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

027/2012-A

17 February 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 Ethiopia's response to the communication from six mandate holders, dated 5 October 2011, concerning the arrest of journalists for committing crimes of terrorism in Ethiopia.

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

OHCHR REGISTRY

17 FEB 2012

Recipients SPD
(Already registered)

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

RESPONSE OF THE GOVERNMENT

OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

Introduction

This response covers the allegations contained in the communication dated 5 October 2011 and the press release issued by five mandate holders on 2 February 2012. Ethiopia strongly rejects the unfounded allegations by the UN Special Rapporteurs in the press release. Ethiopia has been a victim of terrorism for many years. It is thus as a matter of necessity and not choice, that a separate legislation was issued to prevent terrorism that continuously created havoc in the country thereby exposing innocent civilian population and putting the infrastructure of the economy in constant danger.

Constant with obligations of the country under international human rights instruments, the provisions of the legislation are carefully and meticulously formulated in such a way to strike the right and delicate balance between human rights protection, on the one hand and public safety and national security on the other. Moreover, the legislation is, not only in compliance with the fundamental rights and freedoms enshrined the Constitution, but it is also based on the best practices drawn from countries with well- established democratic systems.

Ethiopia recognizes its obligation to protect citizens and provide them safety and security, which is a basic human right. Accordingly, and in order to fulfill its obligation, the Government has been taking positive measures to protect citizens against the threat of terrorist acts. With a view to ensuring the prevalence of the rule of law, the Government is determined to bring perpetrators of such acts to justice. The Government believes that respect for human rights and the rule of law must be the starting point for the fight against terrorism. Ethiopian law incorporates legal and practical safeguards to prevent ill-treatment of persons suspected of engaging in terrorist activities. The measures taken by the Government to counter terrorism are fully in compliance with universally recognized human rights instruments.

The Case of the Two Swedish Journalists

The allegations made need to be viewed, not in isolation but within the context of the following basic facts.

1. The two Swedish journalists have admitted that they entered illegally into Ethiopia with the Ogaden National Liberation Front (ONLF), a group designated as a terrorist organization by the House of Peoples Representatives of FDRE (Ethiopia Parliament) in accordance with the relevant national laws.
2. The journalists were captured with operatives of this terrorist group following exchange of fires between the group and the Ethiopian Defense Forces.

3. The journalists, before they entered into Ethiopia illegally, were trained how to use firearms by the group and they had frequent contacts with the leaders of the group in London, Kenya and Somalia.

4. Based on the compelling evidence presented to the Court, they have been found guilty of supporting the terrorist group and sentenced each to 11 years of imprisonment.

The Legal Proceedings

- Due process of law was observed with strict adherence to the Ethiopian Constitution as well as International Instruments ratified by Ethiopia during the entire investigation and prosecution.

- In particular, the provisions of Article 20(3) of the FDRE Constitution and Article 14(2) of the International Covenant on Civil and Political Rights regarding the rights of the accused to be presumed innocent until proven guilty and not to be compelled to testify against their will have been duly respected.

- As per Article 20(5) of the FDRE Constitution and Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR), the accused have been informed of their right to be represented by legal counsel of their choice and they have been represented by their own lawyers accordingly.

- The right of the accused to communicate with, and be visited by, their families or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel have been duly observed both before and after the trial in

accordance with Article 22(2) of the FDRE Constitution and Article 14(b) of the International Covenant on Civil and Political Rights (ICCPR). There has not been any formal complaints regarding violation of these rights thus far.

The two Swedish journalists, Johan Perrson and Martin Schibbye, together with two members of the terrorist group, were brought before the Federal High Court of Ethiopia to respond to their charges under the above referred to Anti-Terrorism Proclamation and the Ethiopian Criminal Code.

