

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. Mads Andenas (Norway)
Vice-Chairman: Mr. Vladimir Tochilovsky (Ukraine)
Mr. Mr. José Guevara (Mexico)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Sètonджи Roland Adjovi (Benin)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
**Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel
Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye**

Citizens of the Federal Democratic Republic of Ethiopia

v.

Government of the Federal Democratic Republic of Ethiopia

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, and 24/7¹

Submitted Jointly By:

The Ethiopian Human Rights Project

and

Freedom Now

January 26, 2015

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. Resolution 6/4, 15/18, and 24/7 also extending the mandate of the Working Group on Arbitrary Detention, were adopted by the Human Rights Council which, in accordance with U.N. General Assembly Resolution 60/251, has “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” G.A. Res. 60 /251, ¶ 6 (Mar. 15, 2006).

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY
ARREST OR DETENTION**

IDENTITY

1. See Section I(B)(1), below.

ARREST

1. **Date of arrest:** Authorities arrested the detainees on April 25 and 26, 2014 and have held them in detention since that time.
2. **Place of arrest (as detailed as possible):** See section I(B)(1), below.
3. **Forces who carried out the arrest or are believed to have carried it out:** National security police and officers from the Maekelawi Federal Police Station in Addis Ababa.
4. **Did they show a warrant or other decision by a public authority?** Yes.
5. **Authority who issued the warrant or decision:** Ethiopian judicial authorities.
6. **Relevant legislation applied (if known):** The detainees were initially detained for the purpose of investigation under Article 59.2 of the Criminal Code until May 17, 2014, when the government invoked the investigatory detention authorization under Article 20 of the Anti-Terrorism Proclamation.

DETENTION

1. **Date of detention:** Arrested April 25 and 26, 2014; charged July 17, 2014.
2. **Duration of detention (if not known, probable duration):** Nine months.
3. **Forces holding the detainee under custody:** Ministry of Federal Affairs.
4. **Places of detention (indicate any transfer and present place of detention):** The detainees were initially held at the Maekelawi Federal Police Station in Addis Ababa. The government is now detaining the women at Kaliti Prison and the men at Kilinto Prison, both of which are near Addis Ababa.
5. **Authorities that ordered the detention:** The Arada First Instance Court (pre-charge) and the Ledeta Federal High Court (post-charge).
6. **Reasons for the detention imputed by the authorities:** The detainees are being held in pretrial detention on charges of terrorism. See “Statement of Facts,” below.
7. **Relevant legislation applied (if known):** In charging the detainees, the Ethiopian government invoked Article 4 of the Anti-Terrorism Proclamation and Articles 27(1), 27(2), 32(1), 32(2), 38(1), 38(2) and 238(1) of the Criminal Code. Article 20(5) of the Anti-Terrorism Proclamation requires pretrial detention for terrorism suspects.

DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

I. Statement of Facts

Part A of this Section describes the Ethiopian government’s history of suppressing free expression and prosecuting peaceful bloggers and journalists on national security charges. Part B presents the case of the six Zone 9 bloggers and three independent journalists wrongly detained in Ethiopia since April 2014.²

A. Country Background

The Federal Democratic Republic of Ethiopia (Ethiopia) purports to be a constitutional democracy; however, in practice the government is controlled by a single political party – the Ethiopian People’s Republican Defense Force (EPRDF). Officially a coalition of regional parties under a system known as “ethnic federalism,” the EPRDF and its allies have controlled a majority of every elected body at both the regional and national level since the current Constitution’s inception in 1995.³ Indeed, in the most recent parliamentary elections, the ruling coalition claimed 544 of 547 legislative seats.⁴

The Constitution establishes a parliamentary federal government with an independent judiciary.⁵ Despite this requirement, however, Ethiopian criminal courts remain “weak, overburdened, and subject to political influence.”⁶ The executive branch has asserted the authority to override judicial decisions⁷ and constitutional interpretation has historically followed the political

² Facts contained in Section I that are not directly attributed to another source have either been provided by the Ethiopian Human Rights Project or redacted at the request of the source.

³ Asnake Kefale, *The (Un)making of Opposition Coalitions and the Challenge of Democratization in Ethiopia, 1991-2011*, 5 *Journal of Eastern African Studies* 4 (2011), at 683, available at <http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.642525>.

⁴ *Final Report—House of People’s Representatives and State Council Elections*, European Union Election Observation Mission (May 23, 2010), at 33, available at http://eueom.eu/files/pressreleases/english/final-report-eueom-ethiopia-08112010_en.pdf.

⁵ Article 78(1) provides that “An independent judiciary is established by this Constitution” and Article 79(2) provides that “Courts of any lever [sic] shall be free from any interference of influence of any governmental body, government official or from any other source.” *Constitution of the Federal Democratic Republic of Ethiopia* (Aug. 21, 1995) (hereinafter *Constitution of Ethiopia*), available at <http://www.refworld.org/docid/3ae6b5a84.html>.

⁶ *2013 Country Report on Human Rights Practices: Ethiopia*, U.S. Dept. of State, at § 1(e) (hereinafter 2013 State Department Report), available at <http://www.state.gov/documents/organization/220323.pdf>. In one instance, a judge that sentenced the Minister of Justice to four weeks of jail for failing to hand over a suspect “was soon transferred, a move widely seen as punishment to the judge, and the minister was quickly pardoned by the President at the Prime Minister’s request.” Judge R.R. Mzikamanda (High Court of Malawi), *The Place and Independence of the Judiciary and the Rule of Law in Democratic Sub-Saharan Africa*, South African Institute for Advanced Constitutional, Public, Human Rights, and International Law (Nov. 14, 2007), at note 219, available at <http://www.docstoc.com/docs/70097124/1-the-place-of-the-independence-of-the-judiciary-and-the-rule-of>.

⁷ Assefa Fiseha, *Separation of Powers and Its Implications for the Judiciary in Ethiopia*, 5 *Journal of Eastern African Studies* 4 (2001), at 708 (citing Regulation 155/2008 at art. 37), available at <http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.649576?journalCode=rjea20#.VJnTxsBA>.

interests of the ruling coalition.⁸ Indeed, the repeated misuse of criminal and terror charges against peaceful activists and journalists in Ethiopia strongly indicates that the courts operate with little independence from the prosecuting authorities.⁹

1. Limits on Political Participation and the Press

The openness of political contests in Ethiopia, and the ability of the press to report on the campaigns, have fluctuated significantly and worsened in recent years. While the elections of 2000 and 2005 occurred with relatively few pre-vote restrictions, a crackdown followed the contested results of the 2005 election – which included the widespread use of arbitrary detention against opposition activists and critical journalists.¹⁰

Despite initial openness and widespread participation by the opposition in 2005,¹¹ the government quickly cracked-down when protestors began alleging election fraud. Clashes between some demonstrators and police were blamed on the opposition and although political leaders called for calm, hundreds of Ethiopians were arrested and 40 were killed.¹² Over the next few months, thousands more opposition members were reportedly detained nationwide.¹³ The EPRDF also systematically undermined opposition parties by requiring citizens to hold party membership to obtain community goods, from aid subsidies to employment and education; as a result, the ruling coalition won over 99% of the parliament in 2010.¹⁴

In addition to the imprisonment of journalists and oppositionists – which the Working Group

⁸ While the judicial function is vested in the courts, the national parliament is responsible for both legislation and constitutional interpretation. Under recent revisions to the law, however, the courts are required to implement constitutional provisions. Further, recent revisions to the judicial code now require the courts to follow the principal of precedent – creating some debate about the power of the courts to interpret constitutional provisions. Chi Mgbako, et. al., *Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights*, 32 *FORDHAM INT'L L. J.* 259 (2008), at pp 275, 286, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2193&context=ilj>.

⁹ See e.g. *Eskinder Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No 62/2012 (Nov 21, 2012) (finding a violation under categories II and III).

¹⁰ See generally, *Final Report: Observing the 2005 Ethiopian National Elections*, The Carter Center (Dec. 2009) (hereinafter Carter Report), available at http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/Ethiopia-2005-Finalrpt.pdf. See also, *Final Report: Ethiopia Legislative Elections 2005*, European Union Election Observation Mission, available at http://www.eods.eu/library/FR%20ETHIOPIA%202005_en.pdf.

