

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Eskinder Nega,

Citizen of the Federal Democratic Republic of Ethiopia

v.

Government of the Federal Democratic Republic of Ethiopia

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18¹

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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 and 15/18, 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).

BASIS FOR “URGENT ACTION” REQUEST

As established in the attached petition, the Government of the Federal Democratic Republic of Ethiopia is arbitrarily depriving Eskinder Nega of his liberty.

There is reason to believe that Mr. Nega’s continued detention places his health and life at risk. The Ethiopian Government has repeatedly limited Mr. Nega’s access to the outside world since his arrest on September 14, 2011. Authorities held Mr. Nega without access to family for 28 days and denied him access to legal counsel for nearly two months. After the Lideta Federal High Court found Mr. Nega guilty of terrorism related charges in response to his work as a journalist, authorities again shut Mr. Nega off from the outside world by placing him in solitary confinement for two days—rights experts believe this may have been punishment for Mr. Nega’s statement following the verdict that his “conscious is clear.”

Prison conditions in Ethiopia are “harsh and in some cases life threatening” and interrogators in the country have a history of using physical violence to extract confessions from suspects.² In 2010, the UN Committee Against Torture expressed its deep concern regarding “numerous, ongoing and consistent allegations concerning the routine use of torture by the police, prison officers and other members of the security forces, as well as the military, in particular against political dissidents and opposition party members, students, alleged terror suspects and alleged supporters of insurgent groups...”³

Consistent with these findings, Mr. Nega’s co-defendant Nathnael Mekonnen reported that guards tortured him for 23 days while in pre-trial detention at the Maekelawi detention center. His mistreatment included “being beaten, forced to stand for hours upon end, deprived of sleep, and having cold water poured over him;” however, despite the seriousness of these allegations, authorities failed to investigate.⁴

In light of the Ethiopian government’s history of mistreating detainees—in particular those accused of terrorism offenses—and it’s recent attempts to isolate Mr. Nega from the outside world, his continued detention places his life and health at risk. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the “Urgent Action” procedure.⁵ In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolution 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.⁶

² *2011 Country Reports on Human Rights Practices: Ethiopia*, U.S. Dep’t of State (May 24, 2012), at § 1(c), available at <http://www.state.gov/documents/organization/186406.pdf>.

³ *Concluding Observations of the Committee Against Torture: Ethiopia*”), U.N. Doc. CAT/C/ETH/CO.1 (Jan 20, 2011, at ¶ 10.

⁴ *Ethiopia: Terrorism Law Used to Crush Free Speech*, Human Rights Watch, June 27, 2012, available at <http://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech>.

⁵ *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47, Annex ¶7(b) (“Revised Methods of Work”) (Jan. 19, 2011), at ¶ 22-24 [*hereinafter* Revised Methods of Work].

⁶ *Id.* at ¶ 9-20.

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

I. IDENTITY

1. **Family name:** Nega
2. **First name:** Eskinder
3. **Sex:** Male
4. **Birth date:** November 7, 1969 (Gregorian); October 27, 1962 (Ethiopian)
5. **Nationality:** Federal Democratic Republic of Ethiopia
6. **(a) Identity document (if any):** Unknown
(b) Issued by:
(c) On (date):
(d) No.:
7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):** Mr. Nega is a prominent independent journalist and blogger. Although he was often invited to address events sponsored by political opposition groups in this capacity, he is not a member of any political party.
8. **Address of usual residence:** Redacted

II. ARREST

1. **Date of arrest:** September 14, 2011
2. **Place of arrest (as detailed as possible):** Police arrested Mr. Nega while he was driving in Addis Ababa, Ethiopia to pick-up his son from kindergarten. Police initially brought him to his home while they conducted a search and then took him to the Maekelawi Federal Police Criminal Investigation Prison.
3. **Forces who carried out the arrest or are believed to have carried it out:** Federal Police in Addis Ababa, Ethiopia
4. **Did they show a warrant or other decision by a public authority?** Unknown
5. **Authority who issued the warrant or decision:** Unknown

6. **Relevant legislation applied (if known):** Article 19(1) of Ethiopia’s Anti-Terrorism Proclamation No. 652/2009 (2009 Anti-Terrorism Proclamation)⁷

III. DETENTION

1. **Date of detention:** September 14, 2011
2. **Duration of detention (if not known, probable duration):** Ten months and two days
3. **Forces holding the detainee under custody:** Unknown
4. **Places of detention (indicate any transfer and present place of detention):** Police initially detained Mr. Nega at the Maekelawi Federal Police Criminal Investigation Prison and later transferred him to Kaliti Prison.
5. **Authorities that ordered the detention:** The Lideta Federal High Court
6. **Reasons for the detention imputed by the authorities:** Mr. Nega is alleged to have committed terrorism and treason; however, his prosecution was a direct result of his legitimate work as an independent journalist and commentator. See “Statement of Facts,” below.
7. **Relevant legislation applied (if known):** Article 20(5) of Ethiopia’s Anti-Terrorism Proclamation requires pretrial detention for terrorism suspects.⁸ In the government’s charging document, Mr. Nega is accused of having violated Articles 32(1)a, 38(1), 248(b), and 252(1)a of Ethiopia’s 2004 Criminal Code and Articles 3(1), 3(2), 3(3), 3(4), 4, and 6, 7(2) of the 2009 Anti-Terrorism proclamation.

IV. 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 documented history of suppressing political participation and using arbitrary detention to limit freedom of expression and the work of independent journalists. Part B presents the case of Eskinder Nega, an Ethiopian journalist wrongly detained on September 14, 2011 and sentenced by the government to 18 years in prison on July 13, 2012.

⁷ Anti-Terrorism Proclamation 652/2009, [Ethiopian] House of Peoples’ Representatives (*published* Aug. 28, 2009) [*hereinafter* 2009 Anti-Terrorism Proclamation], at art. 19(1) (“The police may arrest without a court warrant any person who he reasonably suspects to have committed or is committing a terrorist act as provided under this proclamation.”).

⁸ *Id.* at art. 20(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 a decision on the case.”).

A. Political Suppression and Limitations on Free Expression in the Federal Democratic Republic of Ethiopia (Ethiopia)

1. Ethiopia's Political System Consolidates Power in an Authoritarian Prime Minister

The Federal Democratic Republic of Ethiopia (Ethiopia) has been governed by now Prime Minister Meles Zenawi since the fall of the Derg Regime in 1991.⁹ Ostensibly, Ethiopia is a liberal democracy: the Ethiopian Constitution, adopted in 1995, separates the government horizontally into legislative, executive, and judicial branches and vertically into federal and regional jurisdictions.¹⁰ The Constitution also contains a broad variety of protections for civil and political rights.¹¹ Prime Minister Meles has indicated that his government seeks to gradually fulfill the Constitution's democratic promises.¹² However, progress toward the realization of fundamental human rights has not merely been slow—in recent years Ethiopia's rights record has worsened.

After coming to power, Prime Minister Meles consolidated his control over the Ethiopian People's Republican Defense Force (EPRDF). Officially, the EPRDF represents a coalition of the Prime Minister's own Tigrayan People's Liberation Front (TPLF) and a number of other ethnically-based groups.¹³ The TPLF instigated these partner organizations in order to forge and lead this coalition.¹⁴ During the transitional period from 1991-1995, the TPLF-led EPRDF used these sponsored partners to politically outmaneuver the opposing parties of its various ethnic rivals.¹⁵ Then, in 2001, Prime Minister Meles culled the EPRDF leadership,¹⁶ giving him

⁹ Initially Mr. Meles governed Ethiopia as its President. Since 1995, when the new Constitution took effect, he has ruled as Prime Minister. *Biography: HE Meles Zenawi, Prime Minister*, Embassy of the Federal Democratic Republic of Ethiopia (UK), at ¶4-5, available at <http://www.ethioembassy.org.uk/facts%20about%20ethiopia/biography%20ato%20meles%20zenawi.htm>.

¹⁰ *Constitution of the Federal Democratic Republic of Ethiopia*, Aug. 21, 1995, at art. 50(1-2) [*hereinafter* Constitution of Ethiopia] available at <http://www.unhcr.org/refworld/docid/3ae6b5a84.html>.

