

**PETITION TO:**

**UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Mr. Sètonджи Roland Jean-Baptiste Adjovi (Benin)

Chair-Rapporteur: Mr. Seong-Phil Hong (Republic of Korea)

Vice-Chairperson: Ms. Leigh Toomey (Australia)

Mr. José Guevara (Mexico)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Andualem Aragie Walle, Andualem Ayalew Gellaw, Nathnael Mekonnen Gebrekidan,  
Kinfemichael Debebe Bereded, Mitiku Damte Weraku, Yeshiwas Yehunalem, and  
Yohannes Terefe Kebede**

Citizens of the Federal Democratic Republic of Ethiopia  
**(“Applicants”)**

v.

Government of the Federal Democratic Republic of Ethiopia  
**(“State”)**

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Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4,  
15/18, 24/7<sup>1</sup>

*Submitted By:*

Maran Turner and Kate Barth

Freedom Now

1776 K Street, NW, 8<sup>th</sup> Floor

Washington, DC 20006

United States of America

+1 (202) 223-3733 (tel); +1 (202) 223-1006 (fax)

kbarth@freedom-now.org

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<sup>1</sup> Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

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

***I. IDENTITY***

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

***II. ARREST***

1. **Date of arrest(s):**
  - a. **Andualem Aragie Walle:** September 14, 2011
  - b. **Andualem Ayalew Gellaw:** October 25, 2011
  - c. **Nathnael Mekonnen Gebrekidan:** September 14, 2011
  - d. **Kinfemichael Debebe Bereded:** September 26, 2011
  - e. **Mitiku Damte Weraku:** September 29, 2011
  - f. **Yeshiwas Yehunalem:** October 13, 2011
  - g. **Yohannes Terefe Kebede:** October 13, 2011
  
2. **Place of arrest(s) (as detailed as possible):**
  - a. **Andualem Aragie Walle:** Addis Ababa, Ethiopia
  - b. **Andualem Ayalew Gellaw:** Khartoum, Sudan
  - c. **Nathnael Mekonnen Gebrekidan:** Addis Ababa, Ethiopia
  - d. **Kinfemichael Debebe Bereded:** Addis Ababa, Ethiopia
  - e. **Mitiku Damte Weraku:** Unknown
  - f. **Yeshiwas Yehunalem:** Unknown
  - g. **Yohannes Terefe Kebede:** Unknown
  
3. **Forces who carried out the arrest or are believed to have carried it out:** Federal Police in Addis Ababa, Ethiopia. Mr. Ayalew was likely arrested by the Sudanese government and delivered to Ethiopian security forces.<sup>2</sup>
  
4. **Did they show a warrant or other decision by a public authority?** An arrest warrant was shown to Mr. Aragie; it is unclear if arrest warrants were shown during the arrests of the other Applicants.
  
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 ("ATP").<sup>3</sup>

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<sup>2</sup> ECADF Ethiopia News & Opinions, *North Sudanese government illegally transferred Ethiopian political refugee Andualem Ayalew Gellaw*, November 21, 2011, available at: <http://ecadforum.com/articles/2011/11/21/north-sudanese-government-ethiopian-americans-council/> [*hereinafter*, "Illegal Transfer"].

<sup>3</sup> See [Ethiopian] House of Peoples' Representatives, *Ethiopia: Proclamation No. 652/2009, Anti-Terrorism Proclamation*, August 28, 2009, at art. 19(1) [*hereinafter*, "Anti-Terrorism Proclamation"] ("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.").

### **III. DETENTION**

1. **Date of detention:** September/October 2011 to present.
2. **Duration of detention (if not known, probable duration):** As of the date of this petition, approximately four years and nine months.
3. **Forces holding the detainee under custody:** Ethiopian government.
4. **Places of detention (indicate any transfer and present place of detention):** Applicants were first detained at Maekelawi prison in Addis Ababa, Ethiopia. Subsequently, the Applicants were relocated to various prison locations. As of the date of this petition, Mr. Aragie was detained at Kality Prison, Mr. Ayalew was detained at Zeway Prison, Mr. Mekonnen<sup>4</sup> was detained at Kality prison, and Mr. Debebe<sup>5</sup> was detained at Kality prison.<sup>6</sup> The detention locations of Mr. Damte, Mr. Yehunalem, and Mr. Terefe remain unknown.
5. **Authorities that ordered the detention:** The Lideta Federal High Court.
6. **Reasons for the detention imputed by the authorities:** The Applicants are alleged to have committed acts of terrorism and treason; however, their prosecution was a direct result of their legitimate work as opposition politicians. See “Statement of Facts,” below.
7. **Relevant legislation applied (if known):** Article 20(5) of the ATP permits pre-trial detention for terrorism suspects.<sup>7</sup> In the State’s charging document, the Applicants are accused of having violated Articles 32(1)a, 38(1), 248(b), and 252(1)a of Ethiopia’s 2004 Criminal Code (“Criminal Code”) and Articles 3(1), 3(2), 3(3), 3(4), 4, 6, and 7(2) of the ATP.<sup>8</sup>

### **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**

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<sup>4</sup> Mr. Mekonnen was transferred from Maekelawi to Zeway prison and was then moved to Kality prison due to unspecified health concerns. Communication with EF.

<sup>5</sup> Mr. Debebe was transferred from Maekelawi to Zeway prison and was then moved to Kality prison due to unspecified health concerns. *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Anti-Terrorism Proclamation, *supra* note 3, 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.”).

<sup>8</sup> English Translation of the Prosecutor’s Charging Document, Prosecutor’s File No. 00180/04, November 10, 2011, attached as Annex A [*hereinafter*, “Charging Document”].