¹¹ For example, while there were pre-election complaints of abuse, the government allowed opposition parties to peacefully assemble, gave them coverage in state-controlled media, and lifted the ban on the Ethiopian Free Press Journalists' Association in advance of the 2005 election. Carter Report, *supra* note 10, at 4, 17. See also *Ethiopia: Ban on Media Association Lifted*, Integrated Regional Information Network (Mar. 7, 2005), available at <http://www.irinnews.org/report/53288/ethiopia-ban-on-media-association-lifted>.

¹² *Ethiopia: Opposition agrees to abide by non-violence pact*, United Nations Integrated Regional Information Network, June 13, 2005, available at <http://www.irinnews.org/fr/report/54891/ethiopia-opposition-agrees-to-abide-by-non-violence-pact>. Carter Report, *supra* note 10, at 25.

¹³ *Urgent Call! Human Rights Violations Committed Against Members and Supporters of Opposition Parties Should be Stopped*. (Special Report No. 89), Ethiopian Human Rights Council (Oct. 17, 2005), at 1, available at <http://www.ethiomeia.com/fastpress/ehrc089.htm>. The EHRC was able to confirm 261 of these claims for the period from September 25th to October 17th (*Id.* at 2-12).

¹⁴ *One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia*, Human Rights Watch (Mar. 2010), at 2-3, available at <http://www.hrw.org/sites/default/files/reports/ethiopia0310webwcover.pdf>.

found to violate international law¹⁵ – the Ethiopian government also sought to squelch free speech through a variety of legal mechanisms. Newsrooms were raided and publications were blocked.¹⁶ In 2008, the Parliament passed the Freedom of the Mass Media and Access to Information Proclamation.¹⁷ The new law established registration requirements and criminal penalties for defamation severe enough to prompt the UN Human Rights Committee to express concern that the measures violated the International Covenant on Civil and Political Rights.¹⁸ The government also targeted civil society organizations with its 2009 Charities and Societies Proclamation, which severely limits access to international support for human rights organizations and was found by rights groups and the UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association to violate international standards.¹⁹ As a result of such laws, Ethiopia continues to be ranked among the worst violators of free expression.²⁰

2. Misuse of Anti-Terror Legislation Against Journalists

In 2009, Ethiopia passed the controversial Proclamation No. 652/2009 (Anti-Terrorism Proclamation), which purports to target terrorist activity while recognizing Ethiopia's international obligations.²¹ The text and its implementation, however, have been roundly criticized by the international community – especially regarding the exceedingly broad provisions on incitement and encouragement of terrorism. Rights groups warned before passage of the law that the language was too vague and as a result, “a journalist interviewing an opposition politician... could be deemed to be ‘encouraging’ terrorism merely by publicizing the

¹⁵ *Birtukan Mideksa Deme v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 28/2009 (Nov. 25, 2009).

¹⁶ *Countries at the Crossroads 2007 – Ethiopia*, Freedom House (Sept. 25, 2007), at ¶ 24, available at <http://www.unhcr.org/refworld/docid/4738692464.html>. According to the imprisoned journalist Eskinder Nega, thirteen publications in total, “the entire genre of Ethiopia’s free press,” were closed following the 2005 unrest. Eskinder Nega, *Ethiopia: Banned journalists summoned to Supreme Court over 2005 elections*, Jimma Times (Dec. 2, 2009), at ¶ 4, available at <http://ecadforum.com/News/ethiopia-banned-journalists-summoned-to-supreme-court-over-2005-elections>.

¹⁷ Freedom of the Mass Media and Access to Information Proclamation, [Ethiopian] House of People’s Representatives, No. 590/2008 (published Dec. 4, 2008), available at <http://www.unhcr.org/refworld/docid/4ba7a6bf2.html>.

¹⁸ *Concluding Observations of the Human Rights Committee: Ethiopia*, UN Human Rights Committee (Aug. 19, 2011), at 7, available at <http://www.unhcr.org/refworld/docid/4fb2488d2.html>. See also Najum Mushtaq, *Rights-Ethiopia: New Media Law – New Threat to Press Freedom* (July 8, 2008), available at <http://www.ipsnews.net/2008/07/rights-ethiopia-new-media-law-new-threat-to-press-freedom/>.

¹⁹ *NGO Law Monitor: Ethiopia*, International Center for Non-Profit Law (updated October 4, 2014), available at <http://www.icnl.org/research/monitor/ethiopia.html>.

²⁰ Freedom House classifies both the internet and the press in Ethiopia as “Not Free.” *Freedom in the World 2014*, Freedom House, available at http://freedomhouse.org/report-types/freedom-world#_VFJJDTTF9P5. Reporters Without Borders ranks Ethiopia 143rd out of 180 countries in its press freedom index. *World Press Freedom Index 2014*, Reporters Without Borders (Jan. 31, 2014), available at http://rsf.org/index2014/data/index2014_en.pdf. The Committee to Protect Journalists has repeatedly pointed out that Ethiopia is Africa’s second worst jailer of the press. See e.g. *Ethiopian Court Sentences Journalist to Three Years in Prison*, Committee to Protect Journalists (Oct. 27, 2014), available at <https://cpj.org/2014/10/ethiopian-court-sentences-journalist-to-three-year.php>. Similarly, in 2013, Freedom House ranked Ethiopia 177th out of 197 countries. *Global Press Freedom Rankings 2013*, Freedom House, available at <http://www.freedomhouse.org/sites/default/files/Global%20and%20regional%20tables.pdf>.

²¹ Anti-Terrorism Proclamation No. 652/2009, [Ethiopian] House of People’s Representatives (published Aug. 28, 2009) (hereinafter Anti-Terrorism Proclamation), at Preamble (“WHEREAS, in order to adequately fight terrorism, it is necessary to cooperate with governments and peoples of our region, continent and other parts of the world that have anti-terrorism objectives and particularly, to enforce agreements that have been entered into under the United Nations and African Union”).

views of the interviewee.”²²

Unfortunately, the concerns of the international community were well-founded. Even before the law had passed, the Ethiopian government accused *Al-Jazeera* of assisting terrorist organizations for its reporting on the restive Ogaden region.²³ Once the law was in effect, the Ethiopian government quickly backed its accusations against reporters with criminal charges.²⁴ From June to December of 2011, ten journalists were charged with terrorism, including two Swedish nationals.²⁵

In response to these prosecutions, a number of international authorities have spoken-out about the misuse of anti-terror laws to silence peaceful activists and journalists:

- Five UN special procedure mandate holders – including the Special Rapporteur on Counter-Terrorism and Human Rights – “expressed their dismay at the continuing abuse of anti-terrorism legislation to curb freedom of expression in Ethiopia.”²⁶
- The former UN High Commissioner for Human Rights indicated that she was “‘seriously alarmed’ by the current climate of intimidation against journalists and human rights defenders in Ethiopia due to an overly broad interpretation of laws concerning terrorism and civil society in the country.”²⁷
- The African Commission on Human and Peoples’ Rights stated that it was “[g]ravelly alarmed by the arrests and prosecutions of journalists and political opposition members, charged with terrorism and other offenses including treason, for exercising their peaceful and legitimate right to freedom of expression and association.”²⁸

In *Eskinder Nega v. Ethiopia*, the UN Working Group on Arbitrary Detention joined these voices and found that the government’s use of the Anti-Terrorism Proclamation to punish the defendant

²² *An Analysis of Ethiopia’s Draft Anti-Terrorism Law*, Human Rights Watch, Jun. 30, 2009, at 6, available at <http://www.hrw.org/node/84132>. Similar concerns were voiced by Article 19 (*Ethiopia: ARTICLE 19 Comments on Anti Terrorism Proclamation*, Article 19 (Mar. 31, 2010), at 1, available at <http://www.unhcr.org/refworld/docid/4bcdb6b118.html>), Amnesty International (*Dismantling Dissent: Intensified Crackdown on Free Speech in Ethiopia*, Amnesty International (2011), at 21, available at <http://www.amnestyusa.org/sites/default/files/afr250112011en.pdf>), and the UN Human Rights Committee (*Summary Record of the 2804th Meeting, Held at the Palais Wilson, Geneva, on Monday, 11 July 2011 [CCPR/C/SR.2804]*, UN Human Rights Committee (102nd Session) (Apr. 11, 2012), at ¶ 19, available at <http://www.un.org/Docs/journal/asp/ws.asp?m=CCPR/C/SR.2804>).