¹¹ *Id.* at Art. 14-44.

¹² See, for example, Meles' remarks to Parliament in 1995 (*Ethiopia; Prime Minister Meles addresses parliament, sets out government plans, originally broadcast on SWB [Ethiopian TV], Aug. 24, 1995, translated and reprinted in The Horn of Africa Bulletin Sept.-Oct. 1995 (Univ. of Pennsylvania African Studies Center)*, at "PRIME MINISTER MELES ADDRESSES PARLIAMENT", available at http://www.africa.upenn.edu/Newsletters/menu_Hab91095.html. See also *One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia*, Human Rights Watch (Mar. 24, 2010), at 2 [*hereinafter One Hundred Ways*], available at <http://www.hrw.org/sites/default/files/reports/ethiopia0310webwcover.pdf>.

¹³ *Ethiopia: The Curtailment of Rights*, Human Rights Watch (Dec. 9, 1997), at 7-8, available at <http://www.hrw.org/sites/default/files/reports/ethio97d.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Nicole Stremlau, *The Press and the Political Restructuring of Ethiopia*, 5 *Journal of East Africa Studies* 4 (2011), at note 62, available at <http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.642526>. See also *Ethiopia: Whether in 2001, there was a split in the Central Committee of the Ethiopian People's Revolutionary Democratic Front (EPRDF) and if so, whether some members of the committee were arrested or detained as a result of this split*

“unchallenged supremacy” in the party.¹⁷

The EPRDF, in turn, controls the government. Since the Constitution’s inception, the EPRDF and its allies have controlled a majority of every elected body at both the regional and the national level.¹⁸ The national parliament is responsible for both legislation and constitutional interpretation. Historically, its interpretation of the Ethiopian Constitution has been governed by the political interests of the EPRDF.¹⁹ Furthermore, in 2001 the Parliament effectively eliminated any checks on legislative or executive power by the nominally-independent judiciary.²⁰ Bound to uphold laws as presumptively constitutional,²¹ criminal courts in Ethiopia remain “weak, overburdened, and subject to political influence.”²² Recently, the executive has even asserted the authority to override judicial decisions.²³

(2001-June 2004), Immigration and Refugee Board of Canada, Jun. 24, 2004 (ETH42754.E), available at <http://www.unhcr.org/refworld/docid/41501c077.html>.

¹⁷ Medhane Tadesse and John Young, *TPLF: Reform or Decline?* 30 *Review of African Political Economy* 97 (2003), at 397, available at <http://www.jstor.org/discover/10.2307/4006983?uid=3739256&uid=2&uid=4&sid=47699032629557>.

¹⁸ 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 www.tandfonline.com/doi/abs/10.1080/17531055.2011.642525.

¹⁹ Chi Mgbako et al., *Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights*, 32 *Fordham International Law Journal* 1 (2008) at 286, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2193&context=ilj>.

²⁰ Council of Constitutional Inquiry Proclamation, [Ethiopian] House of People’s Representatives, No. 250/2001 (published Jul. 6, 2001), at art. 2(5), available at http://www.hofethiopia.gov.et/c/document_library/get_file?p_1_id=13311&folderId=94986&name=DLFE-213.pdf; Consolidation of the House of Federation and the Definition of its Powers and Responsibilities Proclamation, [Ethiopian] House of People’s Representatives, No. 251/2001 (published Jul. 6, 2001), at art. 2(2), available at http://www.hofethiopia.gov.et/c/document_library/get_file?p_1_id=13311&folderId=94986&name=DLFE-214.pdf. Constitutionally, laws are adopted after passage by the Parliament and signature by the President. Constitution of Ethiopia, *supra* note 10, at art. 57. Before 2001, the judiciary could question the constitutionality of unilateral actions by executive officers or legislative regulatory bodies. See Assefa Fiseha, *Separation of powers and its implications for the judiciary in Ethiopia*, 5 *Journal of East African Studies* 4 (2001) at 706, available at <http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.649576> (citing *Addis Ababa Taxi Drivers Union v. Addis Ababa City Administration* and *Blyadigign Meles et al v. Amhara National Regional State* [both unpublished]).

²¹ Fiseha, *supra* note 20, at 706.

²² 2011 *Country Reports on Human Rights Practices: Ethiopia*, *supra* note 2, at § 1(e). 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.saifac.org.za/docs/2007/mzikamanda_paper.pdf.

²³ Fiseha, *supra* note 20, at 708 (citing Federal Democratic Republic of Ethiopia, “Regulation No. 155/2008,” at art. 37).

2. Ethiopia's History of Political Suppression

Recent elections have demonstrated the government's control over the political process and highlighted the continued suppression of independent voices in Ethiopia. Although the 2000 elections were considered generally free and fair, opposition parties performed poorly because of a lack of funding and contested only 20% of parliamentary seats.²⁴ The 2005 elections, by contrast, were marked by the unprecedented participation of opposition parties.²⁵ While there were pre-election complaints of abuse,²⁶ the government allowed opposition parties to peacefully assemble and gave them coverage in state-controlled media.²⁷ The government also allowed the private press increased freedom, lifting an existing ban on the Ethiopian Free Press Journalists' Association in advance of the elections.²⁸

Despite initial openness, the situation deteriorated after voting began. Early, unconfirmed reports suggested that opposition parties had won a significant proportion of the legislature.²⁹ The government reacted quickly. On the evening of May 15—the night of the election—the government imposed a one-month ban on public demonstrations. Control of the Addis Ababa security forces, otherwise soon to be commanded by a newly-elected opposition majority in the capital, was transferred to the Prime Minister's office.³⁰ When official preliminary results showed the EPRDF retained control of the government, opposition parties organized protests claiming election fraud.³¹ The protests devolved into clashes between demonstrators and security forces.³² The Minister of Information accused the opposition of “orchestrating th[e] violence.”³³ Opposition leaders appealed for calm while lamenting that their supporters were being killed and subjected to mass arrests.³⁴ In the three days following the election, hundreds of Ethiopians were

²⁴ *2001 Country Reports on Human Rights Practices: Ethiopia*, U.S. Dep't of State (Mar. 4, 2002), at ¶ 1, available at <http://www.state.gov/j/drl/rls/hrrpt/2001/af/8372.htm>.

²⁵ *Final Report: Observing the 2005 Ethiopia National Elections*, The Carter Center (Dec. 2009), at 4 [*hereinafter* Carter Report], available at http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/Ethiopia-2005-Finalrpt.pdf.

²⁶ *Id.* at 17.

²⁷ *Id.* at 4.

²⁸ *Ethiopia: Ban on media association lifted*, United Nations Integrated Regional Information Network, Mar. 7, 2005, available at <http://www.irinnews.org/Report/53288/ETHIOPIA-Ban-on-media-association-lifted>.

²⁹ Carter Report, *supra* note 20, at 24.

³⁰ *Id.* at 4. When an opposition party sued, arguing Mr. Meles' orders violated the constitutionally-guaranteed right to assembly, the advisory body to the judiciary house of the parliament ruled in favor of the Prime Minister. Mgbako et al., *supra* note 19, at 286.

³¹ Carter Report, *supra* note 25, at 4. Ultimately, the EPRDF controlled 68% of the Parliament. *Id.* at 8.

³² *Eritrea-Ethiopia: Year in Brief, Jan – June 2005 – A chronology of key events*, United Nations Integrated Regional Information Network, Jan. 11, 2006, at “ETHIOPIA, 10 June,” available at <http://www.irinnews.org/Report/57773/ERITREA-ETHIOPIA-Year-in-Brief-Jan-June-2005-A-chronology-of-key-events>.

³³ *Final Report—Ethiopia Legislative Elections 2005*, European Union Election Observation Mission at 24, available at <http://eeas.europa.eu/eucom/pdf/missions/finalreport-ethiopia-2005.pdf>.