- The charges brought against the journalists included three counts.
    - The first count was for the violation of Articles 32(1) (a) and 38(1) of the Ethiopian Criminal Code along with article 5(1) (b) of the Anti-Terrorism Proclamation. This charge was for supporting the said terrorist group and the associating themselves with the terrorist group, their illegal entry into the territory of Ethiopia acting as journalists with the intent to cause damage against the people and the Government of Ethiopia.
    - The second count relates to the violation of Articles 32(1) (a) and 38(1) of the Ethiopian Criminal Code and Article 7 of Anti-Terrorism Proclamation, according to which the journalists took part in the activities of terrorist organization.
    - The third count against the journalists was violation of Articles 32(1) (a), 38(1) and 242 (a) of the Ethiopian Criminal Code. Under this count, the journalists were prosecuted for infringing the political and territorial sovereignty of Ethiopia, not only by entering into the country illegally, but also violating universally accepted principles and national laws.

- The prosecution presented oral testimonies of four witnesses, documents, and video films to prove the charge against the journalists.
    - Two of the witnesses testified that the journalists were arrested at a place called Warder after a combat operation that took place between the Ethiopian defense forces and the ONLF terrorist group.
    - The documentary evidence submitted to the Court included the confession made by the journalists to the police after they were captured and their admission to Federal First Instance Court of Ethiopia in line with Articles 27(2) and 35 of the Ethiopian Criminal Procedure Code.
    - The video footages presented demonstrated the activities of the journalists with the said terrorist group during their arrest. The additional exhibit submitted to the court includes photo and video cameras as well as a laptop.
- After examining the evidence supporting the charges brought by the prosecution, the Court rejected the second charge for the lack of sufficient evidence. Moreover, the Court ordered the journalists to defend themselves with respect to the other two charges after being convinced that the evidence presented by the prosecution against the accused have merits to proceed with the trial. Accordingly, the defense lawyers presented their arguments and the defense witnesses gave their testimony based on their professional expertise in support of the defendants.
- The over-all proceeding, which had been conducted in a fair and transparent manner, was also open to the media, the diplomatic community, international organizations, and all interested persons. After reviewing the case, the Court

gave its verdict finding the journalists guilty. Then after, taking into account, the submission made by the prosecution and the defense lawyers regarding the sentence, the Court finally sentenced the journalists with 11 years of imprisonment.

The case of Elias Kefle *et al*

In the case of Elias kefle and other four defendants (Zerihun Gebregziaber, Woubshet Taye, Hirut Kifle and Reyot Alemu), who were involved in crimes of terrorism, treason and money laundering, the Government followed the legal procedures to bring them to justice. They were also prosecuted for having links with ONLF and Ginbot 7 (group designated by the Parliament as a terrorist organization and responsible for killing of innocent civilians).

Elias Kifle and other six defendants, including Birhanu Nega, Andargachew Tsige, (leaders of the outlawed terrorist organization Ginbot 7) were tried in absentia after the court issued summons in an official and widely read newspapers, Radio and TV for the defendants to appear before the court in accordance with Article 161(2)(a) of the Criminal Procedure Code of Ethiopia.

Andualem Arage and other 24 defendants, including Selashi Hagos, Eskinder Nega, Nethenael Mekonen, Asmmenew Berhanu, Zemane Mola and Debebe Eshetu were also charged with commission for crimes against the Constitution and constitutional order of the country and for having links with Ginbot 7, Oromo Liberation Front (OLF) and ONLF.

Among these suspects, Seleshi Hagos and Debabe Eshetu are released by the court on the ground that the evidence submitted by the prosecution was insufficient.

The trial of Elias Kefle (tried *in absentia*) other 26 defendants, as well as Andualem Arege (et al) was held in open court in their presence, with due respect and observance of the Constitution Federal Democratic Republic of Ethiopia (FDRE) and relevant provisions of the Criminal Law as well as the Criminal Procedure laws of Ethiopia.

All defendants were adequately informed of the nature and contents of the charge brought against them and were given the same in writing, in accordance with the Criminal Procedure Code of Ethiopia. Those defendants present during the proceeding pleaded not guilty. Upon the fulfilment of the requirements stipulated under the Criminal Procedure Code, the Court then ordered the prosecutor to produce evidence.

