

# ETHIOPIA

SUBMISSION TO THE  
UNITED NATIONS HUMAN  
RIGHTS COMMITTEE

**AMNESTY**  
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**Amnesty International Publications**

First published in 2011 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2011

Index: AFR 25/003/2011  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# INTRODUCTION

Amnesty International is submitting this briefing for consideration by the Human Rights Committee (the Committee) ahead of its examination in July 2011 of Ethiopia's initial report on measures taken to implement its obligations under the International Covenant on Civil and Political Rights (the Covenant). This submission provides an overview of the organisation's main concerns about the failure of the Ethiopian government to comply with its obligations under Articles 7, 9, 14, 19 and 22 of the Covenant.

It is based on Amnesty International's research and information the organization has received since 2005, in particular in relation to the arbitrary arrests and detention of thousands of perceived government opponents, many of whom were subjected to torture and other ill-treatment and violations of their rights to a fair trial, as well as measures taken by the government to silence dissent through restrictions on the legitimate exercise of individuals' freedom of expression and association in the country.

## USE OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

### **Article 7: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment**

The Ethiopian Constitution prohibits the use of cruel, inhuman or degrading treatment or punishment.<sup>1</sup> However, torture is commonplace in pre-trial detention centres around the country, including police stations and military camps.

For many years Amnesty International has received numerous reports of torture and other cruel, inhuman or degrading treatment being used, including at the Federal Police Crime Investigation and Forensic Department of Maikelawi in Addis Ababa, which is reportedly under the command of the National Intelligence and Security Service. Large numbers of political detainees – perceived dissenters, political opposition and alleged supporters of insurgent groups – are detained in Maikelawi. This includes political detainees who are transferred to Maikelawi from different parts of the country. Many detainees undergo pre-trial interrogation there, and are transferred to other detention centres after being charged.<sup>2</sup> Torture is used frequently in Maikelawi detention centre. In many cases the use of torture is

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<sup>1</sup> Article 18, Ethiopian Constitution.

<sup>2</sup> Former detainees at Maikelawi have reported encountering other prisoners who have been detained there for a number of years without charge or trial.

intended to extract information or confessions. Many former detainees in Maikelawi have signed confessions under torture, which have then been used against them in legal proceedings (see also section on fair trial concerns below regarding admissibility in legal proceedings of evidence elicited by torture). The government does not allow the International Committee of the Red Cross to access federal prisons, police stations or military detention centres.

## **USE OF TORTURE AND OTHER ILL-TREATMENT AGAINST DETAINEES AT MAIKELAWI**

The 'Ginbot 7' detainees are a group of 32 military officers and civilians who were arrested in April 2009 for involvement in an alleged coup plot as members of the Ginbot 7 Movement for Justice, Freedom and Democracy. Some of the detainees were first detained in different parts of the country, including military camps in Harar (Oromia region), Shire (Tigray region) and Mekod, near Bahir Dar (Amhara region), before they were transferred to Maikelawi. The other detainees were taken directly to Maikelawi upon arrest. A detainee who was held for six days in Mekod military camp reported that he was beaten severely in the camp.

According to information received by Amnesty International, the Ginbot 7 prisoners were subjected to extensive torture during detention in Maikelawi. Reports of the torture methods used against members of the group include beatings to the point of injury and unconsciousness, whipping with electric cables, beatings on the soles of the prisoners feet, suspending detainees by handcuffs from a nail in the wall, administering electric shocks, kicks to the genitals, and hanging weighted objects from male detainees' genitals. Detainees reported that they were made to stand for hours outside in cold weather, handcuffed and blindfolded. One detainee's wife and 18-month old daughter were also held at Maikelawi at the same time, and the wife was reportedly tortured. Detainees were also threatened including with death and forcible infection with HIV, and subjected to mock executions. Many of the prisoners say that they signed confessions of the charges against them due to sustained torture. Many were also forced to implicate others.

According to reports, at a pre-trial hearing in 2009, attorneys and defendants in the Ginbot 7 case raised with the court concerns about physical and psychological abuse while in pre-trial detention. Former army General Asamenew Tsige, one of five leaders of the alleged coup plot, who was being held in solitary confinement, pleaded for special human rights protection. An attorney for another defendant, businessman Getu Worku, asked that her client be allowed to see a private doctor for injuries suffered in detention. Both requests were denied. Subsequently, government spokesman Shemeles Kemal rejected the allegation of torture, and claimed that in three court appearances, the defendants had not filed any specific charges of abuse or torture. In December 2009 the members of the group were convicted of the charges against them. Some were sentenced to death, while the rest of the group were sentenced to life imprisonment. All were then transferred to Kaliti prison, where they remain.

## **USE OF TORTURE AND OTHER ILL-TREATMENT AGAINST POLITICAL DETAINEES – OROMIA REGION**

In recent years thousands of ethnic Oromos throughout the Oromia region have been detained and tortured, on accusations of being a member of, or supporting, the Oromo Liberation Front (OLF).<sup>3</sup> Those arrested are detained in police stations, prisons, and military camps throughout the region where they are often subjected to torture and other ill-treatment, including beatings, kicking and burning with hot objects. Female detainees have been raped, including with glass bottles and other objects. Many of these detainees are held in poor conditions.

Detention is often arbitrary, with men and women being detained for long periods without charge or trial, and denied access to a lawyer. Some detainees have been released after a few weeks, but many have been detained in this way for several years. Many have been held incommunicado. Arbitrary detention and incommunicado detention both increase the risk of torture or other cruel, inhuman or degrading treatment for these detainees (see also section on liberty and security of person – arbitrary arrests and detention below).