³⁴ *Ethiopia: Opposition agrees to abide by non-violence pact*, United Nations Integrated Regional Information Network, June 10, 2005, available at <http://www.irinnews.org/printreport.aspx?reportid=54891>.

injured and 40 were killed, including a newly-elected opposition leader.³⁵

After the election, the EPRDF worked to systematically dismantle opposition support. Over the next few months, opposition parties claimed over a thousand members nationwide were detained and many party offices were shuttered.³⁶ In the five years leading up to the 2010 election, the EPRDF slowly starved the opposition of members, requiring citizens to hold EPRDF party membership to obtain most kinds of community goods, from aid subsidies to employment and education.³⁷ In the 2010 national and regional elections, the EPRDF pursued every possible advantage, preventing opposition from effectively organizing³⁸ and using state resources for campaign activities.³⁹ The result was a landslide victory for the ruling party and its allies.⁴⁰

3. Ethiopia's Interference with Free Expression and Use of Arbitrary Detention

The Ethiopian government views the independent media as “in effect a party organ of the opposition.”⁴¹ Following the election in 2005, the government used a variety of legal mechanisms to quash free expression. Newsrooms were raided and publications were blocked.⁴² In an unprecedented move, independent journalists, including Mr. Nega, were charged with treason, attempted genocide, and “outrages against the constitution.”⁴³

In 2007, the Ministry of Information instituted new restrictions on newspaper licenses, including permanent residency requirements and an often prohibitively high minimum bank balance

³⁵ Carter Report, *supra* note 25, at 25.

³⁶ *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.ehrco.org/images/pdf/special89.pdf>. The EHRC was able to confirm 261 of these claims for the period from September 25th to October 17th (*Id.* at 2-12).

³⁷ *One Hundred Ways*, *supra* note 12, at 2-3.

³⁸ *2010 Country Reports on Human Rights Practices: Ethiopia*, U.S. Dept. of State (Apr. 8, 2011), at § 2(b), available at <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154346.htm>.

³⁹ *Final Report—House of People's Representatives and State Council Elections*, European Union Election Observation Mission (May 23, 2010), at 2, available at http://eueom.eu/files/pressreleases/english/final-report-eueom-ethiopia-08112010_en.pdf.

⁴⁰ *Id.* at 33.

⁴¹ Julia Crawford, *Ethiopia: Poison, Politics, and the Press*, Committee to Protect Journalists, Apr. 28, 2006, at ¶7, available at <http://www.cpj.org/reports/2006/04/ethiopia-da-spring-06.php>.

⁴² *Countries at the Crossroads 2007 – Ethiopia*, Freedom House, (Sept. 25, 2007) at ¶24 [<http://www.unhcr.org/refworld/docid/4738692464.html>]. According to Mr. Nega's own reporting, 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://www.jimmatimes.com/printFriendly.cfm?articleID=33049>).

⁴³ *2006 Country Reports on Human Rights Practices: Ethiopia*, U.S. Dept. of State, (Mar. 6, 2007) at § 1(e), available at <http://www.state.gov/j/drl/rls/hrrpt/2006/78734.htm>. The journalists were charged with crimes carrying the possibility of a death sentence although the maximum sentence under Ethiopia's press laws was three years in prison. Crawford, *supra* note 41, at ¶19.

requirement.⁴⁴ In the first week of 2008, the Ministry denied licenses to a number of journalists released the previous year, including Mr. Nega.⁴⁵ Later that year, the Parliament passed the Freedom of the Mass Media and Access to Information Proclamation.⁴⁶ The new law established registration requirements and criminal penalties for defamation severe enough prompt the UN Human Rights Committee to express concern that the measures violated the International Covenant on Civil and Political Rights.⁴⁷

The Committee was similarly concerned with Ethiopia's 2009 Anti-Terrorism Proclamation, noting that its provisions on encouragement and inducement of terrorism could "lead to abuse of the media."⁴⁸ Prior to the law's passage, Human Rights Watch noted that, "a journalist interviewing an opposition politician... could be deemed to be 'encouraging' terrorism merely by publicizing the views of the interviewee."⁴⁹ The Ethiopian Foreign Ministry had already employed this logic in 2008, accusing Al-Jazeera of "direct and indirect assistance to terrorist organizations" for airing reports on the plight of civilians in Ethiopia's restive Ogaden region.⁵⁰ Once the law was in effect, the Ethiopian government quickly backed similar accusations with criminal charges.⁵¹ From June to December of 2011, ten journalists were charged under the anti-terrorism legislation, including two Swedish nationals.⁵² In response to these prosecutions, 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

⁴⁴ 2007 Country Reports on Human Rights Practices: Ethiopia, U.S. Dept. of State, (Mar. 11, 2008), at § 2(a), available at <http://www.state.gov/j/drl/rls/hrrpt/2007/100481.htm>.

⁴⁵ 2008 Country Reports on Human Rights Practices: Ethiopia, U.S. Dept. of State, (Feb. 25, 2009), at § 2(a), available at <http://www.state.gov/j/drl/rls/hrrpt/2008/af/119001.htm>.

⁴⁶ 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>.

⁴⁷ Concluding Observations of the Human Rights Committee: Ethiopia, UN Human Rights Committee (HRC), (Aug. 19, 2011), at 7 [hereinafter UNHRC Observations], available at <http://www.unhcr.org/refworld/docid/4fb2488d2.html>.

⁴⁸ *Id.* at 4.

⁴⁹ *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>.)

⁵⁰ *One Hundred Ways*, *supra* note 12, at 51.

⁵¹ The first charges leveled against journalists under the new law occurred in late 2009. *Id.* at 50.

⁵² *CPJ condemns trial of Swedish journalists in Ethiopia*, Committee to Protect Journalists, Dec. 21, 2011, at ¶ 2-3, available at <http://www.cpj.org/2011/12/cpj-condemns-trial-of-swedish-journalists-in-ethio.php>.

of expression and association.”⁵³ Similarly, five UN Special Rapporteurs, 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.”⁵⁴

Cumulatively, these measures have further undermined Ethiopia’s already poor record on freedom of expression. In the past year, Ethiopia has fallen seven places in Freedom House’s Global Press Freedom Rankings, from 168th to 175th.⁵⁵ Over the past decade, the government has forced more journalists into exile than any other country in the world,⁵⁶ and in 2007 Ethiopia was labeled the worst backslider on press freedoms by the Committee to Protect Journalists.⁵⁷

B. The Arbitrary Detention of Eskinder Nega

1. Background Information on Eskinder Nega⁵⁸

Eskinder Nega is a prominent journalist and blogger known for his outspoken criticism of the Ethiopian government who has been wrongly detained since September 14, 2011.

Mr. Nega began his career as an independent journalist in 1993 when he founded the *Ethiopia* newspaper, which was quickly closed by the government.⁵⁹ Mr. Nega later founded three more publications that were quickly banned: the English weekly, *Habesha*, a Tigrigna language newspaper, *Dehai*, and an Oromifa language newspaper.⁶⁰ He also served as the general manager of the Serkalem Publishing House, whose three weekly newspapers, *Asqual*, *Satenaw*, and *Menelik*, are now banned.⁶¹ Other publications that Mr. Nega contributed to as a columnist, such as the monthly magazine *Change* and the online news forum *EthioMedia* are also banned in the

⁵³ Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia, African Commission on Human and People’s Rights, Res. 218 (51st Sess.) available at <http://www.achpr.org/sessions/51st/resolutions/218/>.

⁵⁴ *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>.

⁵⁵ Compare *Global Press Freedom Rankings 2012*, Freedom House, at 175th, available at <http://www.freedomhouse.org/sites/default/files/Global%20and%20Regional%20Press%20Freedom%20Rankings.pdf>, with *Global Press Freedom Rankings 2011*, Freedom House at 168th, available at http://www.freedomhouse.org/sites/default/files/FOTP%202011%20Tables%20and%20Graphs_0.pdf.

⁵⁶ *Attacks on the Press in 2011: Ethiopia*, Committee to Protect Journalists, available at <http://cpj.org/2012/02/attacks-on-the-press-in-2011-ethiopia.php>.

⁵⁷ *Backsliders: The 10 countries where press freedom has most deteriorated*, Committee to Protect Journalists, (May 2, 2007), at ¶1, available at <http://cpj.org/reports/2007/05/backsliders.php>.

