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## Human Rights Council Working Group on Arbitrary Detention

### **Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016**

#### **Opinion No. 10/2016 concerning Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye (Ethiopia)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 16 October 2015 the Working Group transmitted a communication to the Government of Ethiopia concerning Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) 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 (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in

the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation or disability or other status, that aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

4. The case submitted by the source involves nine individuals, six of whom are co-founders of the 'Zone 9 blog'. The other three individuals are freelance journalists who are close social associates of the blog co-founders, and had campaigned on behalf of the Zone 9 blog. All of the nine individuals are citizens of the Federal Democratic Republic of Ethiopia. The source provided the following information on each of the nine individuals involved in this case:

5. **Mr. Befekadu Hailu** is a 36-year-old information and communications technology specialist, blogger and writer. He is a co-founder of the Zone 9 blog. He has worked as a journalist for various publications, and maintains his own blog.

6. **Mr. Zelalem Kibret** is a 29-year old lawyer and lecturer. He is a co-founder of the Zone 9 blog. He is active on social media, and maintains his own blog that focuses on education issues.

7. **Mr. Atnaf Berhane** is a 27-year old information technology specialist and human rights activist. He is a co-founder of the Zone 9 blog. He is active with his own blog and on Twitter. He works for the Addis Ababa city administration.

8. **Mr. Natnail Feleke** is a 28-year old economist by training and a human rights activist. He is an employee of the Construction and Business Bank and is active with the Ethiopian Economic Association. He is a co-founder of the Zone 9 blog. He runs his own blog and maintains an active presence on Facebook and Twitter.

9. **Ms. Mahlet Fantahun** is a 32-year old graduate in applied mathematics. She 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.

10. **Mr. Abel Wabella** is a 30-year-old engineer, translator, and blogger. He is a co-founder of the Zone 9 blog. He writes for his own blog and for an international news website known as Global Voices.

11. **Mr. Tesfalem Waldyes** is a 32-year-old freelance journalist who has written for a number of Ethiopian publications. He served as editor of an Amharic-language weekly newspaper which has since been closed.

12. **Mr. Asmamaw Hailegiorgis** is a 31-year-old journalist and senior editor at an influential Amharic-language news magazine. With a background in information technology, he has also operated a radio program.

13. **Ms. Edom Kassaye** is a 32-year-old freelance journalist, translator, and active member of the Ethiopian Environmental Journalists Association. She previously worked at several newspaper and radio outlets.

14. The Zone 9 blog was founded in May 2012. The blog's name is based on the eight zones within Kaliti Prison near Addis Ababa where political prisoners are believed to be detained. Articles posted on the Zone 9 blog focused on human rights and social justice issues and were often critical of the Government, particularly the ruling Ethiopian People's Revolutionary Democratic Front coalition. However, the source points out that contributors to the Zone 9 blog consistently emphasized the importance of peaceful political reform, highlighting the protections afforded under the Ethiopian Constitution and urging the Government to respect those protections.

15. Examples of the blog's initiatives include campaigns to inform the public about their constitutional rights, particularly freedom of expression, and freedom of association and assembly. These initiatives received considerable attention both domestically and internationally. As part of these campaigns, Zone 9 bloggers published their own individual articles that were then circulated online.

16. In reaction to the articles posted on the Zone 9 blog, the Ethiopian authorities blocked access to the site inside the country, though it continued to be accessible outside Ethiopia and the organisers were able to circulate articles inside Ethiopia through social media. The source alleges that the co-founders of the blog were placed under surveillance, and that security officials repeatedly interviewed Mr. Feleke and Ms. Kassaye about the Zone 9 leadership and whether they worked with international non-governmental organisations. During these interviews, investigators expressed concern that the Zone 9 blog was threatening national security. In late 2013, the Zone 9 bloggers stopped posting critical articles due to pressure from the authorities and fear of retaliation.

#### Arrest and pre-trial detention of the nine individuals

17. On 23 April 2014, six months after the bloggers stopped campaigning on the blog, they posted an article entitled "*We'll Keep Talking About Constitutionalism Using Our Constitutional Rights*". In that post, the bloggers stated that they would focus on the upcoming election and other topics of debate. They pledged to notify readers of any further pressure by the authorities.