The case of Mulatu Abera, a trader in Harar city, illustrates the patterns of abuses those accused of supporting the OLF face in detention. Amnesty International is concerned that such abuses remain widespread.

In November 2007, Mulatu Abera was arrested for the third time on suspicion of supporting the OLF, and detained for seven months. He was taken to Harerge central police station, where he says he was placed in a hidden underground cell with three other men for nine days. The room was approximately 4m x 1m with no window and a low ceiling which prevented detainees from standing upright. The floor was covered with sharp stones making it painful to sit or lie down. Cold, dirty water was pumped into the room through a pipe in the wall during the night. For the first four days Mulatu was not fed nor was he allowed to leave the cell to use the toilet.

According to Mulatu's testimony the detainees were taken out one by one and beaten severely with ropes, bricks and stones. A metal belt was placed around the rib cage of the detainees and screwed progressively tighter until ribs broke. According to Mulatu the detainees were often unconscious when they were returned to the cell. The beatings took place at night, allegedly to hide the existence of prisoners in the underground cell from observers. On several occasions Mulatu was tied in painful positions, including being tied backwards over a table, and tied around a pole in contorted positions and then suspended off the ground by the guards lifting the pole. Ropes were tied to his genitals and weights were attached to them, or at other times the guards pulled on the ropes. Mulatu was interrogated about who he was in contact with and who he was working with to undermine the government, including which government officials he was involved with.

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<sup>3</sup> These practises have continued throughout the period since Ethiopia ratified the Covenant in 1993. Tens of thousands of Oromos have been arrested during that time.

After Mulatu's name was announced in an international NGO radio broadcast he was moved to a cell above ground where he was kept in solitary confinement for 15 days. In early 2008 he was moved to Harerge prison by court order. In July 2008 he was released on bail and fled the country.

## **LIBERTY AND SECURITY OF PERSON – ARBITRARY DETENTION AND ARREST**

**Article 9: Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**

The arbitrary detention of political opponents in Ethiopia has been widespread in recent years and continues to be of major concern to Amnesty International.

In the wake of the post-election protests in 2005, tens of thousands of suspected government opponents were arrested in November 2005 in different parts of the country in connection with the demonstrations. Those arrested included opposition politicians, journalists and civil society activists. Large numbers of those arrested were released without charge. In November and December 2005, thousands of students were detained, many ill-treated and some killed, following demonstrations throughout the Oromia region calling for the release of Oromo detainees. The students were released in late 2006 and early 2007.

The government continues to suppress dissent in the Oromia region of the country. Between 2006 and early 2011 it has arbitrarily detained thousands of individuals on allegations of being a member of, or supporting, the Oromo Liberation Front (OLF) throughout the region. Many have been held incommunicado, many have been detained arbitrarily for indefinite periods without charge or trial, and for those whose cases do go to trial, court proceedings are often delayed for significant periods. Some detainees have been held arbitrarily for a few weeks, some have been detained for several years without charge or trial, and denied access to a lawyer or a court. Many individuals have been arrested on multiple occasions on the same allegation. A large number of individuals remain currently in detention.

Those arrested are detained in police stations, prisons, and frequently in military camps, throughout the region. Individuals arbitrarily detained in these locations are held in poor conditions and many have been subjected to torture and other ill-treatment, including rape. Individuals detained in military camps have also been forced to cook and wash clothes for soldiers. Arbitrary detention increases the risk of torture for these detainees.

Release from arbitrary detention has in many cases been contingent on agreement to certain conditions which involve significant restrictions on the rights of freedom of movement, association and assembly. These conditions are imposed by the arresting entity, in many



cases without recourse to due process of law. Frequently cited restrictions imposed on detainees released from arbitrary detention include a requirement of regular reporting to the police or local authorities, restrictions on movement – generally prohibitions from leaving the town of residence, and prohibitions on communing with more than a certain amount of people, or with anyone outside the immediate family of the individual.

There have been several incidents of mass arrests of ethnic Oromos in recent years, including from late October 2008 to early 2009, when at least 100 ethnic Oromos were detained. In early 2011 more than 200 Oromos were arrested in further mass arrests of alleged members of the OLF. On 30 March 2011, the government confirmed that 121 were in detention without charge. The government stated that it had obtained court orders to continue to hold the 121 individuals while it gathers evidence against them. Some detainees have subsequently been charged, while some continue to be held arbitrarily, and further arrests have taken place, including of university students. It is reported that the whereabouts of several detainees is unknown.

As in previous years, since 2005 Amnesty International has also continued to receive reports from the Somali region that individuals are arbitrarily detained, often in military camps and police stations, on accusations of being a member of, or supporting, the Ogaden National Liberation Front (ONLF) in the region. These reports are less frequently received, but this is certainly in part a result of the severe restrictions on freedom of movement and exchange of information in the region which mean very little information is obtained from the region.

Former detainees in the Maikelawi investigations centre in Addis Ababa have reported seeing detainees accused of supporting the OLF and the ONLF who have been detained in Maikelawi for a number of years without charge or trial. No independent organisation is allowed access to Maikelawi to verify the reports and assess the situation of detainees in the centre.

## **RIGHT TO A FAIR TRIAL**

**Article 14 (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (...).**

**(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.**

**(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:**

**(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;**

**(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;**

**(c) To be tried without undue delay;**

**(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right (...);**

**(...)**

**(g) Not to be compelled to testify against himself or to confess guilt.**

Amnesty International is seriously concerned about many aspects of the realization of the right to a fair trial in Ethiopia. Some key concerns in relation to this are addressed below.

