

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

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 Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 rights to freedom of peaceful assembly and of association; 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 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) Terrorism (2005-4) G/SO 214 (53-24)
ETH 4/2011

4 October 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 rights to freedom of peaceful assembly and of association; 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 15/18, 15/15, 16/4, 15/21, 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 arrest of journalists Messrs. **Sileshi Hagos** and **Eskinder Nega** and opposition politicians Messrs. **Andualem Arage**, **Nathanial Mekonnen**, **Asaminew Berhanu**, **Zemene Molla**, and **Debebe Eshetu**, as well as the arrest, detention of and laying of terrorism-related charges against journalists Messrs. **Woubshet Taye**, **Reeyot Alemu**, **Martin Schibbye**, **Johan Persson**, and opposition politician **Zerihun Gebre-Egzabiher**.

Mr. Sileshi Hagos is a contributor to the Addis Ababa based radio station 96.3 FM.

Mr. Eskinder Nega is a journalist who earlier this month, wrote an article marking the 2004 Ethiopian New Year, which was celebrated on 12th September 2011, in which

he wrote “maybe 2004 could be the year when freedom of expression and association will be respected, maybe 2004 could be the year when Ethiopians will no more be incarcerated for their political convictions”.

Messrs. Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu are members of the Unity for Democracy and Justice Party (UDJ) party.

Mr. Zemen Molla is general secretary of the Ethiopian National Democratic Party in Addis Ababa and recently made an application for permission to hold a demonstration in the capital.

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

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

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

Mr. Zerihun Gebre-Egzabiher is the President of the Ethiopian National Democratic party.

Mr. Debebe Eshetu is a well-known actor and opposition leader.

According to the information received:

On 9 September 2011, Mr. Sileshi Hagos was arrested. It is reported that the authorities had confiscated Mr. Hagos’ laptop and subjected him to interrogation already shortly after the arrest of his partner, Ms. Reeyot Alemu in June 2011.

It is reported, that, on 14 September 2011, Messrs. Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Behanu and Zemene Molla were arrested. 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.

It is alleged that when Mr. Nega was brought before the court, journalists and family members were prohibited from entering the court room. This has reportedly given rise to concerns that he may have been subjected to ill treatment while in detention.

On 6 September 2011, Mr. Woubshet Taye and Ms. Reeyot Alemu were reportedly brought before Ethiopia's High Court 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, with the editor of a U.S. based news forum critical of the Ethiopian Government. Their lawyers could not attend the hearing as they had not been notified. Both journalists are allegedly being held at Maekelawi Prison, Addis Ababa. Until this date both journalists had been in detention without having been formally charged since their arrests on 19 June and 22 June 2011 respectively. It is reported that neither Mr. Taye nor Ms. Alemu had access to legal counsel during interrogations.

During a previous court hearing which took place in August, it is reported that Mr. Taye stated that he had been tortured by state officials while he was interrogated in prison. He has allegedly complained of pain in his ear and stomach as a result of the beatings, however, he has reportedly received no medical treatment to date. According to information received, Mr. Taye had previously been arrested following the disputed 2005 elections.

Ms. Alemu's physical and mental health has reportedly deteriorated during her detention and she is now extremely weak. Relatives have been allowed to bring medicines to her but she has allegedly had no access to doctors.

According to information received, both newspapers Awramba Times and Feteah have faced intimidation from authorities and have been targeted in smear campaigns by pro-government State and Government-controlled State media. Since 2008, the editor of Feteah has allegedly been questioned twice by authorities and has had 41 lawsuits filed against him.

It is reported, that, also 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.

These charges follow their arrests by Ethiopian security forces on 30 June 2011 while they were reporting on activities of the "Ogaden National Liberation Front" (ONLF), which has been designated by the Government as a terrorist group in June 2011. The Government allegedly claims that the journalists are working with the ONLF. It is alleged that the Swedish journalists were arrested after they had illegally entered the Ogaden region from Somalia in the company of ONLF members in order to investigate human rights violations at the hands of the Ethiopian armed forces in the region. According to information received, the President of the Ethiopian National Democratic party, Zerihun Gebre-Egzabiher, was also charged in the same case.

Reportedly, in early September well-known actor and opposition member Debebe Eshetu was also arrested.

Charges under the Ethiopian Anti-Terrorism Proclamation, adopted in 2009, carry sentences of up to twenty years imprisonment.