⁵⁸ Some of the information contained in this section is based on private communications with individual sources. Their identities have been withheld due to concerns for their security or at their own request. Each source has been assigned a pseudonym consisting two of consecutive letters, randomly assigned.

⁵⁹ *Top PEN Prize to Honor Eskinder Nega, Jailed Ethiopian Journalist and Blogger*, Pen American Center, Apr. 12, 2012 [hereinafter *Top PEN Prize*] available at <http://www.pen.org/viewmedia.php/prmMID/6494/prmID/174>.

⁶⁰ Communication with MN.

⁶¹ *Top PEN Prize*, *supra* note 59.

country.⁶² Although Mr. Nega is well-known for his political analysis and criticism of the government, he is not a member of any political party.⁶³

The Ethiopian government has repeatedly subjected Mr. Nega to arbitrary arrest—detaining him eight times in the last two decades.⁶⁴ In 2005, the government arrested Mr. Nega and his wife, Serkalem Fasil, who was herself a prominent independent publisher in Ethiopia.⁶⁵ They were arrested along with thousands of Ethiopians during the nationwide crackdown following the country’s disputed elections.⁶⁶ After the crackdown, the government prosecuted dozens of opposition leaders and journalists, including Mr. Nega and Ms. Fasil, on charges including “outrages against the constitution,” “impairment of the defensive power of the state,” and “attempted genocide.”⁶⁷ Ms. Fasil, who was pregnant at the time of her arrest, was denied access to a prenatal examination for the first seven months and gave birth to their son, Nafkot, after only eight months.⁶⁸

Released after 17 months of detention, Mr. Nega and Ms. Fasil continued to face government interference with their work in journalism. Ethiopia’s High Court released the couple on April 9, 2007, after an international outcry over their detention;⁶⁹ however, in July their Sekalem Publishing Company was fined and dissolved as a result of anti-state charges.⁷⁰ Then in January, 2008, the government blocked Mr. Nega and Ms. Fasil from re-launching the publishing house.⁷¹ Although Ms. Fasil decided to stop publishing, Mr. Nega continued write, primarily for online publications based outside of Ethiopia.⁷²

Federal police again detained Mr. Nega briefly on February 11, 2011 after he published an article

⁶² *Id.*

⁶³ Communication with QR.

⁶⁴ Communication with EF.

⁶⁵ *Ethiopia Blocks Freed Journalists from Launching Newspapers*, Committee to Protect Journalists, Jan. 2, 2008, available at <http://www.unhcr.org/refworld/country,CPJ,,ETH,,48243c5423,0.html>. Although a prominent publisher, this was Ms. Fasil’s first arrest. Ron Singer, *Journalist in a Paper Democracy: Interview with Eskinder Nega*, PAMBAZUKA NEWS, May 12, 2011, available at <http://www.pambazuka.org/en/category/features/73174>.

⁶⁶ *Ethiopia Blocks Freed Journalists from Launching Newspapers*, *supra* note 65.

⁶⁷ *Ethiopian High Court Acquits Eight Journalists on Antistate Crimes*, Committee to Protect Journalists, Apr. 9, 2007, available at <http://cpj.org/2007/04/ethiopian-high-court-acquits-eight-journalists-on.php>.

⁶⁸ Singer, *supra* note 65. See also International Women’s Media Foundation, *Serkalem Fasil, Ethiopia*, available at <http://iwmf.org/archive/articletype/articleview/articleid/533/serkalem-fasil-ethiopia.aspx>.

⁶⁹ Communication with XY. See also *Ethiopian High Court Acquits Eight Journalists on Antistate Crimes*, *supra* note 67.

⁷⁰ *Ethiopia Blocks Freed Journalists from Launching Newspapers*, *supra* note 65.

⁷¹ *Id.* See also *Anti-Terrorism Legislation Further Restricts Ethiopian Press*, Committee to Protect Journalists, July 23, 2009, available at <http://www.cpj.org/2009/07/anti-terrorism-legislation-further-restricts-ethio.php>.

⁷² David Goodman, *Imprisoned Ethiopian Journalist is Honored with PEN Award*, NEW YORK TIMES, May 2, 2012, available at <http://www.nytimes.com/2012/05/03/world/africa/eskinder-nega-ethiopian-journalist-honored-by-pen.html>.

online featuring the picture of a former general.⁷³ Heavily armed police seized Mr. Nega and his papers as he left an internet café and transported him to a police station.⁷⁴ There, a Deputy Police Commissioner accused Mr. Nega of trying to incite an “Egyptian-like protest in Ethiopia” and warned that authorities were losing patience with him.⁷⁵ Although the officer told Mr. Nega that he was not being ordered to stop writing or giving interviews, he told Mr. Nega to “be warned that you have already crossed the boundary. We have enough to convict you already. I want you to understand that this is a serious warning.” After releasing Mr. Nega, police placed him under constant, visible surveillance.⁷⁶

2. Arbitrary Arrest and Detention of Eskinder Nega

Even after receiving the warning that he had “crossed the line,” Mr. Nega continued to publish articles about the Arab Spring online. These articles devoted particular attention to what impact such events might have on the political situation in Ethiopia. While Mr. Nega clearly expressed support for the protesters in Tunisia, Egypt, and Lybia, he also repeatedly emphasized the importance of non-violence.⁷⁷ Commenting on the fall of Libyan dictator Muammar Gaddafi, Mr. Nega observed that,

The triumph of hope in only one sub-Saharan dictatorship will beget a continent wide African Spring, hopefully all peaceful. And as Egypt, the Arab world’s biggest dictatorship during Mubarak’s reign, was the Arab Spring’s prize, so will Ethiopia, sub-Saharan’s biggest dictatorship, be the golden prize for an African Spring. There couldn’t have been an Arab Spring without Egypt. There will be no African Spring without Ethiopia.

Hopefully, Meles understands this and is willing to do his country and Africa one big favor. When the time arrives, the inevitable must not be futilely resisted. This is the crucial lesson that should be learned from Gadhafi’s [sic.] needlessly destructive finale. Ethiopia must and should avoid violence. If Ethiopia shuns violence so will most of sub-Saharan Africa. And only then will the advent of the African Spring be even better news

⁷³ *Police Warn Prominent Journalist Against Attempts to Incite Egyptian-Like Protests*, ETHIOMEDIA, Feb. 12, 2011, available at <http://www.ethiomeida.com/above/2126.html>.

⁷⁴ *Id.* See also Singer, *supra* note 65.

⁷⁵ Singer, *supra* note 65.

⁷⁶ *Id.*

⁷⁷ Eskinder Nega, *As Egypt and Yemen Protest, Wither Ethiopia’s Opposition?*, ETHIOMEIDA, Jan. 28, 2011 (“Every time the government responds with violence—however limited and restrained—more and more people are joining them. Their moral fortitude—exemplified through their non-violence—is galvanizing not only their peoples but also the world to their cause.”). Eskinder Nega, *Open Letter to PM Meles Zenawi from the People*, ABUGIDAINFO, Mar. 4, 2011, available at <http://www.abugidainfo.com/index.php/17472/> (“Notwithstanding my conviction that you and your party have fundamentally marred Ethiopia’s standing and potential, it is my duty as a Christian not to wish you ill-health.”). Eskinder Nega, *Gadhafi’s Fall and Meles Zenawi*, ABUGIDAINFO, Aug. 26, 2011, available at <http://www.abugidainfo.com/index.php/18713/> (“Ethiopia must and should avoid violence.”). Eskinder Nega, *Debebe Eshetu’s Arrest and New Years*, ABUGIDAINFO, Sep. 9, 2011, available at <http://www.abugidainfo.com/index.php/18798/> (“2004 Could be the year when we finally stop killing each other for political reasons.”).

than that of the Arab Spring.⁷⁸

In an article marking the Ethiopian New Year, posted just days before his arrest, Mr. Nega criticized the government's use of terrorism charges to jail journalists and critics of the government.⁷⁹ In particular, the article criticizes the arrest of Debebe Eshetu, a prominent Ethiopian dissident. Expressing hope for an end to political violence and respect for human rights in Ethiopia, Mr. Nega noted that,