As set out in the previous section, thousands of government opponents, perceived dissenters, members of the political opposition and alleged supporters of insurgent groups have been arrested in recent years. Many have been detained arbitrarily for indefinite periods without charge or trial. For those whose cases do go to trial, court proceedings are often delayed for significant periods.

## **ACCESS TO A LAWYER**

It has been widely recognised that prompt and regular access to a lawyer for a detainee is an important safeguard against torture, other ill-treatment, coerced confessions and other abuses.<sup>4</sup> The Committee has stated that “all persons arrested must have immediate access to counsel.”<sup>5</sup> Individuals in detention in Ethiopia are frequently denied access to legal counsel. Some are granted access to legal counsel only after significant periods in detention. There are reports that none of the Oromo detainees arrested in the abovementioned March/April 2011 mass arrests have had access to a lawyer at time of writing.

Fear of punitive repercussions and harassment in cases of suspected political opponents, including cases of Oromo detainees, deter private lawyers from standing on behalf of the individuals. An example of possible repercussions was illustrated in the CUD trial of political opponents, journalists and civil society activists in 2006-2007.<sup>6</sup> Berhane Moges, a lawyer for the CUD defendants in the early stages of their trial, was himself arrested in February 2006. At the same time, dozens of other lawyers offering to defend the arrested members of CUD were being harassed and threatened by security officers. Berhane Moges was eventually acquitted of major charges similar to those against the CUD leaders but was charged with illegal possession of a weapon and then released on bail. He was finally sentenced to two months' imprisonment, the period of which he had already been detained.

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<sup>4</sup> Human Rights Committee General Comment 20, para. 11; Report of the UN Special Rapporteur on torture, (E/CN.4/1992/17), 17 December 1991, para. 284.

<sup>5</sup> Concluding Observations of the HRC: Georgia, UN Doc. CCPR/C/79/Add.74, 9 April 1997. para.28.

<sup>6</sup> Discussed in detail below.

The Charities and Societies Proclamation (No.621/2009)<sup>7</sup> places major restrictions on the provision of free legal aid. The law states that organisations are not permitted to spend more than 30 per cent of their budget on administrative costs.<sup>8</sup> A lack of clarity on the definition of ‘administrative costs’ means the provision could be read to include the provision of free legal aid. Prior to the passing of the law, the Ethiopian Women Lawyers Association (EWLA) was providing free legal aid to thousands of Ethiopian women every year. Since the law came into effect, EWLA have laid off 70 per cent of their staff and significantly curtailed their activities.

## **INADMISSIBILITY OF EVIDENCE ELICITED BY TORTURE OR OTHER ILL-TREATMENT**

The Ethiopian Constitution states that “persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.”<sup>9</sup> Nevertheless, there are many reports of cases where confessions and other information elicited by torture have been admitted as evidence in trials.

For example, in the trial of Kifle Tigeneh, elected Member of Parliament for the opposition Coalition for Unity and Democracy (CUD) in Addis Ababa, and 32 other defendants, between March 2006 and May 2007, at least eight defendants complained to the court that they had been tortured in order to elicit confessions, and showed visible signs of torture. Defendants reported being beaten repeatedly, kicked, denied food, and the use of electric shocks. One defendant said he was unable to read the statement he was forced to sign, because his eyes had swollen shut as a result of the beatings. One defendant reported that she signed a confession under torture to secure the release of her sister who was also being tortured. The judges did not open any investigation into the torture allegations, and the statements that had allegedly been made under torture were admitted by the Court as prosecution evidence. Kifle Tigeneh and the 32 other defendants were tried on charges relating to the 2005 post-election demonstrations against the government that were led by the CUD. The trial was one of several trials of opposition members, journalists and civil society members, on charges related to the demonstrations, which took place during this period.<sup>10</sup> (Specific fair trial

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<sup>7</sup> For further details on the Proclamation see the section on freedom of expression and association below.

<sup>8</sup> Article 88(1), Charities and Societies Proclamation, (No. 621/2009).

<sup>9</sup> Article 19(5), Ethiopian Constitution.

<sup>10</sup> Demonstrations took place across the country in June and November 2005 in the wake of general elections in May. The demonstrations were led by the opposition party, the Coalition for Unity and Democracy (CUD), after the CUD alleged rigging of the 15 May 2005 elections by the government and ruling party, the Ethiopian People’s Revolutionary Democratic Front (EPRDF). The demonstrations in Addis Ababa turned violent. Over 180 people were killed by the security forces, six police officers were killed by demonstrators, and considerable damage was caused to city facilities. During and after the demonstrations thousands of protesters were arrested, including opposition politicians, journalists and civil society activists. Large numbers were released without charge, some were tried on charges relating to the demonstrations.

concerns relating to the main CUD trial are covered extensively below.)

In 2009 32 suspected members of the Ginbot 7 Movement for Justice, Freedom and Democracy were tried, along with others tried in absentia, for involvement in an alleged coup plot. All were found guilty and sentenced to either death or life imprisonment. As covered above in the section on torture and other ill-treatment, the accused were repeatedly tortured in pre-trial detention in Maikelawi – the Federal Police Crime Investigation and Forensic Department. As a result of torture many of the 32 Ginbot 7 detainees signed forced confessions. These confessions were accepted by the court and admitted as evidence in the case against those individuals. Many of the detainees were also forced under torture to implicate others.