²³ *One Hundred Ways*, *supra* note 14, at 51.

²⁴ The first charges leveled against journalists under the new law occurred in late 2009. *Id.* at 50.

²⁵ *CPJ condemns trial of Swedish journalists in Ethiopia*, Committee to Protect Journalists (Dec. 21, 2011), available at <http://www.cpj.org/2011/12/cpj-condemns-trial-of-swedish-journalists-in-ethio.php>.

²⁶ *Ethiopia: UN Experts Disturbed at the Persistent Misuse of Terrorism Law to Curb Freedom of Expression*, Office of the High Commissioner for Human Rights (Feb. 2, 2012), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11793&LangID=E>.

²⁷ *UN Rights Chief “Seriously Alarmed” by Intimidation of Journalists in Ethiopia*, UN News Center (July 18, 2012), available at <http://www.un.org/apps/news/story.asp?NewsID=42498#.VFKFeDTF9P4>.

²⁸ *Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia*, African Commission on Human and Peoples’ Rights, Res. 218 (51st Sess.) available at <http://www.achpr.org/sessions/51st/resolutions/218/>.

for his peaceful work as a journalist and blogger violated international law. In that case, in addition to finding procedural violations, the Working Group found that:

Mr. Nega was sentenced to 18 years of imprisonment for terrorism and treason offenses. These provisions, and the use of national security in this context, are overly broad [...]

The source has provided convincing facts that the judgment is a consequence of Mr. Nega's use of his right to freedom of expression and his activities as a human rights defender, which the Government has not rebutted. The application of the overly broad offenses in the current case constitutes an unjustified restriction on the rights to freedom of expression and to a fair trial, and constitutes a deprivation of liberty that falls into category II of the categories applicable to the cases submitted to the Working Group and for which the remedy is immediate release.²⁹

Despite the Working Group's holding, however, Mr. Nega remains in prison and the Ethiopian government continues to rely on the Anti-Terrorism Proclamation to imprison bloggers, journalists, and other independent voices.

B. Arbitrary Detention of Zone 9 Bloggers and Independent Journalists

1. Zone Bloggers³⁰

Befekadu [Befeqadu] Hailu, born February 19, 1980, is an information and communication technology specialist, blogger, and writer. In addition to being a co-founder of the Zone 9 blog, Mr. Hailu has worked as a journalist for various publications, including Global Voices, an international news website that provides both English and Amharic coverage, and maintains his own blog. In 2012, he won the Burt Award for African Literature. He was arrested on April 25, 2014 near Bole Road in Addis Ababa.

Zelalem Kibret, born December 16, 1986, is a lawyer, lecturer, and co-founder of the Zone 9 blog. After earning a master's degree at Addis Ababa University, he began teaching at Ambo University. He is active on social media, and maintains his own blog that focuses on education issues. He was arrested on April 25, 2014 at work.

Atnaf Berhane, born March 5, 1989, is an IT specialist and human rights activist. He is a co-founder of the Zone 9 blog, is active with his own blog and on Twitter, and worked for the Addis Ababa city administration. He was arrested on April 25, 2014 near Bole Road in Addis Ababa.

Natnail [Natnael] Feleke, born October 6, 1987, is an economist by training and a human rights activist. He is an employee of the Construction and Business Bank and active with the Ethiopian Economic Association. A co-founder of the Zone9 blog, he also runs his own blog and maintains an active presence on Facebook and Twitter. He was arrested on April 25, 2014 at work.

²⁹ *Eskinder Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012 (Nov. 21, 2012) at ¶¶ 37, 40 (citations omitted).

³⁰ More information about the individual detainees can be found at <http://trialtrackerblog.org/detainees-profile-3/>.

Mahlet Fantahun, born June 12, 1983, is a graduate in applied mathematics and works as a database administrator in the Ministry of Health in Addis Ababa. She is a co-founder of the Zone 9 blog and is known for her Facebook activism. She was arrested on April 25, 2014 at work.

Abel Wabella [Wabela], born August 6, 1985, is an engineer, translator, and blogger. In addition to co-founding the Zone 9 blog, he wrote for his own blog and Global Voices. He was arrested on April 25, 2014 at work.

2. Independent Journalists

Tesfalem Waldyes [Weldeyes], born December 3, 1983, is a widely-respected freelance journalist who has written for a number of Ethiopian publications, including the English-language Addis Fortune and Addis Standard. He also served as editor of the now closed Amharic-language weekly newspaper Addis Neger. His articles have covered topic including the struggles of the Ethiopian textile industry, the growth of towns due to large national projects, international summits, food aid, the South Sudan crisis, late Ethiopian Prime Minister Meles Zenawi's failing health, corruption, and the Anti-Terrorism Proclamation.³¹ He was arrested on April 25, 2014 at home.

Asmamaw Hailegiorgis, born October 3, 1984, is a journalist and senior editor at the influential Amharic-language news magazine Addis Guday, where he has worked for the last seven years. With a background in information technology, he has also operated a radio program. He was arrested on April 26, 2014 on his way home from work.

Edom Kassaye, born February 12, 1984, is a freelance journalist, translator for Global Voices Amharic and an active member of the Ethiopian Environmental Journalists Association. Ms. Kassaye previously worked at the state daily Addis Zemen and has also worked for The Ethiopian Herald and Radio Fana. She was arrested on April 25, 2014 after being called-in by security officials for questioning.

3. The Zone 9 Blog

The Zone 9 blog was founded in May 2012 with the motto “we blog, because we care!”³² The name of the website is a reference to Kaliti Prison, near Addis Ababa, where political detainees are known to be frequently detained.³³ Because there are eight “zones” within the prison, the founders of the Zone 9 blog wanted to imply that all of Ethiopia is like a prison where citizens lack basic freedoms – especially the right to freedom of expression.

³¹ See Tesfalem Waldyes, *Dazzling Headlines, Biting Reality*, Addis Standard, (May 19, 2014), available at <http://addisstandard.com/dazzling-headlines-biting-reality/>; Tesfalem Waldyes, *What's Next for EPRDF?*, Addis Standard (Apr. 23, 2013), available at <http://addisstandard.com/whats-next-for-eprdf/>; Tesfalem Waldyes, *Ethiopia: When Reporting Becomes Terrorism*, Afro Addis, (Feb. 6, 2012), available at <http://afroaddis.wordpress.com/2012/02/06/ethiopia-when-reporting-becomes-terrorism/>.

³² The Zone 9 blog is available in Amharic at <http://zone9ethio.blogspot.com/>.

³³ *Ethiopia Jails Nine Journalists, Renews Press Crackdown*, Committee to Protect Journalists (Apr. 28, 2014), available at <http://www.cpi.org/2014/04/ethiopia-jails-nine-journalists-renews-crackdown-o.php>.

Articles appearing on the blog focused on human rights and social justice issues and were frequently critical of the government and the ruling EPRDF coalition. For example, a campaign in December 2012 called “Respect the Constitution” sought to inform the public of constitutional rights while urging the government to respect those principles.³⁴ Other initiatives included “Freedom of Expression for all - NOW,” a campaign in February 2013 to highlight issues of free expression and censorship; “Give our Demonstration Rights Back,” which focused on the right to freedom of association and assembly under Article 30 of the Constitution in April 2013; and “Ethiopian Dream,” a forward looking campaign around the Ethiopian New Year in September 2013 that urged Ethiopians to think about their constitutional rights and the future of the country in light of its deep political divisions (See Annex I). These initiatives received considerable attention both domestically and internationally.³⁵

Although articles appearing on the Zone 9 blog frequently criticized the status quo and the government’s failure to respect fundamental rights, contributors consistently emphasized the importance of non-violence and peaceful political reform in Ethiopia. Indeed, the blog frequently highlighted the protections afforded under the Constitution and urged the government to respect the document.

For example, in the “Freedom of Expression for all – NOW” campaign, the bloggers wrote:

We choose the theme of this campaign taking into consideration the growing human rights violations on freedom of speech and expression particularly taking stock on the unwritten enforcement of censorship on online [media] like the illegal closing of our blog and Facebook page.