It is further reported that another six individuals, whose identities have not been communicated, are being detained at the Maikelawi Federal Police Central Investigation Centre on accusations of involvement with the banned political party, the “Ginbot 7 group”. It is reported that they may be at risk of ill treatment while in detention. It has not yet been confirmed whether the detainees have had access to their families or their lawyers.

All of the aforementioned human rights defenders have allegedly been vocal critics of the government and have recently undertaken public or written activities advocating for reforms.

According to information received, the aforementioned arrests come in the context of an on-going campaign against opposition politicians and journalists in Ethiopia. It is reported that since March 2011 at least 100 opposition politicians and journalists have been arrested and accused of terrorism-related activities.

Furthermore, in late August and early September 2011, nine opposition party members and 20 other people were reportedly arrested on accusations of terrorism. In March 2011, it is alleged that 89 members of two Oromo political parties were arrested, many of whom were former members of Parliament and had campaigned in the 2010 elections. It is reported, that all those politicians arrested of Oromo ethnic origin have been accused of belonging to the armed group of the “Oromo Liberation Front”.

Concern is expressed regarding the physical and mental safety and integrity of Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Martin Schibbye, Johan Persson, Reeyot Alem, Debebe Eshetu and Zerihun Gebre-Egzabiher, while in detention particularly given the allegations of torture of Mr. Taye and the fact that he and Ms. Alem reportedly have not had access to doctors nor to legal counsel during interrogation. It is likewise of concern that Mr. Schibbye and Mr. Person allegedly had no legal representation at the court hearing on 6 September 2011. Concern is also expressed that the arrests and detention of the aforementioned individuals may be directly linked to the legitimate exercise of their right to freedom of expression particularly given that their arrests follow their recent criticism of the Government. Concern is expressed regarding the charges brought under antiterrorism legislation and it is feared that such charges may be directly related to investigations of and press articles concerning actions of the Government. Finally concern is expressed that the arrest and detention of the aforementioned individuals form part of an on-going campaign of repression against those who speak out against the Government.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Reeyot Alem, Martin Schibbye, Johan Persson, Debebe Eshetu and Zerihun Gebre-Egzabiher, is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

In this connection, 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 7 which stipulates that "Governments shall ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer", and principle 8 which states that "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 also indicates that "Governments shall ensure that lawyers: (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (b) are able to travel and to consult with their clients freely both within their own country and abroad."

We also wish to draw your Excellency's attention to the right to physical and mental integrity of Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Martin Schibbye, Johan Persson, Reeyot Alem, Debebe Eshetu and Zerihun Gebre-Egzabiher.

In this regard, we would like to draw your Government's attention to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. I would also like to draw your Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which urges States "To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture;"

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."

Furthermore, 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 International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others..."

In relation to the allegations of their involvement in crimes of terrorism against Messrs. Woubshet Taye, Reeyot Alem, Martin Schibbye Johan Persson, and Zerihun Gebre-Egzabiher 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).

Finally, 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, 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.

- 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 Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Martin Schibbye, Johan Persson, Reeyot Alem, Debebe Eshetu and Zerihun Gebre-Egzabiher, 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 the above mentioned 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 above summary of these 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 these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information concerning the legal grounds for the arrest and detention of Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Reeyot Alem, Martin Schibbye, Johan Persson, Debebe Eshetu and Zerihun Gebre-Egzabiher, and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, in particular on the right to freedom of opinion and expression, and international human rights norms and standards on the status and protection of human rights defenders as contained in, inter alia, the Declaration on human rights defenders.
5. Please provide details of any measures taken to guarantee the physical and mental safety and integrity of Messrs. Sileshi Hagos, Eskinder Nega, Andualem Arage, Nathaniel Mekonnen, Asaminew Berhanu, Zemene Molla, Woubshet Taye, Reeyot Alem, Martin Schibbye, Johan Persson, Debebe Eshetu and Zerihun Gebre-Egzabiher, while in detention.
6. Please provide details of the charges brought under antiterrorism legislation against Messrs. Messrs. Woubshet Taye, Reeyot Alem, Martin Schibbye Johan Persson, and Zerihun Gebre-Egzabiher, and whether and how the requirements of the principle of legality have been observed in relation to the definition of the crime of terrorism that have reportedly formed the basis of these charges.

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.

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

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