### **SPECIFIC FAIR TRIAL CONCERNS IN THE MAIN TRIAL OF OPPOSITION PARTY MEMBERS, JOURNALISTS AND CIVIL SOCIETY ACTIVISTS 2006-2008**

The main ‘CUD trial’ of 131 opposition party leaders, journalists and civil society activists took place between May 2006 and December 2007, on charges relating to the 2005 post-election demonstrations.<sup>11</sup> Most of the defendants were arrested in early November 2005 as the demonstrations were beginning or under way. They were not told the reasons for their arrest, nor were their families informed where they were held. Their relatives had to search all possible places of detention and find informal means to locate them.

The charges against the defendants in relation to post-election demonstrations included outrages against the Constitution; attack on the political and territorial integrity of the state; organizing or leading armed rebellion or inciting civil war; obstruction of the exercise of constitutional powers; impairing the defensive power of the state; high treason and genocide. The principal defendants were convicted on most of the charges and most were sentenced to life imprisonment or long prison terms, while some other defendants were acquitted.

In a number of aspects the trial fell short of rights enshrined under article 14 of the Covenant, including the right to be presumed innocent until proven guilty (art 14(2)); and the associated burden of proof on the prosecution; the right to present a defence (art 14(3(d)); and the right to have adequate time and facilities for the preparation of a defence (art 14(3(b)).

The defendants were charged and sentenced for crimes such as “outrages against the Constitution” that are vaguely defined in the Ethiopian Criminal Code, in contrast with the principle of legality, which requires that criminal law be formulated sufficiently clearly and precisely to allow individuals to know what constitutes a crime. As a result, the Court failed to distinguish acts of peaceful criticism or civil disobedience from incitement to violence and/or violent opposition, thereby limiting legitimate exercise of the right to freedom of expression and association.

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<sup>11</sup> The trial was officially known as “*Federal Prosecutor vs. Engineer Hailu Shawel and others*”, case file 43246.

Ethiopian law does not have specific, detailed provisions regulating the admissibility and exclusion of evidence, including the standards that such evidence needs to meet before being admissible in a criminal case. The court exercised wide discretion on this subject. A huge amount of documentary and other evidence was ruled admissible which did not seem to be relevant in proving the relevant criminal offences. The court also allowed the admission of evidence that was allegedly obtained illegally (for example, without the necessary warrants) or was fabricated. The Court did reject some of the additional prosecution evidence, though this was generally those items which dated from after the arrests of the defendants, suggesting that the test of admissibility may have been simplistic. The Court failed to systematically review the evidence presented by the prosecutor, partly through lack of the necessary framework determining admissibility of evidence, which is a vital part of fair trial. Instead, it accepted and based its verdict on evidence that was allegedly obtained illegally, or was of dubious veracity or was not pertinent to the case.

### ***Presumption of innocence***

At the beginning of the trial in May 2006, there were concerns that the presumption of innocence may have been prejudiced by statements made by the Prime Minister, the Minister of Information and state media commentators accusing the CUD of fomenting violence and ethnic hatred, committing treason and planning a Rwanda-type genocide.<sup>12</sup> For most of the trial, the prosecutor referred to the defendants as “conspirators” or “criminals”. Only after a series of objections by the defence counsel for the civil society activists did the Court rule that the prosecutor should cease to use such terms when referring to them. It should be noted that, in doing so, the Court did not make any reference to the presumption of innocence of the defendants.

All but two of the defendants refused to recognise the jurisdiction of the court and did not present a defence. This does not mean they forfeited the right to be presumed innocent. In this situation the court must ensure the evidence presented meets the necessary standards of proof. The documentary, video and audio evidence against the defendants who were not presenting a defence went mostly unquestioned by the court (see above on admissibility of evidence). The judges asked some questions, albeit not systematically, to the prosecutor’s witnesses. This is despite the Criminal Procedure Code stating that “the court may at any time put to a witness *any question which appears necessary for the just decision of the case* (article 136 (4), italics added). Overall, the prosecutor’s evidence went, for the most part, unchallenged by the court in any important respect.

The Human Rights Committee has stated that “no guilt can be presumed until the charge has been proved beyond reasonable doubt.”<sup>13</sup> In June 2007 the Court turned the ruling of April 2007 that the defendants had a prima facie case to answer into a guilty verdict for those defendants who did not present a defence. There is nothing in the 11 June 2007 verdict pointing to the Court having reached the conclusion that the evidence presented by the prosecutor proved beyond reasonable doubt the guilt of the defendants. The issue of the

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<sup>12</sup> “PM warns voters of Rwanda-style bloodshed”, Reuters, 6 May 2005.

<sup>13</sup> Human Rights Committee General Comment 13, para. 7.

prosecutor discharging his burden of proof did not appear to be addressed by the court.

With regards to the two human rights defenders on trial, Daniel Bekele and Netsanet Demissie, the prosecution failed to present any evidence of inciting violence or other criminal activity. A thorough rebuttal was presented by the defence (including by cross-examination of witnesses) of the prosecutor's evidence against them. However, the two defendants were convicted, on the basis of the testimonies of two witnesses whose credibility was questionable. Proof of the charge beyond reasonable doubt was therefore highly suspect. The presiding judge filed a dissenting opinion acquitting them of the charge.

***Right to defend oneself in person or through legal counsel***

Everyone charged with a criminal offence has the right to defend themselves, in person or through a lawyer. The right to defend oneself is inherent in the principle of "equality of arms" and, in order to be fully enjoyed, it requires the right to have adequate time and facilities to prepare the defence (see section below).