18. Two days later, on 25 April 2014, all six members of the Zone 9 blog and two of the independent journalists were arrested by the police. The other independent journalist (Mr. Hailegiorgis) was arrested on 26 April 2014. According to the source, police searched their residences, seizing computers, newspapers, books, and computer discs. The nine individuals were initially held and interrogated at the Maekelawi detention facility in Addis Ababa.

19. The source alleges that the nine individuals were all subjected to ill-treatment during the interrogations. The ill-treatment reportedly included blindfolding, beatings with sticks and cables, kicking, gagging, stomping, being held in stress positions, forced exercise, insults, interrogation of female detainees while they were fully or partially naked in the presence of male officers, deprivation of food and sleep, and solitary confinement for prolonged periods or in cold conditions with limited access to natural light. The source further alleges that, while being interrogated, the nine individuals were forced to admit that the purpose of their peaceful activities was to facilitate the violent overthrow of the Government and to sign confessions. They were warned not to report the ill-treatment. Despite this, all of the nine individuals brought a complaint about their ill-treatment to the Ethiopian Human Rights Commission. Three of the individuals also raised their ill-treatment with the Court.

20. On 27 April 2014, the nine individuals were brought before the Federal First Instance Court, First Criminal Bench at Arada. They were accused of “working with foreign organisations that claim to be human rights activists and agreeing in idea and receiving finance to incite public violence through social media.” The source states that the police did not indicate which “foreign organisation” the nine individuals were believed to have worked with, and did not provide any other specific allegations against them. However, local reports indicated that they were arrested because of their work with Article 19, a human rights organisation based in the United Kingdom which supports freedom of expression and the right to information.

21. The proceedings were not open to the public and the nine individuals were not allowed access to legal counsel. The Court authorised their detention under article 59.2 of the Criminal Procedure Code for the purposes of continuing the investigation.

*Joint Urgent Appeal*

22. On 30 April 2014, the Working Group and four other Special Procedure mandate holders<sup>1</sup> transmitted a joint urgent appeal to the Government seeking information regarding the treatment and well-being of the nine individuals and urging the Government to safeguard their rights. The joint urgent appeal requested information regarding the nine individuals, in particular:

- (i) whether the facts alleged in relation to their cases were accurate,
- (ii) whether a complaint had been lodged on their behalf,
- (iii) what legal grounds existed for their arrest and detention and how those measures were compatible with international norms and standards,
- (iv) whether they had access to family members, legal counsel, and medical personnel, and
- (v) what measures had been taken to ensure that bloggers and journalists in Ethiopia can carry out their peaceful and legitimate activities and express and associate freely without fear of harassment, stigmatisation or criminalisation of any kind.

23. The Working Group regrets that it did not receive a response from the Government to the joint urgent appeal.

*Further information provided by the source*

24. On 7 and 8 May 2014, the First Instance Court reauthorised the detention of all nine individuals under the Criminal Procedure Code. The nine individuals were not given access to a lawyer until 7 May 2014, even though they had previously requested counsel. While these proceedings were reportedly open to the public, the source states that many of the supporters, journalists, and diplomats present were unable to attend the hearings because the room chosen was too small.

25. During court proceedings on 17 May 2014, the Government invoked the 2009 Anti-Terrorism Proclamation. The police indicated that the nine individuals were being

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<sup>1</sup> 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.

investigated and detained under article 20 of the Anti-Terrorism Proclamation. According to the source, although the Anti-Terrorism Proclamation allows the court to release suspects on bail provided that they have not been formally charged, the court refused the bail application of the nine individuals on the grounds that the investigation was ongoing. The source states that the Ethiopian courts repeatedly remanded them in custody for the purpose of investigation, even though neither the police nor the prosecution provided specific information regarding their alleged crimes.

26. On 17 July 2014, the nine individuals were officially charged with terrorism under article 4 of the Anti-Terrorism Proclamation and “outrages against the Constitution” under article 238(1) of the Ethiopian Criminal Code. They were then transferred from the Maekelawi detention facility to the Kaliti and Kilinto Prisons.

