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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/2, 15/15, 16/4, 16/5 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the ongoing trial on the basis of criminal, including terrorism-related, charges brought against Messrs. **Andualem Arage Walle, Natnael Mekonnen Gebrekidan, Yohannes Terefe Kebede, Kinfemikael Debebe Bereded, Mitiku Damtie Weraku, Eskinder Nega Fenta, Andualem Ayalew Gelaw, Andargachew Tsigie, Birhanu Nega Bongor, Wube Robe, Ephrem Madebo, Mesfin Aman, Zelelie Tsegasselassie, Fasil Yenealem, Abebe Belew, Abebe Gelaw, Neamen Zeleke, Elias Molla (Elias Trit), Dessalegn Arrage Walle, Obang Metho, Mesfin Negash, Abiye Teklemariam, Wubeshet Taye, Elias Kifle, Martin Schibbye, Johan Persson, and Ms. Reyot Alemu.**

The cases of Ms. Alemu and Messrs. Arage Walle, Mekonnen Gebrekidan, Nega Fenta, Taye, Schibbye and Persson were already the subject of an urgent appeal sent to your Excellency's Government on 5 October 2011, by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and

protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Regrettably, no reply has yet been received from your Excellency's Government.

Messrs. Andualem Arage Walle, Nathnael Mekonnen Gebrekidan and Andualem Ayalew Gelaw are members of the Unity for Democracy and Justice Party (UDJ). Mr. Gelaw is also a former Member of Parliament for the Coalition for Unity and Democracy (CUD).

Mr. Eskinder Nega Fenta is a journalist and blogger who wrote an article earlier this year marking the 2004 Ethiopian New Year, which was celebrated on 12 September 2011, and expressing hope that in the New Year freedom of expression and association will be respected in Ethiopia, and that "2004 could be the year when Ethiopians will no more be incarcerated for their political convictions". The article was allegedly published in collaboration with the UDJ.

Messrs. Andargachew Tsigie, Birhanu Nega Bonger, Ephrem Madebo and Mesfin Aman are members of "Ginbot 7", a political opposition group qualified by your Excellency's Government as a terrorist group.

Mr. Zelelie Tsegelassie is the former President of the All Ethiopian Democratic Party (AEDP).

Mr. Fasil Yenealem is a journalist and managing editor of Ethiopian Satellite Television (ESAT).

Mr. Abebe Belew is a journalist and radio host at the radio station Addis Dimts.

Mr. Abebe Gellaw is the founding editor of the multimedia online news platform Addis Voice.

Mr. Neamin Zelleke is the secretary of the Alliance for Liberty, Equality and Justice in Ethiopia (ALEJE), an umbrella organization of opposition movements in Ethiopia.

Mr. Obang Metho is the Director of International Advocacy at the Anuak Justice Council, an NGO advocating for the rights of the Anuak ethnic group in Ethiopia and South Sudan.

Messrs. Mesfin Negash and Abiye Teklemariam are editors of the online edition of the Addis Neger newspaper.

Mr. Woubshet Taye is deputy editor of the independent weekly publication Awramba Times.

Ms. Reyot Alemu is a high school English teacher and contributor to the independent weekly newspaper Feteh. She was editor of a private weekly, Addis Press, before the paper was dissolved several months ago.

Mr. Elias Kifle is editor-in-chief of the web-site Ethiopian Review, based in the United States of America.

Mr. Martin Schibbye is a reporter and Mr. Johan Persson a photojournalist, both of whom work for the Sweden-based news agency Kontinent.

According to the information received:

On 14 September 2011, Messrs. Eskinder Nega Fenta, Andualem Arage Walle and Nathnael Mekonnen Gebrekidan were arrested together with two other members of the political opposition. These arrests allegedly follow the UDJ's New Year message calling for 'peaceful struggle... that brings an all-round freedom to the Ethiopian people'. The day after, they reportedly appeared before a court and were remanded in custody for a period of 28 days.

They are reportedly being held in Maekelawi Federal Detention Center. It is alleged that while in custody Mr. Mekonnen Gebrekidan has been beaten; his clothes have been confiscated, leaving him naked in his cell; water has been poured over him; he has been deprived of sleep; and he has been verbally threatened.