In April 2007 the Court made a ruling on the prosecutor's evidence which ordered 38 defendants to defend themselves on a revised list of charges. At least 15 defendants said they were considering presenting a defence. The court recognized this by agreeing to their requests for copies of prosecution evidence and the opportunity to review audio and video evidence. Some defendants had already reportedly taken steps to register that they were going to present a defence, and none of the others had indicated they would not present a defence.<sup>14</sup>

The court had on various occasions told the defendants to present their defence, and the April 2007 ruling contained an order to that effect. However, to Amnesty International's knowledge, the court did not inform defendants that they would be convicted on 11 June 2007 if they had not begun their defence by then. At a hearing on 11 June 2007 the presiding judge cut short the defendants' requests in relation to their possible defence presentations and went for a brief adjournment, but after a much lengthier adjournment suddenly delivered the Court's verdict – which came as a surprise. The judges declared the defendants "guilty as charged" because they had not entered a defence. They did not cite the legal basis for this decision. No attempt was made by the court to call on each defendant and/or their legal counsels to declare whether or not they would present a defence. This occurred despite the fact that some defendants were actually represented by a lawyer and at least 15 had indicated they would present a defence. The right to defend oneself in person or through legal counsel applies to all stages of the criminal proceedings. It is evident that several defendants were prevented from exercising that right at the hearing of 11 June 2007.

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<sup>14</sup> It has been surmised by some that the defendants had "no intention to present a defence" as a political policy in line with their original position. However, there is no evidence to support this belief and no defendant has confirmed it. This argument cannot therefore be used to condone what happened.

***Right to have adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's own choosing***

The right to a fair trial requires access "to all materials that the prosecution plans to offer in court against the accused"<sup>15</sup> as well as the right to confidential communications with counsels.<sup>16</sup> These rights were violated during the CUD trial. At the initial stages of the trial, in accordance with the much-criticized customary procedure in Ethiopia, defence counsel were not allowed to communicate with their clients in full confidentiality, and police or prison officers were present within ear-shot during the meetings. Exchanging communications and documents with their clients was also prohibited. These restrictions were not fully enforced as the trial got underway, although communications were frequently obstructed up to the end of the trial. Furthermore, court documents and transcripts of court proceedings often took several weeks before they were made available to defendants and their lawyers. Documents seized by the police from the homes, offices or computers of defendants were not returned to them. The court denied requests by defendants Daniel Bekele and Netsanet Demissie to return such documents for the purpose of preparing their defence.

Until July 2007 the prosecutor did not provide any documentary or other evidence to support the charges against Daniel Bekele and Netsanet Demissie. This left the two accused with very little information, beyond the generic charge sheet, to enable them to prepare a defence. Throughout their trial, the judges repeatedly refused requests by the defence lawyers to disclose the list of prosecution witnesses. The Court accepted at face value the prosecutor's argument that these witnesses could not be disclosed on account of concerns for their personal security. It is a recognized international standard that in order to have sufficient time to prepare a defence, defendants should be given the list of prosecution witnesses in advance.<sup>17</sup> Although there are exceptions to this standard, including in order to ensure the protection of witnesses, such exceptions should not infringe the right of the defence to equality of arms.<sup>18</sup> Until the day the witnesses appeared in Court, defendants were not even informed of the issues on which the witnesses were called to testify. This severely hampered the preparation of cross-examination and research into the witnesses' reputation and credibility. It should be noted that defendants were also granted the right not to disclose their list of witnesses to the prosecution when the defence case opened.

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<sup>15</sup> Human Rights Committee, General Comment No 32 on the right to equality before courts and tribunals and to fair trial, paragraph 33.

<sup>16</sup> Principle 8 of the Basic Principles on the Role of Lawyers clearly 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. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

<sup>17</sup> The African Commission on Human and Peoples' Rights has stated that "the prosecution shall provide the defence with the names of the witnesses it intends to call at trial within a reasonable time prior to trial which allows the defendant sufficient time to prepare his or her defence." (African Commission, Principles and Guidelines on Fair Trial and Legal Assistance in Africa)

<sup>18</sup> That is, equal treatment by the court of prosecution and defence.

# RESTRICTIONS ON THE RIGHTS TO FREEDOM OF EXPRESSION AND FREEDOM OF ASSOCIATION

**Article 19 (1): Everyone shall have the right to hold opinions without interference.**

**(2) 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 (...).**

**Article 22 (1): 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.**

Since 2005 the government has taken significant measures to silence dissent, including in placing severe legislative restrictions on the activities of civil society organisations and the independent media, and harassing, arresting and prosecuting journalists and civil society activists. These actions have substantially curtailed the legitimate exercise of individuals' freedom of expression and association in the country.

## THE CHARITIES AND SOCIETIES PROCLAMATION (NO.621/2009)

In February 2009 the Ethiopian parliament passed into law the Charities and Societies Proclamation (No.621/2009). The law places excessive bureaucratic restrictions on the work of human rights non-governmental organisations (NGOs) in Ethiopia. The law states that organisations which receive more than 10 per cent of their funding from foreign sources are prohibited from working on a number of human rights issues, including *inter alia*, “the advancement of human and democratic rights; the promotion of equality of nations, nationalities and peoples and that of gender and religion; the promotion of the rights of the disabled and children’s rights; the promotion of conflict resolution or reconciliation; the promotion of the efficiency of the justice and law enforcement services.”<sup>19</sup> Infringements of the law’s provisions could lead to heavy fines or terms of imprisonment for NGO staff. International organisations are completely prohibited from working on these issues in Ethiopia.<sup>20</sup>

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<sup>19</sup> Article 14 (2(j-n)), Charities and Societies Proclamation, (No. 621/2009).