The core purpose of this campaign is to reflect on the ever growing sanction on freedom of the press and expression in the form of Censorship. Censorship has many faces. On the one hand citizens are indirectly made to self-censor their own thoughts, opinions and belief[s] in fear of dismaying a government and its illegal consequences. The other form of censorship is the direct tampering of the government on the free press including the blocking of dissident news websites and blogs. Such visible tendency of censorship is greatly hindering the flourishing of ideas and kills dissident voices. That is why we crafted this campaign to create a platform for an in-depth discussion and scrutiny of the implementation of article 29 of the constitution in the hope of sparking an insight on its enhanced enforcement.

As part of these broader campaigns, members of Zone 9 group published their own individual articles that were then circulated online as part of the group’s activities. In some cases, such articles would later be identified by the government as “evidence” against them. For example,

³⁴ *Ethiopia: It Is Very Simple – Respect the Constitution*, Addis Standard (Editorial) (May 6, 2014), available at <http://allafrica.com/stories/201405060860.html>.

³⁵ See e.g. *Ethiopian “Zone 9” Activist Befeqadu Hailu*, BBC Africa, available at <https://audioboom.com/boos/1586742-ethiopian-zone9-activist-befeqadu-hailu>; See also *Ethiopians Want Freedom of #Demonstration4every1: Online Activist Group Calls on Government to Respect Freedom of Assembly*, Al Jazeera (May 10, 2013), available at <http://stream.aljazeera.com/story/201305102100-0022747>.

Natnael Feleke wrote an article entitled “Freedom and Bread” as part of the anti-censorship campaign, which emphasized the importance of both democracy and development (See Annex II). In that piece, Mr. Feleke noted that:

One indicator for lack of freedom of expression or another other freedom for that matter is that the fear of the citizens not to involve in any matters of their country. Where there is no freedom of expression citizens tend to be passive and they decide to be submissive until they are personally suppressed. They chose to play the games only permitted by the government.

Let us put aside the debate issue of whether freedom of expression or material development should come first. It is clear that we need them both. We do not wish to have a country where freedom is exercised at it most level while citizens starve to death for food. In the other hand, we do not want to have a country where the government limits the rights of citizens and tries to feed them like animals in a barn.

As a result of such statements, Ethiopian authorities quickly blocked access to the site inside the country; however, organizers were able to circulate articles inside Ethiopia through social media and the blog continued to be available abroad.³⁶ During this time, some members of the group reported pressure from the authorities about their work online. The co-founders of the group were placed under surveillance and security officials repeatedly interviewed two of the detainees – Natnael Feleke and Edom Kasasye – about the leadership of Zone 9 and whether they worked with any international nongovernmental organizations. During these interviews, investigators expressed concern that the Zone 9 blog may be threatening national security and wanted to know what the group had planned for the 2015 national elections. As a result of the pressure from authorities and fear of retaliation, the group stopped circulating critical articles in late 2013.³⁷ Even after the group stopped publishing about the political situation in Ethiopia, however, the interviews continued and officials then wanted to know why the group had stopped posting critical articles on the internet.

4. Arrest and Pretrial Detention

After roughly six months of political inactivity on the blog and Facebook page, the detainees posted a new article explaining the reason for the hiatus and informing their readers that they would begin blogging once again. In the post entitled “We’ll Keep Talking About Constitutionalism Using Our Constitutional Rights,” the group pledged to notify their readers of any further pressure by the authorities and said they would focus on the upcoming election and other relevant topics of debate.³⁸

³⁶ Mahlet Fasil, *Corrected Update: Police Requests Court in Addis Ababa for Group of Bloggers, Journalists to Remain in Custody*, Addis Standard (Apr. 28, 2014), available at <http://addisstandard.com/ethiopia-file-charges-against-a-group-of-bloggers-journalists-detained-over-the-weekend/>.

³⁷ While the group’s critical reporting ended around September, three non-political articles were published on the site in September and December 2013 about football and the death of Nelson Mandela.

³⁸ *We’ll Keep Talking About Constitutionalism Using our Constitutional Rights*, Zone 9 (Apr. 25, 2014) (summary translation in English on file with the author).

Two days later, on April 25, 2014 at around 5 p.m., police arrested all six members of the Zone 9 blogging team and two of the independent journalists – Tesfalem Waldyes and Edom Kassaye. Asmamaw Hailegiorgis was arrested the following afternoon. Police searched the detainees’ residences, seizing computers, newspapers, books, and computer discs.³⁹ The detainees were initially held in the notorious Maekelawi detention facility, where they were subjected to mistreatment and forced to sign confessions (see Section I(B)(5) below).

On April 27, 2014, the detainees were brought before the Federal First Instance Court, First Criminal Bench at Arada, and accused of “working with foreign organizations that claim to be human rights activists and agreeing in idea and receiving finance to incite public violence through social media.”⁴⁰ The proceedings were closed to the public and the detainees did not have access to the assistance of legal counsel. Despite this, the court authorized their detention under Article 59.2 of the Criminal Procedure Code for the purposes of continuing the investigation.⁴¹

On May 7 and 8, the court reauthorized the detention of all nine detainees⁴² under the Criminal Procedure Code. None of the detainees were given access to a lawyer before May 7 – a period of at least 10 days.⁴³ While these proceedings were reportedly open to some of the public, many of the supporters, journalists, and diplomats present were unable to attend the hearings because the room chosen was too small.⁴⁴ Although police did not indicate at the time which “foreign organization” the detainees were believed to have worked with or provide any other specific allegations against the defendants, local reports indicated that the detainees were arrested because of their work with the UK-based human rights organization Article 19.⁴⁵

The government first invoked the Anti-Terrorism Proclamation during proceedings that occurred on May 17, 2014, when police indicated that the detainees were being investigated and held

³⁹ *Ethiopia: Release Zone9 Bloggers and Independent Journalists*, East and Horn of Africa Human Rights Defenders Project (Apr. 27, 2014), available at <http://www.defenddefenders.org/2014/04/ethiopia-release-zone9-bloggers-independent-journalists/>.

⁴⁰ Tamiru Tsige, *Detained journalists, bloggers appear before court*, The Reporter (Apr. 28, 2014), available at <http://www.thereporterethiopia.com/index.php/news-headlines/item/1931-detained-journalists-bloggers-appear-before-court>.

⁴¹ Article 59.2 of the Criminal Procedure Code provides that “Where the police investigation is not completed the investigating police office may apply for a remand for a sufficient time to enable the investigation to be completed.”

⁴² Initially, the nine detainees were divided into three separate cases, with some of the cases being heard on May 7 and others being heard on May 8. However, all of the cases were subsequently consolidated into one criminal case. At the hearing on May 7, the court instructed the government that the detainees were to have access to legal counsel.

⁴³ The lawyer who currently represents the detainees first attempted to visit them at the Makelawi detention facility on Tuesday, May 5; however, he was turned away because the center only allows visits on Wednesdays and Fridays. No access was given to any lawyer for 10 days even though the detainees requested such access at the time.

⁴⁴ A number of embassies sent representatives to the hearing on May 7, including the European Union, France, Germany, Switzerland, the United Kingdom, and the United States. Journalists from Bloomberg and the Voice of America were also present at the compound.