On 10 November 2011, the Ethiopian Federal High Court confirmed that a group of 24 individuals, including Andualem Arage Walle, Natnael Mekonnen Gebrekidan, Yohannes Terefe Kebede, Kinfemikael Debebe Bereded, Mitiku Damtie Weraku, Eskinder Nega Fenta, Andualem Ayalew Gelaw, Andargachew Tsigie, Birhanu Nega Bongor, Wube Robe, Ephrem Madebo, Mesfin Aman, Zelelie Tsegasselassie, Fasil Yenealem, Abebe Belew, Abebe Gelaw, Neamen Zeleke, Elias Molla (Elias Trit), Dessalegen Arrage Walle, Obang Metho, Mesfin Negash and Abiye Teklemariam, were charged with terrorism-related offences. Specifically, they have been charged with a violation of articles 32(1)(a), 38(1) of the Criminal Code of Ethiopia, promulgated in 2004, and articles 2, 3, 4 and 6 of Proclamation No. 652/2009, the Anti-Terrorism law. The details of the charges state that they are leaders and members of "Ginbot 7", which was designated a terrorist group by the Ethiopian Parliament in June 2011. It is further alleged in the charges that the defendants, inter alia, "conspired, planned and prepared to

commit acts of terror by acting as masterminds and perpetrators; (...) set up a terror network both in and outside of the country; recruited members and created a clandestine group; approved guidelines detailing terrorist acts, communication methods and organizational structures; using those guidelines, they sent members (abroad) for training on the commission of terrorist acts and smuggled the trainees to Ethiopia ready to commit terrorist acts; organized a hit squad; used their constitutional rights of association and expression as a cover and a strategy to disseminate their terrorist messages and incitement; using (...) media (...) established for the purpose of their terrorist goals as well as the Internet(...), they propagated their terrorist agenda.”

All defendants are further charged with high treason (in violation of articles 32(1)(a) and 248(b) of the 2004 Criminal Code of Ethiopia) and with espionage (in violation of articles 32(1)(a), 38(1) and 252(1)(a) of the 2004 Criminal Code of Ethiopia). The charges carry further specific allegations against Messrs. Andualem Arage Walle, Eskinder Nega Fenta, Andargachew Tsigie, Birhanu Nega Bongor, Fasil Yenealem, Abebe Belew, Abebe Gellaw, Mesfin Negash and Abiye Teklemariam.

During the hearing of the 24 defendants on 23 November 2011, the judge reportedly characterized the charges against Messrs. Negash and Teklemariam for violating articles 32(1)(a) and 381 of the 2004 Criminal Code and articles 2, 3, 4 and 6 of the Anti-Terrorism Proclamation of 2009 as a typing error. These charges were reportedly dropped. It is reported that 16 of the defendants (Messrs. Andargachew Tsigie, Birhanu Nega Bongor, Wube Robe, Ephrem Madebo, Mesfin Aman, Zelelie Tsegasselassie, Fasil Yenealem, Abebe Belew, Abebe Gelaw, Neamen Zeleke, Elias Molla (Elias Trit), Dessalegn Arrage Walle, Obang Metho, Mesfin Negash and Abiye Teklemariam) are being tried in absentia. It is further reported that none of the defendants who are in detention have had access to a lawyer during the pre-trial period

As alleged in the urgent appeal sent to your Excellency’s Government on 5 October 2011, Mr. Woubshet Taye and Ms. Reeyot Alemu were reportedly brought before Ethiopia’s High Court on 6 September 2011 and charged under the Anti-Terrorism Proclamation of 2009 for the publication of statements “likely to be understood as encouraging terrorist acts” alongside, in absentia, Mr. Elias Kifle. Their lawyers could not attend the hearing as they had not been notified. Both Mr. Taye and Ms. Alemu are allegedly being held at Maekelawi Federal Detention Center. Until this date both journalists had been in detention without having been formally charged since their arrests on 19 and 22 June 2011, respectively. It is reported that neither Mr. Taye nor Ms. Alemu had access to legal counsel during interrogations.

As also noted in the urgent appeal of 5 October 2011, on 6 September 2011, Mr. Martin Schibbye and Mr. Johan Persson were charged under antiterrorism

legislation as well and for violation of migration laws. They allegedly had no legal representation present at the court hearing in question. It is reported that on 3 November 2011, the charges against them of participating in terrorism were dropped, but charges for supporting a terrorist group and entering Ethiopia illegally were maintained. Messrs. Schibbye and Persson have reportedly admitted entering the country from Somalia without official authorisation. They are scheduled to re-appear in court on 26 December 2011.

Public comments by His Excellency, Prime Minister Meles Zenawi, and Government spokesman, Shimeles Kemal, are said to have undermined the defendants' presumption of innocence and could be interpreted as undue influence by the executive on the judiciary. In an interview with the Norwegian newspaper *Aftenposten* published on 10 October 2011, Prime Minister Zenawi stated concerning Messrs. Schibbye and Persson that "these people fought with rebels in the Ogaden. They are not journalists. They are, if anything, messengers working for a terrorist organization." The Prime Minister noted in his opening speech to Parliament on 20 October 2011, that "the Government has sufficient and tangible evidence on the terror suspects under its custody."