Part A of this section describes Ethiopia’s documented history of stifling political participation and using arbitrary detention to limit freedom of expression and freedom of association. Part B presents the cases of the Applicants; opposition politicians arbitrarily detained during September and October 2011 and sentenced by the State to lengthy prison sentences (including, for some, life imprisonment) on July 13, 2012.<sup>9</sup>

## **A. Background on the Federal Democratic Republic of Ethiopia**

### **1. Political, Legal, and Social Background of Ethiopia**

At the time of the Applicants’ 2011 arrest and detention, Prime Minister Meles Zenawi had governed Ethiopia since the fall of the Derg Regime in 1991.<sup>10</sup> Following Prime Minister Meles’ death in 2012, fellow Ethiopian People’s Revolutionary Democratic Front (“EPRDF”) member Hailemariam Desalegn succeeded him as Prime Minister. Ostensibly, Ethiopia is a liberal democracy: the Constitution of Ethiopia (the “Constitution”), adopted in 1995, separates the government horizontally into legislative, executive, and judicial branches and vertically into federal and regional jurisdictions.<sup>11</sup> The Constitution also contains a broad variety of protections for civil and political rights.<sup>12</sup> Although both Prime Minister Meles and Prime Minister Hailemariam indicated that the State sought to gradually fulfill the Constitution’s democratic promises, progress toward the realization of fundamental human rights has not merely been slow—in the years leading up to the Applicants’ arrests, and in the years since, Ethiopia’s rights record has worsened.<sup>13</sup>

After coming to power, Prime Minister Meles consolidated his control over the 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.<sup>14</sup> During the transitional period from 1991-1995, the TPLF-led EPRDF used sponsored partners to politically

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<sup>9</sup> U.S. State Department, *Ethiopia 2012 Human Rights Report*, 2013, at 10, available at: <http://www.state.gov/documents/organization/204330.pdf> [*hereinafter*, “State Department 2012”].

<sup>10</sup> Initially, Mr. Meles governed Ethiopia as its President. Since 1995, when the new Constitution took effect, he ruled as Prime Minister. See Embassy of the Federal Democratic Republic of Ethiopia (UK), *Biography: HE Meles Zenawi, Prime Minister*, at ¶4-5, available at: <http://www.ethioembassy.org.uk/facts%20about%20ethiopia/biography%20ato%20meles%20zenawi.htm>.

<sup>11</sup> *Constitution of the Federal Democratic Republic of Ethiopia*, August 21, 1995, at art. 50(1-2), available at: <http://www.unhcr.org/refworld/docid/3ae6b5a84.html> [*hereinafter*, “Constitution of Ethiopia”].

<sup>12</sup> *Id.* at art. 14-44.

<sup>13</sup> See for example, Prime Minister Meles’ remarks to Parliament in 1995 (Univ. of Pennsylvania African Studies Center, *Ethiopia; Prime Minister Meles addresses parliament, sets out government plans, originally broadcast on SWB* [Ethiopian TV], August 24, 1995, translated and reprinted in *The Horn of Africa Bulletin* Sept.-Oct. 1995, at PRIME MINISTER MELES ADDRESSES PARLIAMENT, available at: [http://www.africa.upenn.edu/Newsletters/menu\\_Hab91095.html](http://www.africa.upenn.edu/Newsletters/menu_Hab91095.html). See also Human Rights Watch, *One Hundred Ways of Putting Pressure: Violations of Freedom of Expression and Association in Ethiopia*, March 24, 2010, at 2, available at: <http://www.hrw.org/sites/default/files/reports/ethiopia0310webwcover.pdf> [*hereinafter*, “One Hundred Ways”]; The White House, *Remarks by President Obama and Prime Minister Hailemariam Desalegn of Ethiopia in Joint Press Conference*, Office of the Press Secretary, July 27, 2015, available at: <https://www.whitehouse.gov/the-press-office/2015/07/27/remarks-president-obama-and-prime-minister-hailemariam-desalegn-ethiopia>.

<sup>14</sup> Human Rights Watch, *Ethiopia: The Curtailment of Rights*, December 9, 1997, at 7-8, available at: <http://www.hrw.org/sites/default/files/reports/ethio97d.pdf>.

outmaneuver the opposing parties of its various ethnic rivals.<sup>15</sup> Then, in 2001, Prime Minister Meles culled the EPRDF leadership,<sup>16</sup> giving him “unchallenged supremacy” in the party.<sup>17</sup>

One aggravating factor in the decline of Ethiopia’s human rights records remains the EPRDF’s control of the government. While the Constitution and law provide citizens with the ability to change their government peacefully, EPRDF’s electoral advantages severely limit this ability. Since the Constitution’s adoption in 1995, the EPRDF and its allies have controlled a majority of every elected body at both the regional and the national level.<sup>18</sup> The national Parliament is responsible for both legislation and constitutional interpretation. Historically, the political interests of the EPRDF have governed the national Parliament’s interpretation of the Constitution.<sup>19</sup>

The electoral process has consistently demonstrated the State’s control over the political process and highlighted the continued suppression of independent voices in Ethiopia. The 2005 elections were marked by the unprecedented participation of opposition parties.<sup>20</sup> However, despite initial openness, the situation rapidly deteriorated after voting began. Early, unconfirmed reports suggested that opposition parties had won a significant proportion of the legislature.<sup>21</sup> The State reacted quickly. On the evening of May 15, 2005—the night of the election—the State 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.<sup>22</sup> When official preliminary results showed the EPRDF retained control of the government, opposition parties organized protests claiming election fraud.<sup>23</sup> The

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<sup>15</sup> *Id.*

<sup>16</sup> Nicole Stremlau, *The Press and the Political Restructuring of Ethiopia*, 5 *Journal of East Africa Studies* 4, 2011, at n. 62, available at: <http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.642526>. See also Immigration and Refugee Board of Canada, *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 (2001-June 2004)*, June 24, 2004, available at: <http://www.unhcr.org/refworld/docid/41501c077.html>.

<sup>17</sup> 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>.

<sup>18</sup> 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](http://www.tandfonline.com/doi/abs/10.1080/17531055.2011.642525); U.S. State Department, *Ethiopia 2014 Human Rights Report*, June 25, 2015, at 21-22, available at: <http://www.state.gov/documents/organization/236570.pdf> [*hereinafter*, “State Department 2014”].