Freedom is partial to no race. Freedom has no religion. Freedom favors no ethnicity. Freedom discriminates not between rich and poor countries. Inevitably, freedom will overwhelm Ethiopia.⁸⁰

On September 14, 2011, Federal Police detained Mr. Nega and four opposition activists, including the deputy chairman of the opposition Unity for Democracy and Justice party, Andualem Arage.⁸¹ Police arrested Mr. Nega as he attempted to pick up his son from kindergarten and brought him to his home in Addis Ababa where they conducted a thorough search of the residence.⁸² Police seized Mr. Nega's writings and documents, forcing him to sign each.⁸³ Police also seized about 80 compact disks, some currency, and Mr. Nega's car, laptop, and mobile phone.⁸⁴ Mr. Nega was then taken to the Maekelawi Federal Police Criminal Investigation Prison.⁸⁵

Authorities repeatedly and publicly accused Mr. Nega of terrorism in the days and weeks following his arrest, although the government had not yet formally charged him. State television accused Mr. Nega of membership in the banned U.S.-based Ginbot 7 political movement and portrayed him as a spy "for foreign forces."⁸⁶ The Ethiopian government's spokesperson, Shimless Kemal, claimed that "[t]he five men were involved in staging a series of terrorist acts that would likely wreak havoc," and were connected to Ginbot 7.⁸⁷ Days later, Deputy Federal Police Commissioner Demesash Woldemikael reiterated the government's claim that Mr. Nega

⁷⁸ *Gadhafi's Fall and Meles Zenawi*, *supra* note 77.

⁷⁹ *See Debebe Sehetu's Arrest and New Year*, *supra* note 77.

⁸⁰ *Id.*

⁸¹ William Davidson, *Ethiopian Government Rejects Human Rights-Group's Criticism over Arrests*, BLOOMBERG, Sep. 16, 2011. *See also*, *Government Critics Detained in Ethiopian Anti-Terror Sweep*, VOICE OF AMERICA, Sep. 14, 2011, available at <http://www.voanews.com/content/government-critics-detained-in-ethiopian-anti-terror-sweep-129845693/158852.html>.

⁸² Communication with QR

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Two Ethiopian Journalists Detained on Terrorism Charges*, Committee to Protect Journalists, Sep. 16, 2011, available at <http://www.cpj.org/2011/09/two-ethiopian-journalists-detained-on-terrorism-ch.php>.

⁸⁷ *Government Critics Detained in Ethiopian Anti-Terror Sweep*, VOICE OF AMERICA, Sep 14, 2011, available at <http://www.voanews.com/content/government-critics-detained-in-ethiopian-anti-terror-sweep-129845693/158852.html>.

and the other detainees were accused of planning acts of terrorism with banned groups and claimed to have “hard evidence that [would] stand up in court.”⁸⁸ Then in October, while addressing Ethiopia’s Parliament, Prime Minister Meles accused journalists in the country of working as “messengers” for “terrorist” groups and “claimed the government has evidence linking imprisoned journalists to terrorist acts and is aware of other journalist working in Ethiopia with terrorist ties.”⁸⁹

3. Arbitrary Prosecution of Eskinder Nega

On the morning of September 15, 2011, Mr. Nega was remanded to police custody until October 12, 2011 to allow police additional time to investigate.⁹⁰ The proceedings were closed to the public and Mr. Nega did not have access to legal counsel or members of his family.⁹¹ The government reauthorized Mr. Nega’s detention 28 days later after another hearing that was closed to the public and where Mr. Nega did not have access to legal counsel.⁹² It was during this proceeding that Mr. Nega was first allowed to see his family, nearly one month after his detention.⁹³

On November 10, 2011, the Ethiopian government charged Mr. Nega and 23 other individuals⁹⁴ before the Liedta Federal High Court with terrorism and treason.⁹⁵ This was the first time since his arrest on September 14, 2012 that Mr. Nega had access to any legal counsel.⁹⁶ In its charging document, the government presented four charges against Mr. Nega under Articles 32(1)(a), 38(1), 248(b), and 252(1)(a) of Ethiopia’s 2004 Criminal Code and Articles 3(1), 3(2), 3(3), 3(4), 4, and 6, and 7(2) of the 2009 Anti-Terrorism proclamation.⁹⁷

⁸⁸ *Ethiopia Police Deny Using Anti-Terror Law to Stifle Dissent*, VOICE OF AMERICA, Sep. 16, 2011, available at <http://www.voanews.com/content/ethiopia-police-deny-using-anti-terror-law-to-stifle-dissent-130016653/158867.html>.

⁸⁹ *Ethiopia Steps Up Terrorism Allegations against Journalists*, Committee to Protect Journalists, Oct. 24, 2011, available at <http://www.cpj.org/2011/10/ethiopia-steps-up-terrorism-allegations-against-jo.php>.

⁹⁰ *Two Ethiopian Journalists Detained on Terrorism Charges*, *supra* note 81.

⁹¹ Communication with QR. Article 20(2) of the 2009 Anti-Terrorism Proclamation authorizes the court to remand a suspect under investigation to police custody for at least 28 days, provided that the total amount of time does not exceed four months. 2009 Anti-Terrorism Proclamation, *supra* note 7, at art. 20(2).

⁹² Communication with QR. It is unclear whether these proceedings were physically closed to the public or whether they were merely conducted at times and locations “altered at the last minute.” *Ethiopia: Stop Using Anti-Terror Law to Stifle Peaceful Dissent*, Human Rights Watch, Nov. 21, 2011, available at <http://www.hrw.org/news/2011/11/21/ethiopia-stop-using-anti-terror-law-stifle-peaceful-dissent>.

⁹³ Communication with QR.

⁹⁴ Although six of the defendants are journalists, the other five journalists were tried *in absentia*. The remaining defendants are believed to be associated with opposition groups.

⁹⁵ William Davidson, *Ethiopia Charges Two Politicians and 22 Others with Terrorism*, BLOOMBERG, Nov. 11, 2011, available at <http://origin-www.bloomberg.com/apps/news?pid=20670001&sid=aYYFgoS0u23Q>. See also, English Translation of the Prosecutor’s Charging Document, Prosecutor’s File No. 00180/04, Nov. 10, 2011, on file with the author [*hereinafter* Charging Document].

⁹⁶ Communication with QR. See also *Ethiopia: Stop Using Anti-Terror Law to Stifle Dissent*, *supra* note 92.

⁹⁷ Charging Document, *supra* note 95.

The charges against Mr. Nega included the 2009 Anti-Terrorism Proclamation's broad prohibitions on incitement and encouragement of terrorism. Article 4 of the 2009 Anti-Terrorism Proclamation punishes anyone who "plans, prepares, conspires, *incites* or attempts to commit any of the [prohibited] terrorist acts."⁹⁸ Even more broadly, Article 6 of the 2009 Anti-Terrorism Proclamation provides that,

Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect *encouragement* or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under [the Proclamation] is punishable with rigorous imprisonment from 10 to 20 years.⁹⁹

Like the charges against Mr. Nega, the factual allegations contained in the government's charging document are extremely vague. The only section of the document that contains factual allegations specific to Mr. Nega alleges that,

Since 2003 E.C. (September 2010), at a time that is not known, by using as cover his constitutional right to freedom of expression, in order to put an end to the Constitution and the constitutional system through an organized terrorist act, served as a local agent of the terrorist organization Ginbot 7; accepted terrorist mission; in collaboration with the terrorist organization organized in secret in the country, made terrorist plans, and coordinated the planned terrorism with members of the terrorist organization that are in the country and abroad; disseminated calls for terrorism and violence; disseminated mobilizing materials in different ways; collected information that he directly passed on to Ginbot 7 and indirectly to the enemy the Eritrean Government and other terrorist organizations; called meetings that had terrorist missions and took decisions on different terrorist actions.¹⁰⁰

On January 24, 2012,¹⁰¹ the third criminal bench of the Lideta Federal High Court confirmed the charges against Mr. Nega and scheduled the beginning of the trial for March 5, 2012.¹⁰² However, due to amended pleadings submitted by the government, the trial proceedings did not

⁹⁸ 2009 Anti-Terrorism Proclamation, *supra* note 7, at art 4 (*emphasis added*).