<sup>20</sup> Article 2(4), Charities and Societies Proclamation, (No. 621/2009), ““Foreign Charities’ shall mean those Charities that are formed under the laws of foreign countries or which consist of members who are foreign nationals or are controlled by foreign nationals or receive funds from foreign sources”, in conjunction with Article 14(5) “Those who can take part in activities that fall under Sub-article 2 (j), (k),



Further, organisations are not permitted to spend more than 30 per cent of their budget on 'administrative costs.'<sup>21</sup> A lack of clarity on the definition of 'administrative costs' means the provision could be read to include *inter alia*, the associated costs of investigating and documenting human rights abuses, the provision of free legal aid, advocacy activities, and other essential activities of human rights organisations in the promotion and protection of all rights and freedoms. In some human rights organisations all budgeted expenses could be interpreted as 'administrative costs' under the definition contained in the law.<sup>22</sup>

In addition, the law established a Charities and Societies Agency with broad discretionary powers over non-governmental organisations, including government surveillance and direct involvement in the management and operations of organisations, which could amount to undue interference.

The right to work for a human rights organisation and the right to form or join human rights organisations are essential aspects of freedom of association. The Ethiopian government is obliged under article 22 of the Covenant to create an enabling environment for non-governmental organisations. However, the Charities and Societies Proclamation places a direct legislative impediment on the realisation of this right.

Civil society organisations, particularly non-governmental organisations working on human rights issues, are essential to the upholding of human rights, equality and justice at all levels of society. The Charities and Societies Proclamation undermines the promotion and protection of all rights enshrined within the Covenant, in placing restrictions on essential human rights work including monitoring and documenting violations of those rights by state and non-state actors, and holding the government to account for their performance and adherence to national and international human rights commitments.

The Charities and Societies Proclamation also places major restrictions on the collection, collation and distribution of human rights information.<sup>23</sup> The law therefore significantly impinges on the right of staff members of human rights organisations and of the Ethiopian people to "seek, receive and impart information and ideas of all kinds" in violation of article 19(2) of the Covenant.

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(l), (m) and (n) of this Article shall be only Ethiopian Charities and societies."

<sup>21</sup> Article 88(1), Charities and Societies Proclamation, (No. 621/2009).

<sup>22</sup> Article 2 (14), "'Administrative costs' shall mean those costs incurred for emoluments, allowances, benefits, purchasing goods and services, travelling and entertainments necessary for the administrative activities of a Charity or society."

<sup>23</sup> The law both restricts who (which organisations) can do this work, and as this work could be interpreted as 'administrative costs' it is further restricted as explained above.

### ***Impact of the law on human rights organisations***

The law has had a devastating impact on human rights organisations in Ethiopia, including the Ethiopian Human Rights Council, (now the Human Rights Council, HRCO<sup>24</sup>) and the Ethiopian Women Lawyers Association (EWLA). Before the law was passed, the Ethiopian Human Rights Council was a key human rights organisation in the country, undertaking high quality monitoring and documentation of violations through twelve offices across the country. They have since had to close nine, or 75 per cent, of their offices and have cut at least 75 per cent of their staff (more than 40 people). The Ethiopian Women Lawyers Association (EWLA) was a leading women's rights organisation and the only major organisation focussing exclusively on women's rights advocacy at the national level. EWLA conducted vital work in the field of women and justice, advancing draft legislation to improve protection of women's rights, providing free legal aid for women, and research and publication on issues of law and gender. Since the coming into effect of the law EWLA have cut 70 per cent of their staff and have effectively ceased to function, with the exception of a small amount of free legal aid being provided to women by volunteers.

While both organisations were permitted to re-register during the re-registration procedure demanded by the new legislation, both organisations subsequently learned that their bank accounts had been frozen. The restrictions on foreign funds under the law have been applied retroactively, to funds that had been received prior to the passing of the bill, costing (E)HRCO 9.5 million Birr (approximately US\$566,000) and EWLA 10 million Birr (approximately US\$595,000) in frozen funds.

The underlying impact of the Charities and Societies Proclamation has been to entrench still further, and even to institutionalise, the climate of fear pervading the work of human rights defenders in Ethiopia. The significant majority of human rights defenders are too scared to speak out, or even to have the experiences of their organisation discussed or publicised. In 2009 a coalition of human rights NGOs including EWLA and the (E)HRCO submitted a parallel report on Ethiopia to the UN Universal Periodic Review process. Following the submission the organisations were subjected to serious harassment to the extent that the Director of EWLA and the Secretary General and three other staff members of (E)HRCO fled the country.

## **RESTRICTIONS ON FREEDOM OF ASSOCIATION – TRADE UNIONS**

In February 2008 the Supreme Court upheld a decision to dissolve the Ethiopian Teachers Association (ETA) and hand over its significant assets, including the association's premises, to a rival union formed by the government, also known as the Ethiopian Teachers Association. The original ETA pre-dated the pro-government rival union by some 40 years. The action to dissolve the original ETA and confiscate its assets followed years of harassment, detention and torture of union members. The union had been in sustained conflict with the government, for reasons including criticism of government education policy and resistance to

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<sup>24</sup> The Ethiopian Human Rights Council was compelled to re-name itself the Human Rights Council during the re-registration process under the law.

government interference in the association's affairs.

