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

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of 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 the promotion and protection of human rights and fundamental freedoms while countering terrorism.

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) Terrorism (2005-4)
ETH 4/2012

31 July 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 15/15.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **alleged sentencing of human rights defender Mr. Eskinder Nega Fenta**.

Mr. Eskinder Nega Fenta is a journalist and blogger who has written for Ethiopian diaspora news sites. He was allegedly previously arrested in 2006 after reporting on the crackdown of protests following parliamentary elections. After being acquitted in 2007, Mr. Nega Fenta's publications were reportedly banned and he was denied permission to establish new newspapers.

The case of Mr. Eskinder Nega Fenta was referred to in urgent appeals sent to your Excellency's Government on 5 October 2011 and 19 December 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 in relation to these communications.

As alleged in the urgent appeal sent to your Excellency's Government on 19 December 2011, Mr. Eskinder Nega Fenta wrote an article in September 2011 to mark

the 2004 Ethiopian New Year, in which he expressed hope that freedom of expression and of association will be respected in Ethiopia. On 14 September 2011, Mr. Nega Fenta was allegedly arrested along with five other individuals, reportedly in connection with the above-mentioned article.

On 10 November 2011, Mr. Nega Fenta, along with 23 other individuals were reportedly charged with terrorism-related offences under articles 32(1)(a), 38(1) of the Criminal Code of Ethiopia and articles 2, 3, 4 and 6 of the Anti-Terrorism Law. The defendants were further charged with high treason under articles 32(1)(a) and 248(b) of the Criminal Code and with espionage under articles 32(1)(a), 38(1) and 252(1)(a) of the Criminal Code. It is reported that none of the defendants had access to a lawyer during their pre-trial period.

According to the information received:

On 27 June 2012, Mr. Eskinder Nega Fenta along with fellow journalists Messrs. Mesfin Negash, Abiye Teklemariam, Abebe Gellaw, Abebe Belew and Fasil Yenealem, who were reportedly in exile and tried in absentia, were found guilty of the above-mentioned charges related to terrorism, treason and espionage.

According to reports, the presiding judge accused the journalists of “attempting to incite violence and overthrow the constitutional order” and the prosecutor allegedly requested sentences of life imprisonment.

On 13 July 2012, Mr. Eskinder Nega Fenta was reportedly sentenced to 18 years in prison. According to sources, the five exiled journalists were sentenced to in-absentia prison terms ranging from eight years to life. The presiding judge reportedly stated that the court gave “due considerations to the charges” and that the sentences were “appropriate”.

Reportedly, this decision forms part of a wider climate of intimidation against human rights defenders and other individuals expressing dissenting views in Ethiopia, resulting from the use of “overly broad” provisions in legislation related to terrorism and to civil society. On 13 July 2012, Mr. Andualem Arage, an opposition activist, was sentenced to life imprisonment for plotting against the government in violation of the anti-terrorism law.

Without expressing at this stage an opinion on the facts of the case, concern is expressed that the charges against the aforementioned individuals and the sentencing of Mr. Eskinder Nega Fenta to 18 years of imprisonment are 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.

In this connection, 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 doing or refraining 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), in which it 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).

Therefore, 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 (ICCPR) 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."

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In this connection, 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 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 12 paragraphs 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.

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 above-mentioned persons 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 formentioned summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information on the legal basis for the charges brought against and the conviction and sentencing of Mr. Eskinder Nega Fenta and the other foermentioned individuals.

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

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons 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.

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

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Ben Emmerson
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fundamental freedoms while countering terrorism