⁹⁹ *Id.* at art. 6 (*emphasis added*).

¹⁰⁰ These allegations related to the first charge against Mr. Nega and the other defendants. In describing the second charge against Mr. Nega, the government fails to identify his alleged role in the Ginbot 7 organization, although it does describe the alleged roles of the other defendants. Finally, for the third and fourth charges against Mr. Nega, the government only refers to the "the defendants" in making similarly vague accusations. *See* Charging Document, *supra* note 95.

¹⁰¹ While the Federal High Court scheduled a hearing for November 15, 2011, *See Ethiopia Charges Two Politicians and 22 Others with Terrorism*, *supra* note 95, it does not appear that another hearing took place until January 24, 2012.

¹⁰² *Ethiopia: Judge Confirms Charges against Dissident Blogger*, Committee to Protect Journalists, Jan. 25, 2012, available at <http://cpj.org/2012/01/ethiopian-blogger-risks-death-penalty-as-judge-con.php>. Although some sources initially reported that the court had convicted Mr. Nega, it only authorized the trial to move forward on the government's charges.

recommence until March 24, 2012.¹⁰³

During the trial, both the prosecution and defense were given an opportunity to present evidence to the court.¹⁰⁴ The government submitted to the court a series of Mr. Nega's writings and interviews as evidence of his guilt.¹⁰⁵ During the proceedings, prosecutors showed video evidence that Mr. Nega spoke at events sponsored by different opposition parties in Ethiopia.¹⁰⁶ Prosecutors also reportedly presented "scratchy, nearly inaudible recordings of telephone conversations and other comments as evidence that the defendants were plotting terrorist acts."¹⁰⁷

Mr. Nega addressed the court and admitted to calling for peaceful protests and writing about the possibility of an Arab Spring-like protest movement in Ethiopia; however, he expressly denied advocating violence.¹⁰⁸ Mr. Nega reiterated that "Ethiopia needs change in a peaceful democratic manner."¹⁰⁹ The defense also presented a 70-minute video recording of a meeting of the Unity for Democracy and Justice opposition party, which Mr. Nega was invited to address.¹¹⁰ The defense played the full video to show that the government had selectively used clips of the video out of context during its presentation.¹¹¹ In the video, Mr. Nega emphasized that any protests should be "peaceful and legal."¹¹² Mr. Nega also addressed the video recorded opposition event in his statement to the court, saying that,

I was invited to write something. I accepted the invitation without hesitation, because I believe that it is my right to participate and get involved. As much as I could I wanted to encourage people to get involved and discuss in a peaceful manner the current situation of our country and get their views across.¹¹³

In April, the court held a "trial within a trial" after prosecutors complained that local independent media coverage by the *Fateh* and *Negradas* newspapers portrayed the proceedings as politically motivated and the defendants as falsely accused.¹¹⁴ Prosecutors asked that the court to hold that the coverage was unbalanced and order the papers to publish a correction.¹¹⁵ On April 22, 2012,

¹⁰³ Communication with MN.

¹⁰⁴ Communication with KL.

¹⁰⁵ English Translation of Eskinder Nega's Defense Statement, on file with the author.

¹⁰⁶ *Id.*

¹⁰⁷ *Ethiopian Terrorism Trial Hears Journalist Defendant*, VOICE OF AMERICA, Mar, 27, 2012, available at <http://www.voanews.com/content/ethiopian-terrorism-trial-hears-journalist-defendant-144654675/179445.html>.

¹⁰⁸ English Translation of Eskinder Nega's Defense Statement, on file with the author.

¹⁰⁹ *Id.*

¹¹⁰ Communication with KL.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ English Translation of Eskinder Nega's Defense Statement, on file with the author.

¹¹⁴ Communication with KL

¹¹⁵ Temesgen Desalegn, *The Whisper...*, FITIH, May 4, 2012, English translation on file with the author.

the court convicted journalist Temesgen Desalegn of interfering with the proceedings and sentenced him to four months in prison or a fine of 2000 birr (\$114 USD).¹¹⁶

Although a verdict in Mr. Nega's case was expected on May 11, 2012, the court postponed its announcement twice.¹¹⁷ On June 27, 2012, the court found Mr. Nega and his co-defendants "guilty as charged."¹¹⁸

In presenting the verdict, Judge Endeshaw Adane accused Mr. Nega of abusing his right to freedom of expression and threatening national security; "[u]nder the guise of freedom of speech and gathering, the suspects attempted to incite violence and overthrow the constitutional order," he said.¹¹⁹ Judge Adane accused Mr. Nega of writing "articles that incited the public to bring the North African and Arab uprisings to Ethiopia" and indicated that evidence against the defendants included speeches, articles, e-mails, phone calls and social-media messages.¹²⁰ He warned that "[f]reedom of speech can be limited when it is used to undermine security and not used for the public interest" and went on to say that "[t]here is no way other than democratic elections to attain power in the country, and what [the defendants] said is clearly against the constitution."¹²¹

In response to the verdict, Mr. Nega reemphasized his innocence. "I have struggled for peaceful democracy and I have never disrespected any individual and I didn't commit a crime," he told the court, "[m]y conscience is clear."¹²² When the court attempted to silence Mr. Nega he insisted that his right to free expression be protected. "You have to stand for justice, you have to allow us to say what we want," he said, "you have no right to limit our freedom of speech."¹²³

¹¹⁶ *Id.* On April 22, 2012, the exchange rate was .05706 U.S. dollar for 1 Ethiopia Birr. See <http://www.exchange-rates.org/Rate/ETB/USD/4-22-2012>.

¹¹⁷ Peter Heinlein, *Trials of Politicians, Journalists Test Ethiopia's Anti-Terrorism Law*, VOICE OF AMERICA, May 17, 2012, available at <http://www.voanews.com/content/trials-of-politicians-journalists-test-ethiopias-antiterrorism-law/667114.html>. See also *Verdict in Ethiopia Terrorism Trial Delayed*, RADIO NETHERLANDS WORLDWIDE, June 21, 2012, available at <http://www.rnw.nl/africa/bulletin/verdict-ethiopia-terrorism-trial-delayed>.

¹¹⁸ Jenny Vaughan, *Famed Ethiopian Journalist, Dissident Convicted of Terrorism*, AGENCE FRANCE PRESSE, June 27, 2012, available at <http://www.modernghana.com/news/403437/1/ethiopia-court-finds-24-guilty-of-terrorism.html>. It remains unclear whether the court convicted Mr. Nega of all the violations alleged in the government's charging document. The court did find Mr. Nega guilty of all of the charges that the court ordered him to defend during the proceeding in January. Communication with CD. However, unconfirmed reports indicated that the espionage charges under Article 252(1)(a) of the Criminal Code were dropped. Communication with MN.

¹¹⁹ Aaron Maasho

¹²⁰ William Davidson, *Ethiopian Court Convicts 24 in Opposition of Terror Plot*, BLOOMBERG, June 27, 2012.

¹²¹ Vaughan, *supra* note 118. Echoing the courts position that Mr. Nega abused his right to freedom of expression, following the verdict Prosecutor Michael Tekilo told reporters that "[b]y using the freedom of speech recognized in the constitution these criminals have been trying to destabilize the country... that is why the court should give a grave sentence." *Id.*

¹²² *Id.*

¹²³ *Id.*

Local reports indicated that shortly after the proceedings ended, the government placed Mr. Nega in solitary confinement until the afternoon of June 29.¹²⁴ On July 13, 2012, the court sentenced Mr. Nega to 18 years in prison.¹²⁵

II. Legal Analysis

The continued detention of Eskinder Nega is arbitrary¹²⁶ under Categories II and III as established by the UN Working Group on Arbitrary Detention (Working Group). The detention is arbitrary under Category II because it resulted from Mr. Nega's peaceful exercise of his right to freedom of expression. The detention is also arbitrary under Category III because the government's detention and prosecution of Mr. Nega failed to meet minimum international standards of due process.