Concern is expressed regarding the physical and mental safety and integrity of Messrs. Eskinder Nega Fenta, Andualem Arage Walle and Nathnael Mekonnen Gebrekidan while in detention in view of the allegations of torture of Mr. Mekonnen Gebrekidan. Concern is also expressed that the charges against the individuals subject to this communication are in part based on an overbroad definition of terrorism and may be directly linked to the legitimate exercise of their rights to freedom of expression and of assembly and might form part of an on-going campaign of repression against those who speak out against the Government. Further concern is expressed about alleged pressure put on the judiciary in this case as well as about the lack of respect of fair trial guarantees, notably with respect to an adequate and effective exercise of the right to defence.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to make reference to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular:

Principle 2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Principle 4. There shall not be any inappropriate or unwarranted interference with the judicial process [...].

Principle 6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

With respect to the allegation that none of the defendants who are in detention have had access to a lawyer during the pre-trial period as well as other allegations concerning obstacles to an adequate and effective exercise of the right to defence for some of the defendants, both during interrogation and hearing stages, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990) and, in particular

Principle 1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

Principle 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

Principle 7. Governments shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer.

Principle 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality [...]

Principle 16. Governments shall ensure that lawyers: (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [...]

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on

Civil and Political Rights, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

In relation to the allegations of charges of terrorism-related crimes laid against the above-mentioned individuals, including the initial charges laid against Messrs. Negash and Teklemariam, which have reportedly been dropped by the Federal Court, we would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments such as article 15 of the ICCPR and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct. In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to do or refrain from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist.

In this regard, we would also like to draw the attention to your Excellency’s Government to the concluding observations of the Human Rights Committee on Ethiopia of 19 August 2011 (CCPR/C/ETH/CO/1), which stated the following: “While the Committee appreciates the State party’s need to adopt measures to combat acts of terrorism, it regrets the unclear definition of certain offences in Proclamation 652/2009 and is concerned by the scope of some of its provisions, including the criminalization of encouragement of and inducement to terrorism through publication, which can lead to abuse against the media (arts. 2, 15 and 19). The State party should ensure that its anti-terrorism legislation defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly. The State party should ensure that its legislation is limited to crimes that deserve to attract the grave consequences associated with terrorism, and revise its legislation that imposes undue restrictions on the exercise of rights under the [ICCPR].” (at para. 15). The Committee further stated that it “[i]s concerned by [...] the inappropriate application of this law in the combat against terrorism, as illustrated by the closure of many newspapers and legal charges brought against some journalists. [...] The State party should revise its legislation to ensure that any limitations on the rights to freedom of expression are in strict compliance with article 19, paragraph 3, of the [ICCPR] [...] and ensure that media are free from harassment and intimidation.” (ibid., at para. 24).

With regard to the cases of Messrs. Andualem Arage Walle, Natnael Mekonnen Gebrekidan, Eskinder Nega Fenta, Andualem Ayalew Gelaw, Andargachew Tsigie, Birhanu Nega Bongor, Ephrem Madebo, Mesfin Aman, Zelelie Tsegasselassie, Fasil

Yenealem, Abebe Belew, Abebe Gelaw, Neamen Zeleke, Obang Metho, Mesfin Negash, Abiye Teklemariam, Wubeshet Taye, Elias Kifle, Martin Schibbye, Johan Persson, and Ms. Reyot Alemu, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned individuals are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be

ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the aforementioned individuals in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the cases accurate?
2. In relation to the allegations of torture of Mr. Mekonnen Gebrekidan, please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please explain what measures have been taken to ensure the appropriate and effective exercise of the right to defence for all defendants in this case.
4. Please indicate what measures have been taken to ensure that the legitimate right to defend human rights and to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising these rights is guaranteed and respected.
5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
6. Please explain whether and how the requirements of the principle of legality have been observed in connection with the terrorism-related crimes under the 2009 Anti-Terrorism Proclamation that has reportedly formed the basis of the charges against the afore-mentioned individuals, including the initial charges laid against Messrs. Negash and Teklemariam, which have reportedly been dropped by the Federal Court.
7. Please explain in detail how your Excellency's Government qualifies an organization as terrorist and illegal. Are there any procedures in place to appeal such a designation?

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism

Frank La Rue
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