27. The source states that, before the start of their trial, high ranking Ethiopian officials (including the Prime Minister and Minister of Communications and Information Technology) publicly accused the nine individuals of “being part of a regional terror plot” and of “attempting to foment a colour revolution”, and warned other journalists about associating with such “terrorist networks”. According to the source, no details were given in the charge sheets to support the alleged “terrorist activity”. The evidence provided by the prosecutor appeared to rely heavily upon the individuals’ blog posts and articles in prosecuting them on serious national security charges. The source points out that the most specific allegation appeared to be that the individuals took part in trainings on internet security associated with a widely used and publicly available tool developed by a respected human rights organisation.

28. After having extended the pre-trial detention of the nine individuals on 11 occasions, on 21 November 2014, the Court considered that the prosecution had failed to present their charges with sufficient clarity. Subsequently, the Court dropped the charges of “outrages against the Constitution” under article 238(1) of the Criminal Code and also ordered the Government to amend the charges to include specific information about the terrorist activity that the nine individuals had allegedly participated in or attempted to incite.

29. On 3 December 2014, the prosecutor filed a substantively identical charging sheet and the Court again reauthorised the detention of the nine individuals. Despite repeated requests for additional information issued by the Court on 16 December 2014, 5 and 14 January 2015, the prosecutor did not provide any further information, and the Court reauthorised the detention. As of 26 January 2015, when this communication was filed by the source, the nine individuals had been detained without finalised charges for nine months.

#### *Submissions regarding arbitrary detention*

30. The source submits that the arrest and detention of Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis, and Edom Kassaye was arbitrary in accordance with categories II and III of the categories applied by the Working Group.

31. The source argues that the arrest, detention and prosecution of the six Zone 9 bloggers and three independent journalists was directly related to the peaceful exercise of their rights to freedom of expression and of association under articles 19 and 20 of the UDHR and articles 19(2) and 22 of the ICCPR. Therefore, the source contends that their detention was arbitrary under category II. The source reiterates that, before arresting the nine individuals, 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. Further, just days after announcing that the blog would be revived to cover critical issues in Ethiopia, including the upcoming

election, members of the group and the journalists were arrested and questioned about their writings. According to the source, most telling is the use by the Government of articles written by group members as evidence of their guilt.

32. The source argues that the permissible limitations on the freedom of expression and association in the ICCPR, particularly those that are often invoked by governments in relation to national security, do not apply in this case. The source submits that the Government must specify the precise nature of the threat posed by the protected activity, and demonstrate the proportionality of the limitation by establishing a direct and immediate connection between the activity and the threat. The source argues that the Government must meet a particularly high threshold when imposing restrictions on the peaceful activities of journalists and rights activists.

33. The source also points to the overly broad and vague anti-terrorism and national security laws in Ethiopia which enable the Government to criminalise peaceful dissent, arguing that the present case is part of a much larger trend of the misuse of these laws. The source argues that the provisions of the Criminal Code and the Anti-Terrorism Proclamation applied in this case are examples of such laws. The source notes that the definition of a terrorist act (punishable by 15 years of imprisonment or death) under article 3 of the Proclamation includes 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.” Similarly, the offence of “outrages against the Constitution” under article 238(1) of the Criminal Code (relied on by the Government between 17 May and 21 November 2014) captures an overly broad range of conduct, and is punishable by imprisonment between three to twenty-five years.

34. The source further submits that the violations of the nine individuals’ right to a fair trial are of such gravity as to render their deprivation of liberty arbitrary according to category III. The alleged violations include:

(i) Physical and psychological mistreatment of the nine individuals while they were in detention which amounted to torture and resulted in coerced confessions contrary to article 7 of the ICCPR and Ethiopia’s obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

(ii) Failure to provide an independent and impartial tribunal and violation of the nine individuals’ right to be presumed innocent under articles 10 and 11 of the UDHR, article 14(1) and (2) of the ICCPR, and principle 36(1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The source argues that the repeated reauthorisation of pre-trial detention and failure to hold the prosecution to account when it failed to provide sufficient evidence indicated a lack of impartiality by the courts. The source further submits that statements by high-ranking government officials before the trial undermined the fairness of the criminal process.