⁴⁵ *Eight bloggers detained for links with Article 19*, Zenaddis (Apr. 27, 2014), available at <http://www.zenaddis.com/eight-bloggers-detained-for-links-with-article-19/>; Hindessa Abdul, *Ethiopia: Silencing Zone 9 by hook or crook*, Addis Voice (May 21, 2014), available at <http://addisvoice.com/2014/05/ethiopia-silencing-the-zone-by-hook-or-crook/>. Just weeks before the roundup of the bloggers and journalists, the government detained and deported Article 19 researcher Patrick Mutahi who was in Addis Ababa to deliver security and safety training for journalists and media workers and to gather information for the United Nation’s upcoming Universal Periodic Review of Ethiopia. *Ethiopia Detains ARTICLE 19 Staff*, Article 19 (Apr. 10, 2014) available at <http://www.article19.org/resources.php/resource/37517/en/ethiopia-detains-article-19-staff>.

pursuant to Article 20.⁴⁶ Although the Anti-Terrorism Proclamation does allow the court to release suspects on bail, provided they have not been formally charged, the court refused the bail application on the grounds that the investigation was ongoing.⁴⁷

While the Ethiopian courts repeatedly reauthorized the investigatory detention of the detainees under the Criminal Procedure Code and the Anti-Terrorism Proclamation,⁴⁸ it does not appear that police or prosecutors provided any specific information regarding the alleged crimes of the detainees.⁴⁹ Instead, authorities merely indicated that they needed more time to complete the investigation – claiming, for example, that they were having difficulty gaining access to the detainees’ online accounts. Explanations for the delay also included: “We have only a single not properly working computer since we are investigating Twitter & Word Press blog we need time;” “Since the bloggers committed the 'crime' with their associates we need to catch their associates;” and “Their associates are trying to frighten us not to do [our] investigation.”⁵⁰

On July 17, 2014 the government charged the six Zone 9 bloggers and three independent journalists with terrorism under Article 4 of the Anti-Terrorism Proclamation⁵¹ and “outrages against the constitution” under Article 238(1) of the Ethiopian Criminal Code.⁵² The detainees were thereafter transferred from the Maekelawi detention facility to the Kaliti and Kilinto Prisons.

Although the government had not yet tried the six bloggers and three journalists, high ranking Ethiopian officials – including Prime Minister Hailemariam Desalegn –publicly accused the detainees of being part of a regional terror plot and warned other journalists from associating

⁴⁶ Article 20 of the Anti-Terrorism Proclamation, *supra* note 21, provides that “1) The court, before which an arrested person is presented in accordance with Article 19 of this Proclamation, may give an order to remand the suspect for investigation or trial. 2) If the investigation is not completed, the investigating police officer may request the court for sufficient period to complete the investigation. 3) Each period given to remand the suspect for investigation shall be a minimum of 28 days; provided however, that the total time shall not exceed a period of four months. 4) Public prosecutor may appeal on bail cases. 5) If a terrorism charge is filed in accordance with this Proclamation, the court shall order the suspect to be remanded for trial until the court hears and gives decision on the case.”

⁴⁷ *Media: EAJA Worried Over Continued Detention of Journos, Bloggers*, PANA (May 20, 2014), available at <http://www.panapress.com/Ethiopia--EAJA-worried-over-continued-detention-of-journos,-bloggers--12-911445-42-lang2-index.html>. See also Fasil, *supra* note 36.

⁴⁸ Over the course of the investigatory detention, five separate judges authorized the detention of the detainees on May 7 and 8, 2014; May 17, 2014; June 1, 2014; June 14, 2014; and June 28 and 29, 2014.

⁴⁹ It appears that the only evidence police claimed at the time to possess were bank records of the detainees which purportedly showed payment for “terrorist activity,” however, authorities did not describe with any specificity the alleged wrongdoing or how such bank records were connected to such acts.

⁵⁰ *Pre-trial custody of Zone9ers 'legal' issues what they mean and why they matter*, Zone9ers'Trial' (June 29, 2014) available at <http://trialtrackerblog.org/2014/06/29/pre-trial-custody-of-zone9ers-legal-issues-what-they-mean-and-why-they-matter/>.

⁵¹ Article 4 of the Anti-Terrorism Proclamation, *supra* note 21, broadly provides that: “Whosoever plans, prepares, conspires, incites or attempts to commit any of the terrorist acts stipulated under sub-articles (1) to (6) of Article 3 of this Proclamation is punishable in accordance with the penalty provided for under the same Article [ranging from 15 years in prison to death].” Regarding the terrorism charges, the detainees were accused of both principle responsibility and conspiracy (under Articles 32(1)&(2) and 38(1)&(2) of the Criminal Code).

⁵² Regarding the charges of outrages against the Constitution, the government charged the detainees with attempt, principle responsibility, and conspiracy under Articles 27(1)&(2), 32(1)&(2), and 38(1) of the Criminal Code.

with such “terrorist networks.”⁵³ The Ethiopian Minister of Communications and Information Technology similarly accused the detainees of attempting to foment a color revolution in the country as part of a documentary that was widely televised.

As in other cases involving the prosecution of bloggers and journalists on fabricated terror charges in Ethiopia, there are virtually no specific allegations contained in the charging documents that provide any detail regarding the alleged “terrorist activity” in which the detainees are accused of having participated (See Annex III). Instead, the government largely relies upon conclusory statements of guilt and innuendo without providing any evidence or substantiation. Indeed, the most specific allegation appears to be that the detainees took part in trainings on internet security associated with “Security in a Box” – a widely used and publicly available tool developed by the respected human rights organization Front Line Defenders.⁵⁴ It is also clear from the evidence list that the government will rely heavily upon the detainees’ blog posts and articles in prosecuting them on serious national security charges.

On November 21, 2014, after continuing the pre-trial detention of the detainees 11 times, the court considered the defense team’s argument that the government’s charges failed to provide sufficient allegations to support the charges. In response, the court dropped the charges of “outrages against the constitution” under Article 238(1) – for which the prosecution had provided almost no explanation. The court also ordered the government to amend the charges to include specific information about the supposed terrorist activity the detainees had allegedly participated in or attempted to incite. Despite this order, however, on December 3, 2014 the government filed a substantively identical charging sheet and the court once again postponed the proceedings and reauthorized the continued detention of the detainees.⁵⁵ Repeated requests for additional information were similarly issued on December 16, January 5, and January 14; however prosecutors failed to provide the requested information and the court responded by simply continuing the proceedings and reauthorizing the imprisonment of the detainees – who have now been held without finalized charges for nine months.

5. Mistreatment

A full description of mistreatment of the detainees – as documented by their complaint to the Ethiopian Human Rights Commission – is included in full as Annex IV. The following is a brief summary of that mistreatment as it pertains to the Working Group’s mandate.

Reports of mistreatment began circulating shortly after the hearing on May 7, 2014. Although the

⁵³ William Davidson, *As Ethiopia’s ‘Zone 9’ Bloggers Get Popular, They Get Charged With Terror (+Video)*, Christian Science Monitor (July 21, 2014), available at <http://www.csmonitor.com/World/Africa/2014/0721/As-Ethiopia-s-Zone-9-bloggers-get-popular-they-get-charged-with-terror-video>. *Ethiopia Zone 9 Bloggers Charged with Terrorism*, BBC (July 18, 2014) available at <http://www.bbc.com/news/world-africa-28366841>. Video of the full statement is available in Amharic at: <https://www.youtube.com/watch?v=OmQ3ZzCPZqM>.

⁵⁴ “Security in a Box” is available for free at <https://securityinabox.org/>.

⁵⁵ Information about the revised charge sheet is available at <http://trialtrackerblog.org/>. It appears that some limited additional information was provided, such as the allegation that the detainees “took their strategies” from the previously unidentified Ginbot 7 and Oromo Liberation Front. However, significant ambiguities in the factual allegations continued, including basic information such as name of the group the detainees had allegedly formed, where trainings had allegedly taken place, and the supposed role of each individual detainee in that group.

detainees' lawyer did not raise concerns regarding mistreatment during that initial proceeding, he had only met with the detainees in the courtroom that day and did not have an opportunity to speak with them privately beforehand. Subsequently, the detainees did raise their treatment with the court – Befekadu Hailu and Abel Wabella on May 8, 2014 and Atnaf Berhane on May 17, 2014. All nine detainees then joined the complaint to the Ethiopian Human Rights Commission. As a result of these reports, on April 30, 2014, five UN special procedure mandate holders – including the Chair-Rapporteur of the Working Group on Arbitrary Detention – issued a joint communication to the Ethiopian government seeking information regarding the treatment and well-being of the detainees and urging the government to take all necessary measures protect the basic rights of the detainees.⁵⁶

Accounts of mistreatment by the detainees contain a wide variety of abuses apparently inflicted by authorities in order to obtain confessions, which all occurred at the infamous Maekelawi police station in Addis Ababa. Such abuses included beating the detainees with sticks and cables on their feet, legs, groin area, and underarms; slamming the detainees' heads on the ground and kicking them in the back, face, and neck; subjecting them to gagging, stress positions, and forced exercise during interrogation; withholding food and sleep from the detainees; and holding the detainees in solitary confinement for prolonged periods or in cold conditions with limited access to natural light. The detainees were also warned not to report the mistreatment and threatened with retaliation.