<sup>19</sup> 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> [*hereinafter*, “Mgbako et al.”].

<sup>20</sup> The Carter Center, *Final Report: Observing the 2005 Ethiopia National Elections*, December 2009, at 4, available at: [http://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/Ethiopia-2005-Finalrpt.pdf](http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/Ethiopia-2005-Finalrpt.pdf) [*hereinafter*, “Carter Report”].

<sup>21</sup> *Id.* at 24.

<sup>22</sup> *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.

<sup>23</sup> Carter Report, *supra* note 20, at 4. Ultimately, the EPRDF controlled 68% of the Parliament. *Id.* at 8.

protests devolved into clashes between demonstrators and security forces.<sup>24</sup> The Minister of Information accused the opposition of “orchestrating th[e] violence.”<sup>25</sup> Opposition leaders appealed for calm while lamenting that their supporters were being killed and subjected to mass arrests.<sup>26</sup> In the three days following the election, hundreds of Ethiopians were injured and 40 were killed, including a newly elected opposition leader.<sup>27</sup>

After the election, the EPRDF worked to systematically dismantle opposition support. In the five years leading up to the 2010 Parliamentary elections, 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.<sup>28</sup> The EPRDF pursued every possible advantage, preventing the opposition from effectively organizing through the use of intimidation<sup>29</sup> and utilizing state resources for its own campaign activities.<sup>30</sup> These tactics resulted in a landslide victory for the EPRDF and its allies: the coalition won 545 of 547 seats remaining in power for a fourth consecutive five-year term.<sup>31</sup> The European Union (“EU”) found that the election fell short of international standards for transparency and failed to provide a level playing field for opposition parties.<sup>32</sup> In making this determination, the EU noted the “climate of apprehension and insecurity,” and the volume and consistency of complaints regarding harassment and intimidation by opposition parties.<sup>33</sup>

In April 2013, after the conviction of the Applicants, the EPRDF’s continued political dominance was demonstrated in nationwide elections to local and city council positions. EPRDF-affiliated parties won all but five of 3.6 million seats; 33 opposition parties boycotted the elections.<sup>34</sup>

## **2. Ethiopia’s Interference with Political Participation, Freedom of Expression, and Freedom of Association**

Significant human rights violations in Ethiopia include the harassment and intimidation of

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<sup>24</sup> United Nations Integrated Regional Information Network, *Eritrea-Ethiopia: Year in Brief, Jan – June 2005 – A chronology of key events*, January 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>.

<sup>25</sup> European Union Election Observation Mission, *Final Report—Ethiopia Legislative Elections 2005*, at 24, available at: <http://eeas.europa.eu/eucom/pdf/missions/finalreport-ethiopia-2005.pdf>.

<sup>26</sup> United Nations Integrated Regional Information Network, *Ethiopia: Opposition agrees to abide by non-violence pact*, June 10, 2005, available at: <http://www.irinnews.org/printreport.aspx?reportid=54891>.

<sup>27</sup> Carter Report, *supra* note 20, at 25.

<sup>28</sup> *One Hundred Ways*, *supra* note 13, at 2-3.

<sup>29</sup> U.S. State Department, *2010 Country Reports on Human Rights Practices: Ethiopia*, April 8, 2011, at § 2(b), available at: <http://www.state.gov/documents/organization/160121.pdf> [*hereinafter*, “State Department 2010”].

<sup>30</sup> European Union Election Observation Mission, *Final Report—House of People’s Representatives and State Council Elections*, May 23, 2010, at 2, available at: [http://eucom.eu/files/pressreleases/english/final-report-eucom-ethiopia-08112010\\_en.pdf](http://eucom.eu/files/pressreleases/english/final-report-eucom-ethiopia-08112010_en.pdf).

<sup>31</sup> State Department 2014, *supra* note 18, at 21.

<sup>32</sup> *Id.* at 22.

<sup>33</sup> *Id.*

<sup>34</sup> U.S. State Department, *Ethiopia 2013 Human Rights Report*, 2014, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220113>.

opposition politicians and other dissidents, restrictions on freedom of expression, and restrictions on the freedom of association.<sup>35</sup>

### **a. Ethiopia's Interference with Political Participation**

Despite Ethiopia's federal republican structure, the State operates as an authoritarian regime with a checkered history of political violence and one-party rule.<sup>36</sup> The State persecutes opposition politicians and encumbers the civil and political rights of individuals whose policies are not aligned with those of the EPRDF. According to Freedom House, in 2011, the year of the Applicants' arrests, Ethiopia's political rights rating had declined from its 2010 rating of 5 to 6 (1 being the best score and 7 the worst), its civil liberties rating from 5 to 6, and its status from "Partly Free" to "Not Free," due to national elections that were tainted by the intimidation of opposition candidates and supporters, as well as State clampdown on independent media and nongovernmental organizations.<sup>37</sup> This ranking has only continued to decline; in 2016, Ethiopia's rating declined from 6 to 7 due to the State's systematic constriction of political space surrounding the May 2015 parliamentary elections, which included the arrests of opposition members surrounding the elections.<sup>38</sup>

Opposition parties, without representation in the national parliament and under pressure by the EPRDF, have found it difficult to operate in Ethiopia. Authorities regularly arrest, harass or torture persons critical of the State.<sup>39</sup> Furthermore, the ruling party impedes criticism through various forms of intimidation, including the monitoring and detaining of political opponents in order to disrupt opposition party work.<sup>40</sup> Several opposition political parties have reported difficulty in completing simple administrative tasks such as renting office space due to the pressure exerted on landlords by EPRDF members advising against such rental agreements.<sup>41</sup>

Ethiopian citizens find it difficult to support opposition political parties. Authorities have terminated teachers and other State employees for their involvement with opposition political parties.<sup>42</sup> Unemployed youth not affiliated with the EPRDF have found it difficult to obtain support letters from their "kebeles" (wards), a vital step in obtaining work.<sup>43</sup> Constituent parties of the EPRDF conferred advantages on their members and were broadly perceived to award jobs and business contracts to loyal supporters.<sup>44</sup> Such State practices have effectively deprived the citizens of Ethiopia of any meaningful opportunity to effectuate political change.