(iii) Failure to allow access to legal counsel contrary to article 14(3)(b) and (d) of the ICCPR. The nine individuals were not permitted to communicate with legal counsel in the 10-day period between their arrest on 25-26 April 2014 and the second detention hearing on 7 May 2014. They were also brought before the Court without any legal representation at the initial hearing on 27 April 2014.

35. On 5 August 2015, the source notified the Working Group that Mr. Kibret, Ms. Fantahun, Mr. Waldyes, Mr. Hailegiorgis and Ms. Kassaye had been released from prison on 8 July 2015 and the charges against them had been dropped, almost 15 months after they

were arrested. There was no official explanation given for their release or for the continued detention of the other four bloggers. In a media interview, the National Communications Minister indicated that the prosecutor withdrew the charges against five of the accused because they were “just accomplices where the remaining are the main actors”.

*Response from the Government to the Working Group’s regular communication*

36. On 16 October 2015, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure, with particular reference to the four bloggers who remained in detention.<sup>2</sup> The Working Group requested the Government to provide detailed information by 15 December 2015 about the current situation of the four bloggers and to clarify the legal provisions justifying their continued detention. The Working Group also requested the Government to provide details regarding the conformity of their trial with international law, particularly international human rights law to which Ethiopia is party.

37. The Working Group regrets that it did not receive a response from the Government. The Government did not request an extension of the time limit for its reply, as provided for in the Working Group's methods of work. Under paragraph 15 of its methods of work, the Working Group may render an Opinion in the absence of a response from the Government.

*Further updates from the source*

38. On 26 October 2015, the source provided a further update to the Working Group. According to the source, Messrs. Hailu, Berhane, Feleke and Wabella were acquitted of terrorism charges on 16 October 2015. The four bloggers were released from prison the following day, almost 18 months after they were arrested. However, a new charge of incitement of violence under article 257 of the Criminal Code was brought against Mr. Hailu, and he was released on bail. The new charge against Mr. Hailu is based on the same underlying facts described above.

39. As of 23 March 2016, all of the nine individuals remained outside of prison. However, the Government had appealed the acquittal of Messrs. Hailu, Berhane, Feleke and Wabella and they are awaiting the final appeal at the Supreme Court. Mr. Hailu was awaiting trial for the additional charge brought against him. The source notes with concern that the four bloggers remain at risk of re-imprisonment if the Supreme Court reverses their acquittal or if Mr. Hailu is convicted of the new charge.

**Discussion**

40. The Working Group welcomes the release from detention of all of the nine individuals.

41. Under paragraph 17(a) of its methods of work, the Working Group reserves the right to render an Opinion, on a case-by-case basis, on whether the deprivation of liberty was arbitrary, notwithstanding the release of the persons concerned. In this case, the Working Group considers that it is important to render an Opinion, having taken into account the following factors:

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<sup>2</sup> The regular communication also referred briefly to the facts pertaining to the five individuals who had been released, as the same alleged facts applied to all nine individuals.

- (i) the alleged silencing of prominent critical voices in what appears to be a pattern of conduct by the Government in criminalising the peaceful exercise of human rights,<sup>3</sup>
- (ii) information provided by the source that four of the nine individuals remain at risk of being returned to prison, as outlined above,
- (iii) multiple alleged violations of the right to fair trial under international human rights law,
- (iv) the serious allegations of ill-treatment of the nine individuals possibly amounting to torture, and
- (v) the length of the detention of the nine individuals (almost 15 months for five of them, and almost 18 months for the other four) before they were released.

42. The release of the nine individuals does not absolve the Government of its obligations under international law, including the obligation to provide compensation for the harm suffered, if the deprivation of liberty is found to be arbitrary.