The Federal Prosecutor summoned witnesses, produced documentary and other corroborative evidence before the Federal High Court third Criminal Bench. It has also produced additional exhibits including electronic messages and telephone conversations and communications between the defendants and leaders of Gihbot 7 and ONLF.

The evidence submitted before the Court clearly show how the defendants planned, organised and cooperated with full intent to align themselves with terrorist organisations and commit crimes of terror. It also proved beyond reasonable doubt that the defendants intentionally worked with the terrorist organizations to carry

out acts of terrorism by providing information, organizing terrorist cells, supplying financial and material supports.

In the case of Elias Kifle et al and other defendants as well as Andualem Arage and other defendants, the Court has dropped all charges other than counts of their involvement in terrorist acts, money laundering and for collaborating with the terrorist groups including Ginbot 7.

The defendants made statements in reply to the charges and called witnesses in their defence in accordance with Article 142 Sub-Article 1 of the Criminal Procedure Code of Ethiopia. The defendants did so by producing defence witnesses and furnished additional corroborative evidences.

After a scrupulous examination of the oral, documentary and other evidence produced by the Federal Prosecutor and the Defence counsel in accordance with relevant Criminal Procedure Code of Ethiopia, the court passed its judgement against the accused.

The Court sentenced Elias kifle with life imprisonment for financing, recruiting and leading a terror plot. Zerihun Gebregziaber, Woubshet Taye, Reyyot Alemu and Hirut Kifle are sentenced 17 years imprisonment and Birr 50,000 fine, 14 years imprisonment and 33,000 birr fine, 14 years and 36,000 birr fine and 19 years imprisonment respectively for their involvement with terrorist organizations and money laundering.

The Court took into consideration mitigating factors such as personal circumstances including family situation and antecedents before rendering the

sentence. All the defendants have been brought to a public trial and their cases have been heard by an ordinary Court within a reasonable period of time in accordance with article 14(3)(c) of the International Covenant on Civil and Political Rights and Article 20(1) of the FDRE Constitution. In line with article 3(a) of the International Covenant on Civil and Political rights and Article 20(2) of the FDRE Constitution, the rights of the accused to be informed with sufficient particulars of the charge brought against them in a language they understand and be provided with the charges in writing have been respected.

All the accused who were present during the whole trial period in person, have been able to examine by themselves or through their legal representatives all the human, documentary, audio and video evidences brought against them in accordance with Article 20(4) of the FDRE Constitution and Article 14(e) of the International Covenant on Civil and Political Rights. In addition, they defend themselves against all charges and evidences brought against them and they were able to produce documentary and other demonstrative evidences and heard before a court on their defence.

In accordance with Article 14(3) and Article 20(5) of the FDRE Constitution of the International Covenant on Civil and Political Rights (ICCPR), the accused have been informed of their right to be presented by legal counsel of their choice, and for those unable to secure the service of lawyer for themselves the Government guaranties where the interest of justice so required.

The accused were also informed of their right to be provided with legal representation at the expense of the Government. Accordingly, they declined the

legal representation at the state expense and opted to be presented by legal counsel of their own choice. All were represented by their legal counsels.

During the trial, from the beginning until the end, it was made possible for the accused to understand every process in the court in the language they understand in accordance with Article 20 sub article 7 of the FDRE constitution and Article 14 (3)(f) the ICCPR.

The right of the accused to communicate with, and be visited by, their families or partners, close relatives, friends, religious councilors, medical doctors and their legal counsel has been observed before and after the trial in accordance with Article 22(2) of the FDRE Constitution and Article 14(b) of the International Covenant on Civil and Political Rights (ICCPR). The Government did not receive thus any formal complaints regarding violation of these rights. The convicted individuals and other defendants are guaranteed the right to appeal against final decision of the court in accordance with Article 20(6) the FDRE constitution and article 14 (5) the ICCPR.