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<sup>35</sup> State Department 2014, *supra* note 18, at 1.

<sup>36</sup> Economist Intelligence Unit, *Democracy Index 2010: Democracy in Retreat*, The Economist, 2011, available at: [https://docs.google.com/viewer?url=http%3A%2F%2Fgraphics.eiu.com%2FPDF%2FDemocracy\\_Index\\_2010\\_web.pdf](https://docs.google.com/viewer?url=http%3A%2F%2Fgraphics.eiu.com%2FPDF%2FDemocracy_Index_2010_web.pdf).

<sup>37</sup> Freedom House, *Ethiopia 2011 Scores*, available at: <https://freedomhouse.org/report/freedom-world/2011/ethiopia>.

<sup>38</sup> Freedom House, *Ethiopia 2016 Scores*, available at: <https://freedomhouse.org/report/freedom-world/2016/ethiopia>.

<sup>39</sup> State Department 2014, *supra* note 18, at 11.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 22-23.

<sup>42</sup> *Id.* at 23.

<sup>43</sup> *Id.*; State Department 2010, *supra* note 29, at 15-16.

<sup>44</sup> State Department 2014, *supra* note 18, at 22.

## **b. Ethiopia's Interference with Freedom of Expression and Freedom of Association**

Following the election in 2005, the State used a variety of legal mechanisms to quash free expression. Newsrooms were raided and publications were blocked.<sup>45</sup> In an unprecedented move, independent journalists (including Eskinder Nega, the journalist who was later tried alongside the Applicants in the trial at issue in this petition)<sup>46</sup> were charged with treason, attempted genocide, and “outrages against the constitution.”<sup>47</sup> In 2008, the Parliament passed the Freedom of the Mass Media and Access to Information Proclamation,<sup>48</sup> which established registration requirements and criminal penalties for defamation severe enough to prompt the United Nations Human Rights Committee (the “Committee”) to express concern that the measures violated the International Covenant on Civil and Political Rights (the “ICCPR”).<sup>49</sup>

Since 2009, the ATP has been used to target political opponents, silence journalists and stifle any dissent.<sup>50</sup> The African Commission on Human and Peoples’ Rights stated that it was “[g]ravelly alarmed by the arrests and prosecutions of journalists and political opposition members, charged with terrorism and other offenses including treason, for exercising their peaceful and legitimate right to freedom of expression and association.”<sup>51</sup> Similarly, five United Nations Special Rapporteurs “expressed their dismay at the continuing abuse of anti-terrorism legislation to curb freedom of expression in Ethiopia.”<sup>52</sup> In 2011, hundreds of opposition party members and journalists were charged with terrorism related crimes under the ATP and the Criminal Code in

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<sup>45</sup> Freedom House, *Countries at the Crossroads 2007 – Ethiopia*, September 25, 2007, at ¶ 24, available at: <http://www.unhcr.org/refworld/docid/4738692464.html>. Thirteen publications in total, “the entire genre of Ethiopia’s free press,” were closed following the 2005 unrest. Mr. Nega, *Ethiopia: Banned journalists summoned to Supreme Court over 2005 elections*, Ethiopian news and Opinions, December 2, 2009, at ¶ 4, available at: <http://ecadforum.com/News/ethiopia-banned-journalists-summoned-to-supreme-court-over-2005-elections/>.

<sup>46</sup> A petition on Mr. Nega’s behalf to the Working Group was previously filed in 2012 and the Working Group found Mr. Nega’s detention to be arbitrary. See *Nega v. The Federal Democratic Republic of Ethiopia*, UN Working Group on Arbitrary Detention, Communication No. 62/2012, U.N. Doc. A/HRC/WGAD/2012/62, December 28, 2012.

<sup>47</sup> U.S. State Department, *2006 Country Reports on Human Rights Practices: Ethiopia*, March 6, 2007, at § 1(e), available at: <http://www.state.gov/j/drl/rls/hrrpt/2006/78734.htm>.

<sup>48</sup> [Ethiopian] House of People’s Representatives, *Freedom of the Mass Media and Access to Information Proclamation, No. 590/2008*, December 4, 2008, available at: <http://www.unhcr.org/refworld/docid/4ba7a6bf2.html>.

<sup>49</sup> UN Human Rights Committee (HRC), *Concluding Observations of the Human Rights Committee: Ethiopia*, August 19, 2011, at 7, available at: <http://www.unhcr.org/refworld/docid/4fb2488d2.html> [*hereinafter*, “UNHRC Observations”].

<sup>50</sup> Human Rights Watch, *World Report 2015: Events of 2014*, 2015, at 226, available at: [https://www.hrw.org/sites/default/files/world\\_report\\_download/wr2015\\_web.pdf](https://www.hrw.org/sites/default/files/world_report_download/wr2015_web.pdf) [*hereinafter*, “World Report 2015”].

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

<sup>52</sup> UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, *Ethiopia: UN Experts Disturbed at the Persistent Misuse of Terrorism Law to Curb Freedom of Expression*, February 2, 2012, available at: <http://freeassembly.net/news/ethiopia-freedom-of-expression/>.



the State's severe crackdown on freedom of expression.<sup>53</sup> International observers found the evidence presented at these trials to be either open to interpretation or indicative of acts of a political nature rather than linked to terrorism.<sup>54</sup>

Currently, the State continues to block even mildly critical web pages and blogs and the majority of opposition media websites are obstructed.<sup>55</sup> The State regularly monitors and records telephone calls, monitors digital communications using intrusive spyware on computers, and uses its monopoly on mobile and internet services to facilitate abusive surveillance tactics.<sup>56</sup> Cumulatively, these measures have further undermined Ethiopia's already-poor record on freedom of expression.