A. Category II

The detention of Mr. Nega on terrorism related charges in response to his work as a journalist is arbitrary under Category II. A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law, including the right to freedom of expression.¹²⁷

1. Ethiopia Detained and Prosecuted Mr. Nega Because He Exercised His Right to Freedom of Expression

The right to freedom of expression is protected under international and Ethiopian law. Ethiopia is a party to the International Covenant on Civil and Political Rights (ICCPR)¹²⁸ and the Ethiopian Constitution mandates that the rights protected by the Constitution "shall be interpreted in a

¹²⁴ Communication with EF.

¹²⁵ Aaron Maasho, *Ethiopia Jails Prominent Blogger, Opposition Figures*, REUTERS, July 13, 2012, available at <http://www.reuters.com/article/2012/07/13/us-ethiopia-media-trial-idUSBRE86C0CN20120713>.

¹²⁶ 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), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, at art. 9(1) [*hereinafter* ICCPR]. 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, at art 9 (1948) [*hereinafter* UDHR]. "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, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988) [*hereinafter* Body of Principles].

¹²⁷ 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." Revised Methods of Work", *supra* note 5 at ¶ 8(b).

¹²⁸ Status of Ratification of the International Covenant on Civil and Political Rights, 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.

manner conforming to the principles” of the ICCPR.¹²⁹ 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.”¹³⁰ Article 29 of Ethiopia’s Constitution contains the same protection and specifically guarantees freedom of the press and prohibits censorship.¹³¹

The UN Human Rights Committee (Committee), the body tasked with interpreting the ICCPR, has recognized that Article 19(2) specifically protects the work of journalists¹³² and “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹³³ The Committee has also emphasized that freedom of expression and “a free and uncensored press” are of “paramount importance” in a democratic society.¹³⁴

Despite these express protections under international and Ethiopian law, the Ethiopian government detained and prosecuted Mr. Nega as a direct result of his legitimate activities as a journalist. When authorities finally charged Mr. Nega under the Criminal Code and the 2009 Anti-Terrorism Proclamation, the government acknowledged that the ultimate motivation behind the prosecution was Mr. Nega’s critical writings. In introducing its vague factual allegations, prosecutors claimed that Mr. Nega had “use[d] as cover his constitutional right to freedom of expression.” Then, during the criminal proceedings the government relied upon Mr. Nega’s public writings and speeches—none of which advocated the use of violence—to prove his guilt. The court specifically identified Mr. Nega’s work as a journalist and accused him of attempting to incite an Arab Spring-like movement. The court also admitted that it relied upon the defendants’ articles, speeches, and social media messages in coming to its verdict.

The circumstances of Mr. Nega’s arrest also demonstrate that his government’s actions are a result of his critical reporting. Police briefly detained Mr. Nega in February 2011 and warned him that his articles had “crossed the line” and that authorities were losing patience with him. Then, police arrested Mr. Nega in September, just days after he published an article strongly

¹²⁹ Constitution of Ethiopia, *supra* note 10, at art 13(2) (“The fundamental rights and freedoms specified in this Chapter 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.”).

¹³⁰ ICCPR, *supra* note 126, at art. 19(2). *See also* UDHR, *supra* note 126, 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.”).

¹³¹ The Ethiopian Constitution mirrors Article 19(2) of the ICCPR. Constitution of Ethiopia, *supra* note 10, at art. 29(2). The Constitution further provides that “[f]reedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements: (a) Prohibition of any form of censorship. (b) Access to information of public interest. *Id.* at art. 29(3).

¹³² *Movlonov et. al. v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004, U.N. Doc. CCPR/C/95/D/1334/2004 (*adopted* Mar. 19, 2009).

¹³³ *de Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (*adopted* Mar. 29, 2005) at ¶ 6.7.

¹³⁴ *Id.* *See also* General Comment No. 25, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) at ¶ 12 (“Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”).

criticizing the government’s arbitrary use of the 2009 Anti-Terrorism Proclamation—the very law the government used against him—and seized his writings and documents during a search of his home. This attempt to silence Mr. Nega is consistent with the government’s broader history of attempting to suppress free expression by independent journalists and opposition activists and constitutes a violation of Article 19(2) of the ICCPR and is therefore arbitrary.

Further, the narrow limitation on the right to freedom of expression contained in Article 19(3) of the ICCPR does not apply in this case. Article 19(3) provides that,

The exercise of the [right to freedom of 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) [f]or the respect of the rights or reputations of others; [or] (b) [f]or the protection of national security or of public order (ordre public), or of public health and morals.

Contrary to the Lideta Federal High Court’s claim that “[f]reedom of speech can be limited when it is used to undermine security and not used for the public interest,” the scope of Article 19(3) is much narrower. The Committee has emphasized the narrowness of this limitation by noting that “when a State party imposes a limitation on the exercise of freedom of expression, [it] may not put in jeopardy the right itself.”¹³⁵ As such, any limitation “must meet a strict test of justification.”¹³⁶ To guide states, the Committee has established three requirements for any limitation on the right to freedom expression. A permissible limitation must be 1) “provided by law,” 2) for the protection of one of the “enumerated purposes,” and 3) “necessary” to achieve that purpose.¹³⁷ In this case, the limitation on Mr. Nega’s expression fails to meet both the second and third requirements.

The limitation on Mr. Nega’s free expression was not for a proper purpose. The terrorism and treason charges against Mr. Nega implicate the “national security” purpose, which generally involves threats to “the political independence or territorial integrity of the State is at risk.”¹³⁸ However, invocation of this rationale is not without limit. The government must “specify the precise nature of the threat” that the prohibited expression poses to national security.¹³⁹ Further, “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.”¹⁴⁰

¹³⁵ General Comment No. 34, UN Human Rights Committee, U.N. Doc. CCPR/C/G/34 (Sep. 12, 2011) at ¶ 21.

¹³⁶ *Park v. Republic Korea*, UN Human Rights Committee, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995 (adopted Oct. 20, 1998) at ¶ 10.3.

¹³⁷ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000 (adopted Mar. 16, 2004) at ¶ 7.3.

¹³⁸ SARAH JOSEPH ET AL., *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES AND CONTROVERSIES* (Oxford 2004 2nd ed.) at 534.

¹³⁹ *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, U.N. Doc. CCPR/C/OP/5 (adopted July 19, 1995) at ¶ 10.4.

¹⁴⁰ *Mukong v. Cameroon*, UN Human Rights Committee, Communication No. 458/1991, U.N. Doc. CCPR/C/51/D/548/1991 at ¶ 9.7.

In this case, Mr. Nega’s expression falls outside the kind of speech that can be properly limited under a national security rationale. The charges against Mr. Nega in this case include the 2009 Anti-Terrorism Proclamation’s exceedingly broad prohibition on encouraging terrorism. That provision punishes anyone who “publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement...” of terrorism.¹⁴¹ It was the use of this overreaching law against journalists that prompted condemnation from international rights organizations, the African Court of Human and Peoples’ Rights, and five United Nations Special Rapporteurs. Similarly, government’s vague factual allegations against Mr. Nega fail to specify with any precision the nature of the threat posed by his calls for peaceful political reform in Ethiopia. Indeed, his is precisely that kind of expression—criticizing government authorities and calling for “multi-party democracy, democratic tenants, and human rights”—that the Committee has recognized cannot be properly punished under the narrow national security rationale.

Further, even if the government could properly invoke the national security rationale, the limitation on Mr. Nega’s freedom of expression in this case was not “necessary” to achieve that purpose.¹⁴² It is not sufficient that a certain limitation on free expression merely advance the government’s purpose.¹⁴³ Rather, the Committee has consistently observed that “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on the freedom of expression must be proportional to the value which the restriction serves to protect.”¹⁴⁴ This requires the government to establish a “direct and immediate connection between the expression and the threat.”¹⁴⁵

However, as demonstrated above, the Ethiopian government has failed to indicate with any specificity how Mr. Nega’s advocacy of peaceful democratic reform threatened the country’s national security. As such, limiting his expression cannot be considered “necessary” for that

¹⁴¹ 2009 Anti-Terrorism Proclamation, *supra* note 7, at art. 6.