During these interrogations, officials questioned the detainees about their work online and their criticism of the government. They were asked about the Zone 9 blog and the “true objectives” of the website, as well as their international contacts. Ultimately, the purpose of the mistreatment became self-evident when interrogators forced each of the detainees to admit that the purpose of their peaceful activities was to facilitate the violent overthrow of the government.

II. Legal Analysis

The continued detention of Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye is arbitrary⁵⁷ pursuant to Category II and Category III, as established by the Working Group.

A. Category II

⁵⁶ The letter was issued by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences. The letter is available at: https://spdb.ohchr.org/hrdb/27th/public - UA_Ethiopia_30.04.12_%283.2014%29.pdf.

⁵⁷ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI) (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) (hereinafter ICCPR) at art. 9(1). Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (adopted Dec. 10, 1948) (hereinafter UDHR) at art. 9 (“Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law...”). Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, U.N. Doc. A/43/49 (adopted Dec. 9, 1988) (hereinafter Body of Principles) at principle 2.

The arrest and prosecution of the Zone 9 bloggers and independent journalists in this case is directly related to their peaceful, internationally protected activities. As such, their detention is arbitrary under Category II because it resulted from their exercise of fundamental rights – particularly free expression and free association.⁵⁸

1. Right to Freedom of Expression and Association

The right to freedom of expression and association is protected under Ethiopian and international law. In language that closely tracks international agreements, Articles 29 and 31 of the Ethiopian Constitution protect the right to freedom of expression and freedom of association, respectively.⁵⁹ Further, Article 13(2) of the Ethiopian Constitution specifically provides that its provisions “shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and international instruments adopted by Ethiopia.”

Ethiopia is, in fact, party to a number of binding treaties that specifically protect the right to freedom of expression and the right to freedom of association – including the International Covenant on Civil and Political Rights (ICCPR)⁶⁰ and the African Charter on Human and Peoples’ Rights.⁶¹ Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of 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.”⁶² Similarly, Article 22 of the ICCPR protects “the right of freedom of association with others.”⁶³

In this case, the government’s imprisonment of the six Zone 9 bloggers and three independent journalists is a clear limitation – indeed violation – of these fundamental rights. Before arresting

⁵⁸ According to the Working Group’s Revised Methods of Work, a detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47 (Jan. 19, 2011) at ¶ 8(b) (hereinafter Revised Methods of Work) at Annex ¶ 8(b).

⁵⁹ Article 29(2) provides that “Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and idea of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.” Article 31 protects freedom of association by noting that “Every person has the right to freedom of association for any cause or purpose...” Constitution of Ethiopia, *supra* note 5, at arts. 29(2), 31.

⁶⁰ See Status of Ratification of the ICCPR, U.N.T.C. Chapter IV(4), available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁶¹ See Ratification Table: African Charter on Human and Peoples’ Rights (hereinafter ACHPR), available at <http://www.achpr.org/instruments/achpr/ratification/>.

⁶² See also UDHR, *supra* note 57, at art. 19 (“[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”). See also African Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force Oct. 21 1986) (hereinafter ACHPR) at art. 9(2) (“Every individual shall have the right to express and disseminate his opinions within the law.”).

⁶³ See also UDHR, *supra* note 57, at art. 20 (“Everyone has the right to freedom of peaceful assembly and association.”). See also ACHPR, *supra* note 62, at art. 10(1) (“Every individual shall have the right to free association provide that he abides by the law.”).

the detainees, the government placed the Zone 9 bloggers under surveillance and repeatedly questioned members of the group – creating so much fear that they suspended their critical writing on the website for six months. Then, just days after announcing that the blog would be revived to cover critical issues in Ethiopia, including the upcoming elections, members of the group and the journalists they knew socially were arrested and questioned about their writings. Most telling, however, is the fact that the government has included their articles as evidence of their guilt.

2. Narrow Limitations and Special Protections for Rights Activists

While the right to freedom of expression and association may be limited in certain narrow circumstances, governments “may not put in jeopardy the right itself.”⁶⁴ The UN Human Rights Committee (Committee) has established a three-part “strict test of justification” in analyzing limitations on such fundamental rights.⁶⁵ In order to be permissible under international law, any limitation must be 1) “provided by law,” (2) for the protection of an “enumerated purpose” (including the protection of national security), and (3) “necessary” to achieve that purpose.⁶⁶

Although governments frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. The Committee has noted that restrictions “may not put in jeopardy the right itself.”⁶⁷ Further, the government may not merely invoke the national security rationale without a searching review of that claim. Indeed, the government must “specify the precise nature of the threat” posed by the protected activity⁶⁸ and then demonstrate the proportionality of the limitation by establishing a “direct and immediate connection between the expression and the threat.”⁶⁹ In short, general allegations claiming that an individual’s expression or association threatened national security – without evidence of a specific threat and a proportional response – will not meet this high burden.⁷⁰

⁶⁴ See *General Comment No. 34*, UN Human Rights Committee, U.N. Doc. CCPR/C/G/34 (Sep. 12, 2011), at ¶ 21. Article 19(3) of the ICCPR, for example, provides that “The exercise of the [right to free expression] carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect for the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.” Article 22 of the ICCPR invokes similar language but add the additional qualifier that all restrictions must be “necessary in a democratic society.” While this arguably creates a higher standard for any restriction, there is little jurisprudence from the Human Rights Committee applying this standard.

⁶⁵ *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, (adopted Oct. 20, 1998) at ¶ 10.3.

⁶⁶ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, (adopted Mar. 16, 2004) at ¶ 7.3.

⁶⁷ *General Comment No. 34*, supra note 64, at ¶ 21.

⁶⁸ *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, (adopted July 19, 1995) at ¶ 10.4.

⁶⁹ *General Comment No. 34*, supra note 64, at ¶35. See also *Gauthier v. Canada*, Communication No. 633/1995 (adopted Apr. 7, 1999), at ¶ 13.6 (In determining whether an accreditation scheme that operated to exclude journalists from observing parliamentary proceedings was necessary and proportionate, the UN Human Rights Committee held that “the accreditation scheme should be specific, fair and reasonable, and their application should be transparent.”). See also *Sohn v. Republic of Korea*, supra note 68, at ¶ 10.4 (finding that “reference to the general nature of the labor movement” and “alleging that the statement issued by the author in collaboration with others was a disguise for the incitement to a national strike” was insufficiently precise to meet the necessity requirement.).

⁷⁰ In *Kim v. Republic of Korea*, the UN Human Rights Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for protecting national security. The Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK from the publication of views similar to their own

In addition to this strict test of justification, the government must meet an especially high threshold when imposing restrictions on the peaceful activities of journalists and rights activists. Because a free press “constitutes one of the cornerstones of a democratic society,”⁷¹ governments may not “suppress or withhold from the public information of legitimate public interest that does not harm national security or [] prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”⁷² In particular, the Committee has noted that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets, [or] human rights.”⁷³

The Working Group has adopted a similar approach in cases involving human rights defenders and activist bloggers and journalists. Where the detainee’s work focuses on protecting fundamental rights, the Working Group will subject the case to a “particularly intense review.”⁷⁴ In the case of ESKINDER NEGA, for example, the Working Group looked to Mr. Nega’s work as an independent activist who wrote about the prospects of political reform in Ethiopia and noted that his “role as a human rights defender and his own role in human rights work as a publicist and blogger, requires the Working Group to undertake this kind of intensive review.”⁷⁵

The work of the Zone 9 bloggers and independent journalists in this case falls well outside the narrow limitations allowed on the right to freedom of expression and association. Indeed, because their work as writers and activists is critical to the protection and promotion of democratic principles, it was entitled to special protection under international law. Despite this protection, the government detained the writers and initiated criminal proceedings on the basis of general accusations of terrorism and anti-constitutional activities – a response to peaceful criticism that fails both the necessity and proportionality tests. As in the case of ESKINDER NEGA, the government has relied upon vague claims of guilt and unsubstantiated references to “terrorism” and “treason” without describing specific conduct to support such serious charges.