In addition, the State has denied political opposition members of their right to freedom of association. Opposition political party members have noted that their applications for public events are routinely denied and, in cases when approved, are subject to arbitrary demands for last minute relocations or date changes.<sup>57</sup> Local government officials control access to municipal halls and use such control to deny and obstruct the scheduling of opposition parties' use of halls for lawful political rallies.<sup>58</sup> Moreover, the State has used a widespread system of paid informants to report on the activities of particular individuals affiliated with opposition parties.<sup>59</sup> Opposition members have reported that ruling party operatives and militia members have made intimidating and unwelcome visits to their homes and offices during party meetings.<sup>60</sup> The harassment suffered by the Applicants who are members of or affiliated with the opposition party known as the Unity for Democracy and Justice party (the "UDJ"), fits into a larger pattern of Ethiopia's repression of the right to association of opposition party members.<sup>61</sup>

### **3. Lack of Judicial Independence and Due Process Protections in Ethiopia**

Other human rights concerns include an overburdened judiciary subject to political influence.<sup>62</sup> In 2001, the Parliament effectively eliminated any checks on legislative or executive power by the nominally-independent judiciary.<sup>63</sup> Bound to uphold laws as presumptively constitutional,<sup>64</sup>

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<sup>53</sup> Amnesty International, *Dismantling Dissent: Intensified Crackdown on Free Speech in Ethiopia*, 2011, at 13, available at: [http://www.amnesty.be/IMG/pdf/dismantling\\_dissent\\_afr250112011.pdf](http://www.amnesty.be/IMG/pdf/dismantling_dissent_afr250112011.pdf). [*hereinafter*, "Dismantling Dissent"].

<sup>54</sup> U.S. State Department, *2011 Country Reports on Human Rights Practices: Ethiopia*, 2012, at § 1(e), available at: <http://www.state.gov/documents/organization/186406.pdf> [*hereinafter*, "State Department 2011"].

<sup>55</sup> World Report 2015, *supra* note 50, at 226.

<sup>56</sup> *Id.*

<sup>57</sup> State Department 2014, *supra* note 18, at 16.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 10.

<sup>60</sup> *Id.*

<sup>61</sup> The Applicants were members of UDJ or affiliated with the party in some capacity.

<sup>62</sup> State Department 2014, *supra* note 18, at 1.

<sup>63</sup> [Ethiopian] House of People's Representatives, *Council of Constitutional Inquiry Proclamation, No. 250/2001*, July 6, 2001, at art. 2(5), available at: <http://ehrp.org/wp-content/uploads/2014/05/council-of-constitutional-inquiry-2001.pdf>; [Ethiopian] House of People's Representatives, *Consolidation of the House of Federation and the Definition of its Powers and Responsibilities Proclamation, No. 251/2001*, July 6, 2001, at art. 2(2), available at: <http://goalgoole.com/proclamation-no-2512001-consolidation-of-the-house-of-the-federation-and-the-definition-of->

criminal courts in Ethiopia remain “weak, overburdened, and subject to political influence.”<sup>65</sup> The executive can and has asserted the authority to override judicial decisions indiscriminately.<sup>66</sup> Furthermore, judicial inefficiency and lack of qualified staff often results in serious delays in trial proceedings and makes the application of law unpredictable.<sup>67</sup>

Ethiopia’s judicial system also suffers from a lack of due process protections, especially for those charged with crimes under the ATP. For instance, bail is unavailable for persons arrested under the ATP and the police are permitted to hold these individuals without charge for 28-day periods and up to a maximum of four months while an investigation is conducted.<sup>68</sup> Detainees in pre-trial detention are often not informed of their charges and authorities may allow them little or no contact with legal counsel, deny them full information about their health status, and refuse family visits.<sup>69</sup> There are also reports that authorities deny detainees charged under the ATP visits with representatives of the political parties to which they belong.<sup>70</sup> Finally, it is not uncommon for State officials to show a high level of interest in ATP cases and senior members of the government have made public claims of guilt against such detainees prior to their trial.<sup>71</sup>

#### 4. Prison Conditions in Ethiopia

Prison conditions in Ethiopia are notoriously harsh and, in some cases, life threatening.<sup>72</sup> There are reports that authorities regularly abuse prisoners.<sup>73</sup> Police investigators, in order to extract confessions, use torturous tactics such as beatings, stress positions, hanging by wrists, prolonged handcuffing, water torture, verbal threats, and solitary confinement.<sup>74</sup> In 2011, the Committee Against Torture reported it was “deeply concerned” about “numerous, ongoing, and consistent allegations” concerning “the routine use of torture” by police, prison officers, and other members of the security forces against opposition party members.<sup>75</sup> Reports that security officials torture or mistreat detainees are ongoing.<sup>76</sup>

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its-powers-and-responsibilities-proclamation/. Constitutionally, laws are adopted after passage by the Parliament and signature by the President. Constitution of Ethiopia, *supra* note 11, 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 *Blyadigligh Meles et al v. Amhara National Regional State* [both unpublished]) [*hereinafter*, “Fiseha”].

<sup>64</sup> Fiseha, *supra* note 63, at 706.

<sup>65</sup> State Department 2011, *supra* note 54.

<sup>66</sup> Fiseha, *supra* note 63, at 708 (citing Federal Democratic Republic of Ethiopia, “Regulation No. 155/2008,” at art. 37).

<sup>67</sup> State Department 2014, *supra* note 18, at 8.

<sup>68</sup> *Id.* at 7.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 5.

<sup>71</sup> Dismantling Dissent, *supra* note 53, at 22.

<sup>72</sup> State Department 2014, *supra* note 18, at 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 3.

<sup>75</sup> *Id.*

<sup>76</sup> U.S. State Department, Ethiopia 2015 Human Rights Report, 2016, at 3, available at: <http://www.state.gov/documents/organization/252893.pdf>.

