resolution 1373 obliges States to ensure any person who participates in the financing, planning, preparation or perpetration of terrorist acts is to bring to justice.

Freedom of expression and conviction of newspaper editors

24. Freedom of expression is a Constitutional right in Ethiopia. Individuals or groups can hold or advance their views without interference. These rights can be limited only through laws. The criminal code of Ethiopia prohibits any release of information on a proceeding or a pending case which has detrimental effect on the outcome of the case. News papers are obliged to disseminate correct information on a pending case.
25. 'Negadras' and 'Feteh' were summoned before the court for publishing exaggerated and false information. The court has found the news on the trial of Eskinder nega is proper and acquitted the newspaper. On the other hand, the court found them guilty for dissemination of exaggerated and misleading information on the trial of 'Abebe Kesto'.

Conclusion

26. The trial process of Mr. Eskinder Nega demonstrates that due process guarantees were ensured in keeping with domestic legislations and international standards as enshrined in the ICCPR and other relevant human rights instruments to which Ethiopia is a party. International human rights law does not prohibit prosecution of members of terrorist organisations or those who support, cooperate and assist terrorism by any means. Rather, it prohibits any form of discrimination and impunity of prosecution.
27. Professional background cannot be taken as an excuse to commit a crime of terrorism. Mr. Eskinder Nega is not prosecuted for exercising his freedom of expression or being a critique of the Government. He was involved in a crime of terrorism as an accomplice with a terrorist organization. His involvement in terrorism is a clear violation of Ethiopia's domestic laws and international conventions against terrorism.

Annex

Criminal charge file number: 00180/04

Police investigation file number: 107/04

To: Federal High Court**Lideta criminal bench****Addis Ababa****Plaintiff: Federal Prosecutor****Defendants: 24****7th defendant Eskinder Nega Fenta****Declaration: This is an amended charge in accordance with article 119(1) of the Criminal Procure Code of Ethiopia⁵****Charge 1****Only on 1-22 defendants⁶**

⁵ The charge is amended by the order of the Federal High Court Criminal Bench for the best interest of justice and to enable the defendant to properly defend himself.

⁶ This charge includes the 7th defendant Eskinder Nega.

Offence

In violation of article 32(1a), 38(1) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia and article 3(1,2,3,4 and 6) of the Anti-Terrorism Proclamation 652/2009.

Particulars of the Charge

The defendants, as leaders, principal offenders, by planning, conspiring and preparing to commit a crime; by forming a coalition with OLF, ONLF and other groups designated as a terrorist organization by the House of Peoples Representatives of Ethiopia, since 2010 and are operating under direct command and logistic support as well as instructions and guidance from the Government of Eritrea; by assuming a leadership role and being a member in the terrorist organization called Ginbot 7, operating to disrupt and destabilize the constitutional order of the state forcefully and plots to assassinate Government officials, destroy public property and looting financial institutions; by recruiting and providing training to members of terrorist organizations, under the cover of their constitutional right of freedom of expression; by organizing a kill-squad and with a plan to disrupt and destroy the political, social and economic order of the state with full knowledge of their act and the consequences thereof;

Specially,

7th defendant: Eskinder Nega

The defendant secretly met with leaders of the terrorist organization called Ginbot 7 under the cover of freedom of expression. He agreed to finance the terrorist organization and participated in the two-day meeting which was held in Taitu Hotel which is located in Arada sub city, Addis Ababa, Ethiopia on early September 2011 in accordance with the direction and instructions given to him by a terrorist organization called Ginbot 7 to destabilize, create havoc and disorder in the country. He has also been involved in dissemination different materials, articles and other information intended to destabilize the country to the propaganda machine of the terrorist organization called ESAT.

Charge 2

Only on 1-18, 21 and 22 defendants⁷**Offence**

In violation of Art 32(1a) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia and article 7(2) of the Anti-Terrorism Proclamation 652/2009.

Particulars of the Charges

The defendants committed a crime of terrorism by taking a position of youth team organizer and coordinator role in Ginbot 7 in Ethiopia.

Charge 4**Only on 1-22 defendants⁸****Offence**

In violation of Art 32(1a) and 248(b) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia.

Particulars of the Charges

The defendants as principal offenders, enjoying Ethiopian nationality, committed a crime of treason by associating themselves in a crime with full intent to achieve an intended result. They have dealt with and keep up a secrete correspondences with a clandestine organization called Ginbot 7 who is working to implement the interests of the Government of Eritrea. They have been working on the promotion of destabilizing agenda of the authorities of the Government of Eritrea starting from unspecified date in 2011. They have also been involved in training the terrorists in Eritrea and help them to infiltrate in to Ethiopia through secrete channels. In general, the defendants are charged for committing a crime of high treason by aligning themselves and secretly met with Eritrean Government officials and leaders of Ginbot 7 to insure the successfully accomplishment of terrorism plot of the Government of Eritrea.

Charge 5

⁷ This charge includes the 7th defendant Eskinder Nega

⁸ *Ibid*

Only on 1-22 defendants⁹**Offence**

In violation of Art 32(1a) and 252(1a) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia

Particulars of the Charges

The defendants as a principal offenders and knowing the outcome and intended result of their act as well as the grave danger of their action on the security and national interests of Ethiopia has committed a crime of espionage by engaging themselves in collecting and leaking political, diplomatic and military intelligences to Eritrean Government which is in a state of war with Ethiopia.

⁹ This charge includes the 7th defendant Eskinder Nega