43. In its jurisprudence, the Working Group has established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>4</sup>

44. In this case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source. These allegations strongly suggest that the bloggers and journalists were detained solely because of the peaceful exercise of their rights to freedom of expression and association, rather than for alleged terrorist acts. The Working Group takes note of the fact that the bloggers and journalists were arrested two days after resuming criticism of the Government in the Zone 9 blog, and that their articles on human rights and social justice issues appear to have been used as the primary evidence against them. Indeed, the release of five of the individuals, and the acquittal of the other four, suggests that the Government never had a strong case against any of them for alleged terrorist acts.

45. In addition, the Working Group has had regard to other reliable information which supports the source's claims. In particular, the Working Group recalls its Opinion No. 62/2012,<sup>5</sup> a case similar in many respects to the present case. In that case, the Federal

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<sup>3</sup> See, for example, Working Group Opinions 2/2015, 62/2012 (discussed below), 28/2009 and 18/1999. See also a statement by six UN Special Procedures mandate holders urging Ethiopia to stop using anti-terrorism legislation to curb human rights (Office of the High Commissioner for Human Rights, News Release, Geneva, 18 September 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15056&LangID=E>). The statement noted that: "Two years after we first raised the alarm, we are still receiving numerous reports on how the anti-terrorism law is being used to target journalists, bloggers, human rights defenders and opposition politicians in Ethiopia." In addition, during the second cycle of the Universal Periodic Review (UPR) of the Ethiopian Government, a number of States expressed concern that journalists and media providers continue to be arbitrarily detained under the Anti-Terrorism Proclamation and recommended that Ethiopia ensure that the freedom of expression and association are not criminalised under the Proclamation: Report of the Working Group on the UPR Ethiopia, A/HRC/27/14, 7 July 2014, paragraphs 30, 43, 49, 73, 75, 77, 103, 132-33, 140, 148, 155.104-108, 155.161-163, 156.5-6, 157.7, 157.18, 158.32-35, 158.50-53.

<sup>4</sup> See, for example, Report of the Working Group, A/HRC/19/57, 26 December 2011, para. 68, and Opinion No. 52/2014.

<sup>5</sup> *Eskinder Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012 (21 November 2012).



Democratic Republic of Ethiopia was found to have arbitrarily deprived a journalist and blogger of his liberty according to categories II and III by applying the overly broad provisions of the Anti-Terrorism Proclamation. As in the present case, no details were provided as to the specific threat posed by the journalist, and the Working Group concluded that the prosecution of the journalist was a direct consequence of the exercise of his right to freedom of expression. The Working Group has reached the same conclusion in the present case.

46. Thus, the Working Group concludes that the nine individuals were deprived of their liberty in violation of articles 19 and 20 of the UDHR and articles 19(2) and 22 of the ICCPR. The deprivation of liberty falls within category II of the categories applied by the Working Group.

47. Further, the Working Group considers that the source's allegations disclose serious violations of the right to a fair trial. The Working Group is particularly concerned about the alleged acts of torture of the nine individuals in violation of article 5 of the UDHR and article 7 of the ICCPR, and the resulting coerced confessions. The information provided by the source indicates that the confessions were taken into account in determining the charges against the nine individuals. The charge sheet refers to "signed confessions statements which can be used as evidence". The charge sheet then lists the nine individuals, indicating that they had signed confessions, as well as the page length, which presumably refers to the length of their written confessions.

48. The Working Group recalls General Comment No. 32 of the Human Rights Committee which states that it is unacceptable according to article 14(3)(g) of the ICCPR to torture or subject a person to other ill-treatment in order to obtain a confession, and that the burden is on the State to prove that statements made by the accused have been given of their own free will.<sup>6</sup> The Working Group concurs with the European Court of Human Rights which has found that the admission of statements obtained as a result of torture or of other ill-treatment as evidence in criminal proceedings renders the proceedings as a whole unfair. This finding applies irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction.<sup>7</sup> The Working Group reminds the Government of its obligations under articles 2 and 15 of the CAT to prevent acts of torture in any territory under its jurisdiction,<sup>8</sup> and to ensure that any statement made as a result of torture is not invoked as evidence in any proceedings. The Working Group will refer this matter to the relevant Special Rapporteur for further consideration of this case and, if necessary, appropriate action.