In addition, severe overcrowding is common, especially in sleeping quarters. Authorities only provided nine birr (USD \$0.43) per prisoner per day for food, water, and healthcare.<sup>77</sup> Given such paucity, food supplies are usually supplemented with food deliveries from family members.<sup>78</sup> However, there are reports that officials may prevent some prisoners from receiving supplemental food from their families.<sup>79</sup> Medical care is unreliable in federal prisons and almost nonexistent in regional prisons.<sup>80</sup> Limited access to potable water, and water shortages caused unhygienic conditions, and most prisons lack appropriate sanitary facilities.<sup>81</sup> Many prisoners suffer from serious health problems that go unaddressed and 62 percent of inmates across the country suffer from mental health issues as a result of solitary confinement, overcrowding, and lack of adequate health-care facilities and services.<sup>82</sup>

## **B. The Arbitrary Detention of the Applicants**

### **1. Background Information on the Applicants<sup>83</sup>**

Andualem Aragie Walle, born on November 4, 1972, is a prominent opposition politician who began his political career in 2000 when he helped found the Ethiopian Democratic Party. He later became involved with the Coalition for Unity and Democracy (the “CUD”) before becoming Vice President of the UDJ and was seen as an increasingly dominant figure in opposition politics.<sup>84</sup> He also served as Press Secretary for the UDJ newspaper and as an executive committee member of Medrek, the largest opposition coalition in Ethiopia.

In 2005, during the post-election protests and subsequent government crackdown, Mr. Aragie was arrested and, along with other leaders of the CUD, sentenced to life in prison.<sup>85</sup> Due to immense international pressure, he was pardoned and released in 2007 but continued to face State interference with his work and was placed under constant and invasive surveillance.<sup>86</sup>

Andualem Ayalew Gellaw, age 41,<sup>87</sup> was elected to Parliament in 2005 as a member of the CUD. In the 2010 election, he was accused of inciting the public with his campaign speeches during his run for candidacy under the UDJ party. After receiving threats from State officials, he fled to

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<sup>77</sup> *Id.* at 4.

<sup>78</sup> State Department 2014, *supra* note 18, at 4.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> 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 of two letters, randomly assigned.

<sup>84</sup> Peter Heinlein, *Ethiopia Police Deny Using Anti-Terror Law to Stifle Dissent*, Voice of America, September 17, 2011, available at: [www.voanews.com/english/news/africa/ethiopia-police-deny-using-anti-terror-law-to-stifle-dissent-130016653.html](http://www.voanews.com/english/news/africa/ethiopia-police-deny-using-anti-terror-law-to-stifle-dissent-130016653.html).

<sup>85</sup> *Id.*

<sup>86</sup> Communication with AB.

<sup>87</sup> The exact date of birth for this applicant and the following applicants is unknown. This age and the following ages are calculated from the Charging Document. Charging Document, *supra* note 8.

neighboring Sudan to avoid political imprisonment and was given refugee status by the Office of the High Commission for Refugees. Mr. Ayalew was awaiting relocation to a third country when he was forcibly taken back to Ethiopia.<sup>88</sup> The exact date of his transfer is unknown, but the State claims that Mr. Ayalew was arrested on October 25, 2011.<sup>89</sup>

Nathnael Mekonnen Gebrekidan, age 39, is an opposition politician who served on UDJ's executive committee and was considered an influential figure in opposition politics. He was arrested on September 14, 2011 in Addis Ababa.

Kinfemichael Debebe Bereded, age 47, is an opposition politician and a member of the All Ethiopian Democratic Party (the "AEDP"), an ally of the UDJ and a member party to Medrek. Mr. Debebe was arrested in Addis Ababa on September 26, 2011.

Mitiku Damte Weraku, age 47, was a member of the AEDP before running for the 2010 election as a member of the UDJ. Mr. Damte was arrested on September 29, 2011, but the exact location of his arrest is unknown.

Yeshiwas Yehunalem, age 62, is a member of UDJ and was a candidate in the 2010 election. Mr. Yehunalem's participation in party activities reportedly ceased after the elections because he experienced severe harassment during his campaigning.<sup>90</sup> Mr. Yehunalem was arrested on October 13, 2011, but the exact location of his arrest is unknown.

Yohannes Terefe Kebede, age 50, is a member of the AEDP. Mr. Terefe was arrested on October 13, 2011, but the exact location of his arrest is unknown.

## 2. The UDJ

The UDJ, commonly known as Andinet (the Amharic word for "unity"), was formally registered on August 22, 2008.<sup>91</sup> The UDJ formed after the dissolution of the CUD, which had been the main opposition alliance in Ethiopia.<sup>92</sup> Many members of CUD then went on to help establish the UDJ, the largest opposition party at the time of the Applicants' arrests.

In 2009, eight opposition parties, including the UDJ and the AEDP, united to form a political coalition in the lead-up to the May 2010 elections.<sup>93</sup> Medrek, the coalition (commonly known as the Forum for Democratic Dialogue in Ethiopia, the Ethiopian Federal Democratic Unity Forum, or the Forum for Justice and Democratic Dialogue), was reported to be the country's largest opposition group. In the 2010 election, Medrek put forward over 400 candidates but won only one seat.<sup>94</sup>

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<sup>88</sup> Dismantling Dissent, *supra* note 53, at 18; Illegal Transfer, *supra* note 2.

<sup>89</sup> Charging Document, *supra* note 8.

<sup>90</sup> Dismantling Dissent, *supra* note 53, at 17.

<sup>91</sup> Canada: Immigration and Refugee Board of Canada, *Ethiopia: The Unity for Democracy and Justice Party (UDJ)*, July 23, 2012, available at: <http://www.refworld.org/docid/50ead0a92.html> [*hereinafter*, "UDJ"].

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* The winning candidate was from the UDJ.