Further, because the bloggers and journalists involved in this case focused much of their work on supporting fundamental human rights, the limitation on their expression and association in this case is entitled to heightened scrutiny. It is precisely this work – seeking to raise awareness of constitutional rights abuses – which ultimately motivates their continued imprisonment. As such, the detention in this case cannot meet the “particularly intense review” mandated by the jurisprudence of the Working Group.

created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, Communication No. 574/1994, (adopted Nov. 3, 1998), at ¶ 12.4. See also *Sohn v. Republic of Korea*, *supra* note 68, at ¶ 10.4.

⁷¹ *General Comment No. 34*, *supra* note 64, at ¶ 13.

⁷² *General Comment No. 34*, *supra* note 64, at ¶ 30.

⁷³ *Mukong v. Cameroon*, UN Human Rights Committee, Communication No. 458/1991 (adopted July 21, 1994), at ¶ 9.7.

⁷⁴ See e.g. *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012 (Nov. 21, 2012), at ¶ 39 (citing *Nasrin Sotoudeh v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 21/2011 (May 6, 2011); *Abdolfattah Soltani v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 54/2012 (Nov. 19, 2012)).

⁷⁵ *Nega v. Ethiopia*, *supra* note 74, at ¶ 39.

3. Use of Overly Broad Laws to Punish Peaceful Activism

In attempting to justify the detention of these outspoken bloggers and journalists, the government has relied upon a series of laws whose scope do not comport with international standards. Unfortunately, the arbitrary imprisonment of independent journalists, bloggers, and activists on national security charges has become increasingly commonplace in Ethiopia. This case is part of a much larger trend that involves the misuse of overly-broad anti-terror and national security laws that enable the government to punish peaceful dissent.

The Working Group has specifically criticized the use of national security provisions that are “so vague that it could result in penalties being imposed not only on persons using violence for political ends, but also on persons who have merely exercised their legitimate right to freedom of opinion or expression”.⁷⁶ In particular, these cases involved national security laws that covered crimes such as “activities aimed at overthrowing the people’s administration,” anti-state propaganda, and “forming or joining a group or association... which seeks to disturb the security of the country.”⁷⁷ This line of cases was specifically invoked by the Working Group in the case of ESKINDER NEGA – which involved charges that included Article 4 of the Anti-Terrorism Proclamation. In finding the detention of Mr. Nega arbitrary under Category II, the Working group held that “[t]he application of *overly broad offenses* in the current case constitutes an unjustified restriction on freedom of expression and to a fair trial.”⁷⁸

In this case, the Ethiopian government has once again relied upon the overly broad provisions of Article 4 of the Anti-Terrorism Proclamation, which provides that,

Whosoever plans, prepares, conspires, *incites* or attempts to commit any of the terrorist acts stipulated under sub-articles (1) to (6) of Article 3 of this Proclamation is punishable in accordance with the penalty provided for under the same Article [ranging from 15 years in prison to death].⁷⁹

When combined with the definition of terrorist acts under the Proclamation, the sweeping nature of the law becomes clear. Article 3 defines a “terrorist act” to include any act that “endangers, seizes or puts under control, causes serious interference or disruption of a public service” with the purpose of “coercing the government, intimidating the public or a section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country.”⁸⁰ When taken together, these two provisions create the possibility of

⁷⁶ *Le Cong Dinh, et al. v. Vietnam*, UN Working Group on Arbitrary Detention, Opinion No. 27/2012 (Aug 29, 2012) at ¶ 39. (In this cases, the Working Group also criticized “broad criminal law provisions, which criminalize ‘taking advantage of democratic freedoms and rights to abuse the interests of the State,’”).

⁷⁷ *Id* at ¶ 41; See also *Abdolfattah Soltani v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 54/2012 (Nov 19, 2012).

⁷⁸ *Nega v. Ethiopia*, *supra* note 74, at ¶ 40 (emphasis added).

⁷⁹ Anti-Terrorism Proclamation, *supra* note 21, at art. 4 (emphasis added).

⁸⁰ Article 3 of the Anti-Terrorism Proclamation, *supra* note 21, provides in full: “Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country (1) causes a person’s death or serious bodily injury; (2) creates serious risk to the safety or health of the public or a section of the public; (3) commits kidnapping or hostage taking; (4) causes serious damage to property; (5) causes damage to natural resource,

criminal liability for peacefully exercising the right to free expression. For example, advocating for peaceful protests – which may be intended to influence government policy but in no way endanger people or property – may be considered inciting terrorism under the broad language of the Anti-Terrorism Proclamation (if such protests remain peaceful but happen to temporarily disrupt public services).

Between May 17, 2014 and November 21, 2014, the government also relied upon Article 238(1) of the Criminal Code to detain the independent bloggers and journalists. This prohibition on “Outrages against the Constitution or the Constitutional Order” invokes language that is so vague that it is also potentially criminalizes the peaceful exercise of fundamental rights; it provides that,

Whosoever, intentionally, by violence, threatens *conspiracy or any other unlawful means*: (a) overthrows, modifies or suspends the Federal or State Constitution; or (b) overthrows or changes the order established by the Federal or State Constitution, is punishable with rigorous imprisonment from three years to twenty-five years.⁸¹

Like other national security laws that the Working Group has rejected as excessively broad,⁸² this provision does not necessarily distinguish between those who use violence for political ends and those that seek peaceful political change. While it does make reference to the use of violence, it also covers any “conspiracy” or other “unlawful means” by which an individual might attempt to reform the government – terms which greatly expand the reach of the law. Indeed, the fact that the peaceful Zone 9 bloggers and independent journalists detained in this case were even charged under this law points to the provision’s excessive scope.

Because the Ethiopian government has detained the bloggers and journalists in this case on the basis of overly broad national security laws and in response to their peaceful exercise of the rights to freedom of expression and association, it is a violation of Category II.

B. Category III

The continued detention of the six bloggers and three journalists in this case is arbitrary under Category III because “the total or partial non-observance of the international norms relating to the right to a fair trial... is of such gravity as to give the deprivation of liberty an arbitrary character.”⁸³ The international standards of due process applicable in this case are established by the ICCPR, the Universal Declaration of Human Rights (UDHR), and the Body of Principles for

environmental, historical or cultural heritages; (6) endangers, seizes or puts under control, causes serious interference or disruption of and public service; or (7) threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this articles is punishable with rigorous imprisonment from 15 years to life or with death.”

⁸¹ Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Proclamation No. 414/2004 (entered into force May 9, 2005) (hereinafter Criminal Code) (emphasis added).

⁸² In *Dang, et. al. v. Vietnam*, the Working Group rejected the use of national security laws against religious activists noting that “the major drawback of vague and imprecise charges of the kind brought against the [detainees] is that they do not distinguish between armed and violent acts capable of threatening national security, on the one hand, and the peaceful exercise of the right to freedom of opinion and of expression, on the other.” *Dang et. al. v. Vietnam*, UN Working Group on Arbitrary Detention, Opinion No. 21/1997 (Dec. 2, 1997) at ¶ 6.

⁸³ Revised Methods of Work, *supra* note 58, at ¶ 8(c).

the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).⁸⁴

1. Right to be Free from Torture or Other Mistreatment

The prohibition against torture under international law is clear and unqualified. Article 7 of the ICCPR establishes a non-derogable prohibition on torture and other mistreatment; it provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁸⁵ Although torture is not defined under the ICCPR, the Convention Against Torture, to which Ethiopia is a party,⁸⁶ broadly defines torture as including the severe infliction of physical or mental pain or suffering for the purposes of obtaining information or a confession.⁸⁷ The Working Group has held that such mistreatment falls within its mandate in the context of requests for an opinion “only in so far as [the mistreatment] is used in order to obtain a confession of guilt of the pre-trial detainee or otherwise impairs his or her exercise of the right to a proper defense.”⁸⁸

In this case, the detainees were subjected to both physical and psychological mistreatment that rises to the level of torture specifically for the purposes of obtaining a confession. As outlined in their complaint prepared for the Ethiopian Human Rights Commission, the detainees were severely mistreated after their arrests, when interrogators beat and otherwise abused them and ultimately obtained coerced confessions from each detainee.

The mistreatment reported by the detainees is strikingly similar to the pattern of violent interrogation tactics recently documented by Human Rights Watch at the Maekelawi police station. In its report, *They Want a Confession*, the rights group documented the systemic use of torture and other ill-treatment at the detention center – often combined with limited access to lawyers or visitors – for the specific purposes of extracting confessions.⁸⁹

The Ethiopian government violated Article 7 of the ICCPR. Because the mistreatment resulted in coerced confessions, the mistreatment falls within the Working Group’s mandate.