49. In addition, the source has submitted credible information that the nine individuals were deprived of the right to an independent and impartial tribunal and the presumption of innocence, as well as the right to legal representation prior to their second detention hearing on 7 May 2014. The Working Group takes note of the fact that the Court ultimately acquitted four of the bloggers in October 2015, which suggests a degree of independence and impartiality. However, the repeated authorisation of the proceedings by the Court and the failure to hold the prosecution accountable for presenting its case also suggests a lack of

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<sup>6</sup> Human Rights Committee General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007, paragraph 41.

<sup>7</sup> See, for instance, *Gäfgen v. Germany*, no 22978/05, ECtHR [GC], 1 June 2010, paragraph 166; *El Haski v. Belgique*, no 649/08, 25 September 2012, paragraph 85.

<sup>8</sup> See also the Revised UN Standard Minimum Rules for the Treatment of Prisoners (the 'Mandela Rules'), rules 1 and 57(3). These rules reiterate the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment for prisoners, and state that allegations of such treatment must be dealt with immediately and must result in a prompt and impartial investigation by an independent national authority (A/RES/70/175, 8 January 2016).

independence, which the Government has not rebutted with information to the contrary. This resulted in the four bloggers being detained for almost 18 months before they were acquitted, and would likely have served as a significant deterrent to the exercise of free expression and association by others in similar positions.

50. The Working Group also recalls its list of principles concerning the compatibility of anti-terrorism measures with articles 9 and 10 of the UDHR and articles 9 and 14 of the ICCPR.<sup>9</sup> These principles include a requirement that the detention of persons who are suspected of terrorist activities be accompanied by concrete charges, and that the accused persons enjoy the necessary guarantees of a fair trial such as access to legal counsel and representation. These protections were not afforded to the bloggers and journalists in this case.

51. The Working Group therefore concludes that the breaches of articles 10 and 11 of the UDHR and article 14 of the ICCPR are of such gravity as to give the deprivation of liberty of the nine individuals an arbitrary character, falling within category III of the categories applied by the Working Group.

52. Finally, the Working Group notes with concern the fact that the Government has not responded to the serious allegations in this case. The Working Group recalls the Human Rights Council's call for all States to cooperate with the Working Group, to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>10</sup>

### **Disposition**

53. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Befekadu Hailu, Zelalem Kibret, Atnaf Berhane, Natnail Feleke, Mahlet Fantahun, Abel Wabella, Tesfalem Waldyes, Asmamaw Hailegiorgis and Edom Kassaye was arbitrary, being in contravention of articles 5, 9, 10, 11, 19 and 20 of the UDHR and articles 7, 9, 14, 19 and 22 of the ICCPR, and falls within categories II and III of the categories applicable to the consideration of cases submitted to the Working Group.

54. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the abovenamed nine individuals without delay and bring it into conformity with the standards and principles in the UDHR and ICCPR.

55. Taking into account all the circumstances of the case, the Working Group considers that the adequate remedy would be to accord the abovenamed nine individuals an enforceable right to compensation in accordance with article 9, paragraph 5 of the ICCPR for the harm suffered during the period of their arbitrary deprivation of liberty. Under international law, victims of arbitrary deprivation of liberty are entitled to seek and obtain effective reparations from the State, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

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<sup>9</sup> Report of the Working Group on Arbitrary Detention, A/HRC/10/21, 16 February 2009, paragraphs 50-55. In addition, see the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa, principles 1F and I, Parts 3 and 4. The Principles and Guidelines were officially released in Addis Ababa on 29 January 2016.

<sup>10</sup> Human Rights Council Resolution 24/7, A/HRC/RES/24/7, 8 October 2013, paragraph 3.

56. The Working Group urges the Government to ensure that the abovenamed nine individuals are not subjected to further ill-treatment. The Working Group also urges the Government to fully investigate the circumstances surrounding their arbitrary deprivation of liberty, and to take appropriate measures against those responsible for the violation of their rights.

57. In accordance with paragraph 33(a) of its methods of work, the Working Group refers the allegations of torture and ill-treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

*[Adopted on 20 April 2016]*

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