## **RESTRICTIONS ON PRESS FREEDOM**

Amnesty International is seriously concerned about ongoing restrictions on press freedom in Ethiopia. The stifling effect of the trial of a number of journalists relating to the post-election demonstrations of 2005 as well as restrictive press laws and ongoing harassment of journalists contribute to a climate that prevents many journalists from freely exercising their right to freedom of expression.

### ***Trial of journalists 2006-2007***

As noted above, from May 2006 to December 2007 131 defendants stood trial on charges relating to the post-election demonstrations of 2005. Defendants in the trial included members of the political opposition CUD party and civil society activists as well as 14 journalists, and six publishing companies.<sup>25</sup> The charges against the journalists included 'outrages against the Constitution or the Constitutional order'<sup>26</sup> for inciting the public by means of their publications to riot and violence. For this, as well as for other charges, the prosecutor invoked article 258 of the Criminal Code, which provides that for those crimes which carry life imprisonment or death in aggravated circumstances, the Court shall pass a death sentence where, *inter alia*, the crime has been committed "during or under threat of war or internal disturbance". All defendants, including the journalists, thus faced possible death sentences if convicted.

The grounds for the charges against the journalists on trial were that in general they reflected the views of the opposition leaders. About half of the journalists charged were acquitted, while the remainder were convicted. Four out of the six publishing houses were convicted on certain charges and fined. None was alleged to be a member of the political opposition or proved to have incited violence or participated in it. All defendants were subsequently given a Presidential pardon.

Amnesty International concluded that the convicted journalists did not receive a fair trial and were convicted on account of exercising the right to freedom of expression. Publication of criticisms of the government, ruling party and the National Election Board cannot be taken as attempts to overthrow the government or the Constitution by violent means. Amnesty International considers the arrests, trial and convictions of these journalists constituted attacks on the freedom of the media.

Those journalists involved in the trial faced further restrictions on their freedom of expression since the end of the trial. Some 13 independent newspapers were shut down in relation to the post-elections demonstrations, including the publications of all the journalists charged in the trial. None have been granted licences to re-open. Serkalem Fasil, Eskinder Nega and Sisay Agena, former publishers of Ethiopia's largest circulation independent newspapers, and

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<sup>25</sup> Issues relating to the right to a fair trial for defendants in this trial are also covered extensively above.

<sup>26</sup> Article 238, Ethiopian Criminal Code.

who were defendants in the trial, have been denied licences to open new newspapers. The fines imposed against the four publishing houses in the 2007 trial decision were overturned by the presidential pardon of those convicted. However, the government has continued to pursue the collection of the fines through the judicial system. In February 2009 the High Court ruled that the 2007 presidential pardon also extended to the fines. The government appealed the decision to the Federal Supreme Court. In March 2010 the Federal Supreme Court reinstated the fines, and ordered the publishing houses to pay fines ranging from 15,000 to 120,000 Birr (US\$900-\$7,250).<sup>27</sup> In response to the publishing houses' owners' inability to pay the fine, the government has requested that their assets be frozen by the High Court.

### ***Restrictive press law***

A new press law, the Mass Media and Access to Information Proclamation, was passed by parliament in December 2008. This legislation presents cause for concern over requirements of registration, limits to access to information, and strict penalties, including impoundment and fines for offenses including defamation. Previous drafts had been criticized by international human rights and freedom of expression organisations for introducing more restrictions on freedom of the media than the previous Press Law and the revised Penal Code.

### ***Harassment of journalists***

Ethiopia's independent press is barely able to function. Journalists work in a climate of fear because of the threat of state harassment and prosecution, and significantly self-censor in their work. A number of journalists have fled the country in recent years in the face of harassment and threats of prosecution. In 2009 the management team of the independent Addis Neger newspaper shut down the print version of the newspaper and a number of senior staff members fled the country in response to sustained harassment.

The following individual incidents Amnesty International documented in recent years illustrate the harassment that journalists face in Ethiopia:

In February 2011 journalist Eskinder Nega was detained by heavily armed Federal Police officers, and taken to the head office of the Federal police, where the Deputy Commissioner told Eskinder that he had been summoned for attempting to incite protests similar to those in Egypt or Tunisia. This accusation related to an article Eskinder had posted on a website a week previously. He was warned to cease writing articles that the government considers to be inflammatory, or face imprisonment.

In May 2010, Woubshet Taye, editor-in-chief of the Awramba Times, resigned following a warning from the Ethiopian Broadcasting Authority that he would be "responsible for any bloodshed that may occur in connection with the coming election". The Awramba Times had featured an article the week before about a pro-democracy demonstration during the 2005 election period.

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<sup>27</sup> Serkalem Publishing: 120,000 birr; Sisay Publishing: 100,000 birr; Zekarias Publishing: 60,000 birr; Fasil Publishing: 15,000 birr.

In January 2010, Ezeden Muhammad, editor and publisher of Ethiopia's largest Islamic weekly, *Hakima*, was sentenced to one year's imprisonment for incitement in connection with a 2008 column criticizing comments made by the Prime Minister. In September, Ezeden Muhammad was released, but his 17-year-old son Akram Ezeden, who had been acting as editor during his father's detention, was arrested on the same day. Akram Ezeden was later released and the case against him dropped.

In 2009 Ibrahim Mohamed Ali, editor of the *Salafiyya* newspaper, and Asrat Wedajo, editor of the former *Seife Nebelbal* newspaper, were sentenced to one year in prison on charges dating back to 2005. They were reportedly tried under an outdated press law which had since been superseded by the new media law passed in 2008.