⁸⁴ In making a Category III determination, the Working Group will look to the norms “established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned.” Revised Methods of Work, *supra* note 58, at ¶ 8(c). However, the Revised Methods of Work also explain that where appropriate, the Working Group will refer to standards established under the Body of Principles. *Id.* at ¶ 7(a).

⁸⁵ Article 4(1) of the ICCPR, *supra* note 57, prohibits any derogation from the provisions of Article 7.

⁸⁶ Status of Ratification of the Convention Against Torture, U.N.T.C Chapter IV(9)), available at https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en.

⁸⁷ Fully defined, “torture” under the Convention Against Torture includes “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” Convention Against Torture, GA Res 39/46, 1465 U.N.T.S. 85 (entered into force June 26, 1987) (hereinafter CAT) at art. 4.

⁸⁸ *Savda v. Turkey*, UN Working Group on Arbitrary Detention, Opinion No 16/2008 (May 9, 2008) at ¶ 41.

⁸⁹ *They Want a Confession*, Human Rights Watch (Oct. 2013), available at <http://www.hrw.org/reports/2013/10/17/they-want-confession-0>

2. Right to an Independent Tribunal and the Presumption of Innocence

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal.”⁹⁰ Article 14(2) of the ICCPR provides that “[e]veryone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.”⁹¹ The Body of Principles similarly provides that an individual “shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all of the guarantees necessary for his defense.”⁹² The Committee has noted that the presumption of innocence is “fundamental to the protection of human rights” and creates a “duty for all public authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the accused.”⁹³ Further, to protect the defendant, the “media should avoid news coverage undermining the presumption of innocence.”⁹⁴

Despite these protections under international law, high-ranking government officials have severely undermined the fairness of the criminal process in this case. Before proceedings even began, the Prime Minister himself accused the detainees of being part of a regional terror plot – an especially prejudicial statement in a region where there are serious security threats. The communications minister similarly accused the detainees of attempting to foment unrest.

As explained above, the Ethiopian courts do not, in practice, operate free from political interference.⁹⁵ Despite this well-documented lack of independence, courts in Ethiopia at times attempt to display impartiality by criticizing the government’s case or expressing confusion about the evidence. This approach was observed by Freedom Now during an appeal hearing in the case of Eskinder Nega, when the court appeared to act bewildered about the nature of the charges against the widely-respected journalist. According to local observers, this tactic is used frequently to create the appearance of independence – even though trial and appellate courts ultimately accept the position of the government in almost every case. Indeed, in this case the court had repeatedly ordered that the government submit amended charges and provide more specific allegations about the alleged activity of the detainees. Far from complying with these orders, however, the government had continued to resubmit charges that are substantively the same. Instead of holding prosecutors accountable, the court had simply postponed the proceedings and re-authorized pretrial detention for the detainees – belying any impression of impartiality.

⁹⁰ ICCPR, *supra* note 57, at art. 14(1). See also UDHR, *supra* note 57, at art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”).

⁹¹ ICCPR, *supra* note 57, at art. 14(2). See also UDHR, *supra* note 57, at art. 11(1) (“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public at which he has all the guarantees necessary for his defense.”).

⁹² Body of Principles, *supra* note 57, at Principle 36(1).

⁹³ *General Comment No. 32*, UN Human Rights Committee, U.N. Doc. CCPR/C/G/32 (Aug. 23, 2007) at ¶ 30.

⁹⁴ *Id.*

⁹⁵ See *Freedom in the World 2014: Ethiopia*, Freedom House at § F (“The judiciary is officially independent, but its judgments rarely deviate from government policy.”) See also, *2013 Country Report on Human Rights Practices: Ethiopia*, U.S. Dept. of State, at ¶ 1(e) (“The law provides for an independent judiciary. Although the civil courts operated with a large degree of independence, the criminal courts remained weak, overburdened, and subject to political influence.”)

In light of this lack of independence, the statements by high ranking government officials – including the Prime Minister – can only be viewed as attempts by the government to influence the outcome of the proceedings against the detainees. Such attempts violate the right to an independent tribunal and fly in the face of the requirements that public officials avoid statements prejudging the outcome of the trial.

3. Right to the Assistance of Legal Counsel

Article 14(3)(b) of the ICCPR protects the right of all criminal defendants “to communicate with counsel of his own choosing.”⁹⁶ Similarly, the Ethiopian Constitution protects the right of individuals held in custody “to communicate, and to be visited by... their legal counsel.”⁹⁷ While the ICCPR does not specify at what point a detained individual must have access to a lawyer, “[t]he right to communicate with counsel requires that the accused is given prompt access to counsel.”⁹⁸ In *Kelly v. Jamaica*, the Committee held that the government violated the petitioner’s rights under Article 14(3)(b) when it ignored his request to speak to a lawyer for five days.⁹⁹ Similarly, in *Musaev v. Uzbekistan*, the Working Group found a detention arbitrary under Category III where the detainee “had no possibility to communicate with a lawyer for more than 10 days following his arrest.”¹⁰⁰

In this case, the detainees had no access to a lawyer between the time of their arrests and the second detention hearing on May 7, 2014 – a period of at least 10 days. This period of time falls outside of the established limits for “prompt” access to a lawyer and therefore failed to meet the requirements of Article 14(3)(b) of the ICCPR.

In addition to communication rights, international law protects the right of individuals to the assistance of chosen legal counsel in defending against criminal charges. Article 14(3)(d) of the ICCPR provides that everyone is entitled “[t]o defend himself in person or through legal assistance of his own choosing.”¹⁰¹ However, on April 27, 2014, the detainees were brought before the Federal First Instance Court, First Criminal Bench at Arada, without any legal representation whatsoever. During this proceeding, the government authorized the continued detention of the bloggers and journalist. This limitation on their right to defend themselves, without any apparent justification, violated Article 19(3)(d) of the ICCPR.

⁹⁶ ICCPR, *supra* note 57, at art. 14(3)(b). Although the language of Article 14 refers to the right of individuals “in the determination of criminal charges,” the right to communicate with and have the assistance of legal counsel should apply in this case. Although the detainees were not formally charged with a criminal offense until July 17, 2014, the initial proceedings were required under a criminal law (the Anti-Terrorism Proclamation) and were for the specific purpose of authorizing their continued detention. An alternative finding would allow the government to hold individuals indefinitely and without access to legal counsel by failing to formally charge them, a result inconsistent with the very purpose of the protection.

⁹⁷ Constitution of Ethiopia, *supra* note 5, at art. 21(2)

⁹⁸ *General Comment No. 32*, *supra* note 93, at ¶ 34. Similarly, Principle 15 of the Body of Principles provides that “notwithstanding the exceptions [in extenuating circumstances] communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.” Body of Principles, *supra* note 57, at Principle 15.

⁹⁹ *Kelly v. Jamaica*, UN Human Rights Committee, Communication No. 537/1993, (adopted July 17, 1996), at ¶ 9.2.

¹⁰⁰ *Musaev v. Uzbekistan*, UN Working Group on Arbitrary Detention, Opinion No. 14/2008 (July 26, 2007), at ¶ 40.

¹⁰¹ ICCPR, *supra* note 57, at art. 14(3)(d).

The Ethiopian government failed to meet a number of international due process standards by subjecting the detainees to severe mistreatment, undermining the fairness of the criminal proceedings, and restricting their access to legal counsel. As such, their continued detention is arbitrary pursuant to Category III.

III. Conclusion

As outlined above, the continued detention of Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye violates the Ethiopian government's obligations under international law. The detention of these bloggers and journalists is arbitrary under Category II because it resulted directly from their peaceful exercise of the right to freedom of expression and association. Further, the detention falls within Category III because the government has failed to meet minimum international due process standards.

INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

The prosecution of the detainees on charges of terrorism is ongoing. The detainees have prepared a complaint for the Ethiopian Human Rights Commission regarding their mistreatment at the Maekelawi police station.

FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

This petition is submitted jointly by the Ethiopian Human Rights Project and Freedom Now.

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