In 2009 and 2010, the UDJ contested the fairness of the electoral process and protested against the oppressive political climate in Ethiopia. According to the deputy leader of the UDJ, opposition candidates were “being intimidated or arrested on false charges” and regional offices were being closed as part of a larger strategy to oppress opposition politics.<sup>95</sup>

### 3. Arbitrary Arrest and Detention of the Applicants

Despite the State’s oppressive tactics of imprisoning and surveilling the party leadership, UDJ members continued to openly advocate for peaceful democratic reform. In the lead up to the mass arrests of its party members in 2011, the UDJ (with AEDP participation) held several rallies and published various articles through the party’s newspaper<sup>96</sup> calling for a “peaceful struggle...that brings an all-around freedom to the Ethiopian people,” akin to the Arab Spring movement for democracy.<sup>97</sup> At the time, information about events taking place in Egypt and Tunisia was tightly controlled by the State and the Applicants were likely targeted for their public statements on such matters.<sup>98</sup>

The arrests of the Applicants were probably also in response to the Applicants’ vocal criticism of the ATP. On September 9, 2011 the UDJ held a party-wide meeting at which Mr. Aragie admonished the EPRDF for its practice of imprisoning political opposition members under fabricated terrorism related charges, stating that the party only did so because it was worried about “losing its 20 year grip on power.”<sup>99</sup> He noted that:

So long as you are not cooperating with the regime, then you will be labeled a terrorist the next morning. Beginning with the 2005 elections, this regime has very well understood it will never win the hearts and minds of the Ethiopian people so that the solution they are left with is fabricating lies and jailing everyone they think is opposing them.<sup>100</sup>

In subsequent court proceedings, and despite evidence that such meetings were calling only for peaceful change, the State declared this meeting and other similar meetings illegal and claimed that they were held in order to “cause chaos” around Ethiopia.<sup>101</sup>

Throughout September and October 2011, the Federal Police arrested and detained the Applicants. Mr. Aragie and Mr. Mekonnen were arrested on September 14, 2011. Mr. Debebe was arrested on September 26, 2011 and Mr. Damte was arrested a few days later on September

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<sup>95</sup> *Id.*

<sup>96</sup> The newspaper regularly commented on the impoverished state of civil and political freedom in Ethiopia.

<sup>97</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Joint Urgent Appeal ETH 1/2012*, March 16, 2012, available at: [https://spdb.ohchr.org/hrdb/20th/UA\\_Ethiopia\\_19.12.2011\\_\(7.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/UA_Ethiopia_19.12.2011_(7.2011).pdf) [*hereinafter*, “Joint Urgent Appeal”].

<sup>98</sup> Amnesty International, *Ethiopia: Threats against journalist are another attack on freedom of expression*, February 18, 2011, available at: <http://www.amnesty.org.au/news/comments/24856/>.

<sup>99</sup> Voice of America, *Government Critics Detained in Ethiopian Anti-Terrorism Sweep*, September 13, 2011, available at: <http://www.voanews.com/content/government-critics-detained-in-ethiopian-anti-terror-sweep-129845693/158852.html>.

<sup>100</sup> *Id.*

<sup>101</sup> Communication with KL.

29, 2011. Mr. Yehunalem and Mr. Terefe were arrested on October 13, 2011 and Mr. Ayalew was arrested on October 25, 2011.

On September 14, 2011, Mr. Aragie was ambushed by security forces in Addis Ababa and taken by force to Maekelawi prison.<sup>102</sup> Subsequently, Mr. Aragie's home was searched and various documents, compact discs, videos, a laptop, and a digital camera were seized.<sup>103</sup> Mr. Mekonnen's home was also searched and similar items were seized. According to the prosecution's witness, valid search warrants were presented at the time of the searches.<sup>104</sup> After their arrests, the Applicants were taken to Maekelawi prison during pre-trial detention<sup>105</sup> but were not officially charged until November 10, 2011.<sup>106</sup> At least one Applicant, Mr. Damte, was initially misinformed regarding the nature of the charge made against him.<sup>107</sup>

In addition to the Applicants, Eskinder Nega, a prominent journalist who had been active in calling for peaceful protests against the government along with the UDJ, was also arrested during this roundup. Despite no formal affiliation with the UDJ, Mr. Nega was later tried alongside the Applicants. (In 2012, the Working Group reviewed the case of Mr. Nega's arrest, detention and trial and found it to be "arbitrary, in violation of articles 9, 10 and 19 of the Universal Declaration of Human Rights and articles 9, 14 and 19 of the International on Civil and Political Rights and falls into categories II and III of the categories applicable to the cases submitted to the Working Group."<sup>108</sup>)

Authorities repeatedly and publicly stated that the Applicants were guilty of terrorism in the days and weeks following their arrests, although the State had not yet formally charged them.<sup>109</sup> State television accused the Applicants of membership in the banned U.S.-based Ginbot 7 political movement and other terrorist groups and portrayed them as spies for "foreign forces."<sup>110</sup> The State's spokesperson, Shimless Kemal, claimed that Mr. Aragie "[was] involved in staging a series of terrorist acts that would likely wreak havoc"<sup>111</sup> and that he "received from the Eritrean government weapons and explosives for the purpose of carrying out terrorists activities in Ethiopia."<sup>112</sup> These two nations have a history of conflict and both sides continue to accuse the other of supporting proxy rebel forces meant to destabilize the other nation.<sup>113</sup>

Days later, Deputy Federal Police Commissioner Demesash Woldemikael reiterated the State's

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<sup>102</sup> Communication with AB.

<sup>103</sup> Communication with MN.

<sup>104</sup> *Id.*

<sup>105</sup> Communication with AB.

<sup>106</sup> Charging Document, *supra* note 8.

<sup>107</sup> Communication with CD.

<sup>108</sup> *Nega v. Ethiopia*, *supra* note 46, at ¶ 45.

<sup>109</sup> Communication with AB.

<sup>110</sup> *Id.*

<sup>111</sup> Voice of America, *Government Critics Detained in Ethiopian Anti-Terror Sweep*, September 14, 2011, available at: <http://www.voanews.com/content/government-critics-detained-in-ethiopian-anti-terror-sweep-129845693/158852.html>.