On World Press Freedom Day in May 2008 Alemayehu Mahtemework, publisher of the monthly *Enku*, was detained and 10,000 copies of his publication impounded. He was released after five days without charge and copies of the magazine were later returned to him.

#### ***Restrictions on access to information***

On 4 March 2010, Voice of America reported that its Amharic-language broadcasts were being jammed. In March 2010, the Prime Minister declared that the radio station had been broadcasting "destabilizing propaganda" and compared it to Radio Television Libre des Milles Collines (RTLM), a Rwandan radio station that incited ethnic hatred before and during the 1994 Rwanda genocide.

Internet content is censored by the state and some websites are blocked. Digital communications are subject to high levels of monitoring. Information is also closely controlled by state bodies including the Radio and Television Agency (ERTA) and Ethiopian Press, the state publisher.

## **RECOMMENDATIONS**

In light of Amnesty International's ongoing concerns about the human rights situation in Ethiopia the organisation has been calling on the government of Ethiopia to:

#### *Torture and other ill-treatment*

- Immediately end torture and other ill-treatment of prisoners, in line with the prohibition in the Ethiopian Constitution of cruel, inhuman or degrading treatment or punishment<sup>28</sup>, and Ethiopia's obligations under the ICCPR; initiate independent and impartial

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<sup>28</sup> Article 18, Ethiopian Constitution.

investigations into all such allegations, and bring perpetrators to justice in accordance with international fair trial standards;

- Extend access to prisons and other places of detention and to prisoners, to appropriate non-governmental bodies and also to international humanitarian agencies such as the International Committee of the Red Cross (ICRC), to allow such bodies to independently inspect and monitor prison conditions, and consider their recommendations on prison improvements and humanitarian assistance to prisoners.
- Afford greater powers to judges to enforce their orders to the Prison Administration on providing humane treatment of prisoners and acceptable prison conditions.
- Ban disciplinary prison measures which constitute torture or other cruel, inhuman or degrading treatment or punishment, and ensure the observation of proper mechanisms to ensure that disciplinary measures are not imposed arbitrarily or unfairly.

*Political prisoners and prisoners of conscience*

- Immediately and unconditionally release all prisoners detained solely because of their peaceful expression of their political, religious or other conscientiously held beliefs;
- Immediately and unconditionally release all detainees suspected of support for the OLF or ONLF or charge them with a recognisable criminal offence, and try them in a timely manner in trials which meet international standards of fair trial;
- Charge all other prisoners with a recognisable criminal offence or immediately and unconditionally release them;
- Grant all detainees access to their families and provide any medical treatment they may require.

*Fair trial*

- Guarantee all detainees a fair trial in a timely manner in accordance with international standards;
- Guarantee the enforcement of the laws requiring that any arrested person is brought before a court within 48 hours and is informed of the reasons for arrest, and that their families are promptly informed of their whereabouts in custody.
- Provide all detainees immediate access to a lawyer of their choice, and grant them a fair trial in accordance with international standards;
- Review the Criminal Procedure Code and bring it fully in line with international standards of fair trial, including by establishing clear rules on admissibility of evidence, standards and burden of proof, advance disclosure of witnesses, right to present a defence, confidential consultation with legal counsel, inadmissibility of evidence obtained by torture and other cruel, inhuman or degrading treatment or punishment, and obligations of judges to thoroughly investigate allegations of torture and other ill-treatment and bring perpetrators to justice.
- Ensure that judges, prosecutors, police and prison officials are fully trained in human rights law, with particular focus on the international standards of fair trial and the human rights of detainees.

*Freedom of expression and freedom of association*

- Review the Criminal Code to ensure that provisions relating to crimes threatening the security of the state and other provisions do not criminalize the right to freedom of expression, association and assembly, as guaranteed by the Constitution and international human rights treaties.
- Ensure that no-one is arrested, detained, charged, tried, convicted or sentenced on account of the peaceful exercise of their right to freedom of expression, association and assembly, as guaranteed by the Constitution and international and regional treaties ratified by Ethiopia.
- Ensure that no journalist or media personnel should be arrested, charged, tried, convicted or imprisoned, or their media organization banned or punished with a fine, on account of exercising their right of freedom of the media guaranteed by the Constitution and international and regional treaties ratified by Ethiopia
- End the harassment and persecution of journalists and media who publish reports or opinions critical of the government or public officials.
- Remove restrictions on freedom of expression in the Mass Media and Access to Information Proclamation (2008) that do not conform to rights of freedom of expression specified in international human rights law. Pending such legal reform, do not use charges that criminalize legitimate exercise of the right to freedom of expression. The development of professional media standards and protection of the reputations of individuals needs be accomplished in full conformity with international and regional human rights standards.

*Charities and Societies Proclamation*

- Immediately amend the Charities and Societies Proclamation to omit provisions which restrict human rights activities carried out by non-governmental organizations, both local and international, and which in effect prohibit and criminalize much of the work of human rights defenders and severely restrict humanitarian organizations, in violation of the rights of freedom of expression, association and assembly;
- Provide guarantees that all international and national non-governmental organizations in Ethiopia can operate freely and without fear of harassment, intimidation or arbitrary arrest in accordance with the UN Declaration on Human Rights Defenders.
- Explicitly recognize, respect, protect and promote the rights of human rights defenders as set out in international and regional standards as well as the Constitution.

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