¹⁴² The UN Human Rights Committee has noted that even if the State party establishes the existence of a legitimate purpose for the limitation, it must also demonstrate that the actions taken were “necessary” for protecting that purpose. *Shin v. Republic of Korea*, *supra* note 137, at ¶ 7.3.

¹⁴³ In *Kim v. Republic of Korea*, the 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 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, U.N. Doc. CCPR/C/64/D/574/1994 (*adopted* Nov. 3, 1998) at ¶ 12.4.

¹⁴⁴ *de Morais v. Angola*, *supra* note 133, at ¶ 6.8. In determining whether an accreditation scheme that operated to exclude journalists from observing parliamentary proceedings was necessary and proportionate, the Committee held that “the accreditation scheme should be specific, fair and reasonable, and their application should be transparent.” *Gauthier v. Canada*, Communication No. 663/1995, U.N. Doc. CCPR/C/65/D/633/1995, at ¶ 13.6 (*adopted* Apr. 7, 1999). *See also Sohn v. Republic of Korea*, *supra* note 139, at ¶ 10.4 (finding that “reference to the general nature of the labor movement” and “alleging that the statements 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.).

¹⁴⁵ General Comment No. 34, *supra* note 135, at ¶ 35.

purpose. Because Mr. Nega’s work as a journalist and blogger was protected free expression under Article 19(2) and because the limitation on that right imposed by the government does not fall within the narrow exception contained in Article 19(3), his continued detention is arbitrary pursuant to Category II.

B. Category III

The continued detention of Mr. Nega is arbitrary under Category III. A deprivation of liberty is arbitrary under Category III where “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.”¹⁴⁶ The minimum 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 the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles.)¹⁴⁷

1. Ethiopia Violated Eskinder Nega’s 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.”¹⁴⁸ 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.”¹⁴⁹ 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.”¹⁵⁰ In recognition of this right, the Ethiopian Constitution protects the right of criminal defendants to the presumption of innocence.¹⁵¹

The requirement of judicial independence under Article 14 establishes an objective standard, which is treated as an “absolute requirement[] not capable of limitation.”¹⁵² As noted by the Committee, “[a] situation where the functions and competencies of the judiciary and the

¹⁴⁶ Revised Methods of Work, *supra* note 5, at ¶8(c).

¹⁴⁷ 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 5, 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).

¹⁴⁸ ICCPR, *supra* note 126, at art 14(1). *See also* UDHR, *supra* note 126, 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.”).

¹⁴⁹ ICCPR, *supra* note 126, at art. 14(2). *See also* UDHR, *supra* note 126, 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.”).

¹⁵⁰ Body of Principles, *supra* note 126, at Principle 36(1).

¹⁵¹ Constitution of Ethiopia, *supra* note 10, at art. 20(3) (“During proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.”)

¹⁵² ALEX CONTE & RICHARD BURCHILL, *DEFINING CIVIL AND POLITICAL RIGHTS* (Ashgate 2009 2nd ed.) at 165.

executive are not clearly distinguishable or where the latter is able to control the former is incompatible with the notion of an independent tribunal.”¹⁵³ Similarly, 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.”¹⁵⁴ Further, to protect the defendant, the “media should avoid news coverage undermining the presumption of innocence.”¹⁵⁵

Here, the government violated Mr. Nega’s right to be tried by an independent tribunal and his right to the presumption of innocence by publicly expressing certainty about his guilty at the highest levels. As noted above, after Mr. Nega’s arrest, government officials repeatedly made public statements casting Mr. Nega as a terrorist. State media claimed Mr. Nega was a member of the banned Ginbot 7 party and portrayed him as a spy “for foreign forces.” The Ethiopian government’s spokesperson publicly alleged that Mr. Nega was “involved in staging a series of terrorist acts that would likely wreak havoc” in the country—a claim later reiterated by the Deputy Federal Police Commissioner. Finally, Prime Minister Meles publicly told his Parliament that the government had evidence linking the country’s imprisoned journalists to terrorist acts.

As explained above, the Ethiopian courts do not, in practice, operate free from political interference. In light of this lack of independence, these 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 Mr. Nega. Such attempts violate his right to an independent tribunal. Similarly, these statements fly in the face of the requirements that the press avoid covering the proceedings in a way that undermines the presumption of innocence and that public officials avoid statements prejudging the outcome of the trial. As such, the government similarly violated his right to the presumption of innocence.

2. Ethiopia Violated Eskinder Nega’s Right to Communicate With and Have 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.”¹⁵⁶ Similarly, the Ethiopian Constitution protects the right of individuals held in custody “to communicate, and to be visited by... their legal counsel.”¹⁵⁷ 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

¹⁵³ General Comment No. 32, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) at ¶ 19.

¹⁵⁴ *Id.* at ¶ 30.

¹⁵⁵ *Id.*

¹⁵⁶ ICCPR, *supra* note 126, 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 Mr. Nega was not formally charged with a criminal offense until November 10, 2011, the initial proceedings were required under a criminal law (the 2009 Anti-Terrorism Proclamation) and were for the specific purpose of authorizing his 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.

¹⁵⁷ Constitution of Ethiopia, *supra* note 10, at art. 21(2)

access to counsel.”¹⁵⁸ In *Kelly v. Jamaica*, the Committee held that the government violated the petitioner’s rights under Article 14(3)(b) where it ignored his request to speak to a lawyer for five days.¹⁵⁹ 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.”¹⁶⁰

In this case, the government denied Mr. Nega prompt access to legal counsel. After his arrest on September 14, 2011, authorities held Mr. Nega without access to a lawyer until November 10, 2011. This restriction on his right to communicate with legal counsel for nearly two months fell well outside the bounds established for “prompt” access, and therefore violated his due process rights under Article 14(3)(b).

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.”¹⁶¹ However, after Mr. Nega’s arrest, the government conducted two hearings—one on September 15, 2011 and another 28 days later—and authorized his continued detention without allowing him access to any legal assistance before or during the proceedings. This limitation on Mr. Nega’s right to the assistance of legal counsel of his own choosing therefore also violated Article 19(3)(d).

3. Ethiopia Violated Eskinder Nega’s Right to Be Visited by Family

Principle 19 of the Body of Principles provides that “[a] detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family... subject to reasonable conditions and restrictions as specified by law or lawful regulations.”¹⁶² The Ethiopian Constitution similarly provides that detained individuals “shall have the opportunity to communicate with and be visited by, their spouses or partners [and] close relatives...”¹⁶³ However, despite these clear protections, the government prevented Mr. Nega from seeing his family for a period of 28 days. While Principle 19 recognizes that this right may be subject to reasonable conditions,¹⁶⁴ denying an individual access to family for nearly one month and for apparently no reason at all cannot be considered a reasonable condition. As such,

¹⁵⁸ General Comment No. 32, *supra* note 153, 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 126, at Principle 15.

¹⁵⁹ *Kelly v. Jamaica*, UN Human Rights Committee, Communication No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (adopted July 17, 1996), at ¶ 9.2.

¹⁶⁰ *Musaev v. Uzbekistan*, UN Working Group on Arbitrary Detention, Communication No. 14/2008, U.N. Doc. A/HRC/10/21/Add.1 (adopted July 26, 2007), at ¶ 40.

¹⁶¹ ICCPR, *supra* note 126, at art. 14(3)(d).

¹⁶² Body of Principles, *supra* note 126, at principle 19.

¹⁶³ Constitution of Ethiopia, *supra* note 10, at art. 21(2).

¹⁶⁴ Body of Principles, *supra* note 126, at Principle 19 (“subject to reasonable conditions and restrictions as specified by law or lawful regulations.”).

the government's limitation on Mr. Nega's right to be visited by his family violated Principle 19.

C. Conclusion

As established above, the detention of Mr. Nega is a result of his legitimate work as an independent journalist in violation of his right to freedom of expression. Further, in detaining and prosecuting Mr. Nega, the government failed to meet certain minimum international standards for due process. As such, his detention is arbitrary pursuant to Categories II and III.

V. 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.

On July 13, 2012, the Lideta Federal High Court in Addis Abba sentenced Mr. Nega to 18 years in prison; he is expected to appeal the court's decision.

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

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