<sup>112</sup> AFP, *Ethiopia charges 24 with terrorism*, November 10, 2011, available at: <http://www.news24.com/Africa/News/Ethiopia-charges-24-with-terrorism-20111110>.

<sup>113</sup> *Id.*

claim that the Applicants had planned acts of terrorism with banned groups and claimed to have “hard evidence that [would] stand up in court.”<sup>114</sup> In October, while addressing the Parliament, Prime Minister Meles accused journalists and opposition politicians in the country of working as “messengers” for “terrorist” groups and claimed the State had evidence linking the Applicants to terrorist acts and terrorist ties.<sup>115</sup>

During this pre-trial detention period, State officials had placed several of the Applicants under duress in an attempt to coerce confessions. On November 26-28, 2011, State television broadcasted a three-part special program titled “Akeldama,” which showed clips of Mr. Aragie and Mr. Mekonnen confessing under duress to terrorist-related crimes.<sup>116</sup> Mr. Mekonnen later told the court that during his pre-trial detention he was tortured for 23 days, including being beaten, forced to stand for hours upon end, deprived of sleep, and having cold water repeatedly poured over him at the notorious Maekelawi facility.<sup>117</sup> He also reported that his clothes were at one point confiscated and that he was left in the cell naked.<sup>118</sup>

Mr. Ayalew and Mr. Debebe were also subjected to severe beatings and torture while in the custody of the Ethiopian security forces.<sup>119</sup> These two Applicants were tortured in the State’s attempt to obtain false testimony against Mr. Aragie.<sup>120</sup> In addition, two unidentified individuals were also tortured in order for the State to procure testimony against Mr. Aragie but were released shortly after they succumbed to the torture and provided false testimony.<sup>121</sup> A journalist imprisoned in late 2011 was asked to testify against Mr. Mekonnen. After agreeing to this request the journalist was informed that he would later be instructed on how to testify.<sup>122</sup>

#### 4. Arbitrary Prosecution of the Applicants

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<sup>114</sup> Voice of America, *Ethiopia Police Deny Using Anti-Terror Law to Stifle Dissent*, September 16, 2011, available at: <http://www.voanews.com/content/ethiopia-police-deny-using-anti-terror-law-to-stifle-dissent-130016653/158867.html>.

<sup>115</sup> Committee to Protect Journalists, *Ethiopia Steps Up Terrorism Allegations against Journalists*, October 24, 2011, available at: <http://www.cpj.org/2011/10/ethiopia-steps-up-terrorism-allegations-against-jo.php>.

<sup>116</sup> Communication with AB; PEN, *Top PEN Prize to Honor Eskinder Nega, Jailed Ethiopian Journalists and Blogger*, April 12, 2012, available at: [www.pen.org/viewmedia.php/prmMID/6494/prmID/2203](http://www.pen.org/viewmedia.php/prmMID/6494/prmID/2203).

<sup>117</sup> Communication with AB; Crush Free Speech, *infra* note 223; William Davison, *Ethiopia Charges Two Politicians and 22 others With Terrorism*, November 11, 2011, available at: <https://adalvoice.wordpress.com/2011/11/12/ethiopia-charges-politicians-and-22-others/>.

<sup>118</sup> Judges and Lawyers, *infra* note 128.

<sup>119</sup> ECAD, *North Sudanese government illegally transferred Ethiopia political refugee Andualem Ayalew Gellaw*, November 21, 2011, available at: <http://ecadforum.com/articles/2011/11/21/north-sudanese-government-ethiopian-americans-council/>; *Open Letter to Mr. Barack Obama*, April 19, 2016, available at: [http://www.zehabesha.com/andualem-arage-from-kaliti-prison-open-letter-to-mr-barack-obama/](http://www.zehabesha.com/andualem-arage-from-kaliti-prison-open-letter-to-mr-barack-obama/http://www.zehabesha.com/andualem-arage-from-kaliti-prison-open-letter-to-mr-barack-obama/) [*hereinafter*, “Open Letter”].

<sup>120</sup> Open Letter, *supra* note 119.

<sup>121</sup> *Id.* Unfortunately, because the Applicants are being held without much access to the outside world it has been difficult to glean accurate information about every instance of abuse experienced by the Applicants since September 2011. However, it is clear that the Applicants remain imprisoned in harsh prison conditions. Communication with AB.

<sup>122</sup> Human Rights Watch, *They Want a Confession*, October 17, 2013, available at: <https://www.hrw.org/report/2013/10/17/they-want-confession/torture-and-ill-treatment-ethiopia-maekelawi-police-station>.

After their arrests, the Applicants were collectively denied access to an attorney during the pre-trial detention period. On September 15, 2011, the Applicants then in custody were remanded to further police custody until October 12, 2011 to allow police additional time to investigate.<sup>123</sup> This proceeding was closed to the public and the Applicants then in custody did not have access to legal counsel or members of their family.<sup>124</sup> The State again reauthorized the Applicants' detention in mid-October after another hearing that was closed to the public and for which the Applicants did not have access to legal counsel.<sup>125</sup>

On November 10, 2011, the State charged the Applicants<sup>126</sup> (and Eskinder Nega) before the Lideta Federal High Court on terrorism, treason, and espionage related charges.<sup>127</sup> This was the first time since their arrests that the Applicants had access to an attorney.<sup>128</sup> In its charging document, the State presented four charges against the Applicants under Articles 32(1)(a), 38(1), 248(b), and 252(1)(a) of the Criminal Code and Articles 3(1), 3(2), 3(3), 3(4), 4, and 6, and 7(2) of the ATP.<sup>129</sup>

The charges against the Applicants included the ATP's broad prohibitions on incitement and encouragement of terrorism. Article 4 of the ATP punishes anyone who "plans, prepares, conspires, *incites* or attempts to commit any of the [prohibited] terrorist acts."<sup>130</sup> Even more

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<sup>123</sup> *Two Ethiopian Journalists Detained on Terrorism Charges*, *supra* note 81; Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur(s) on the promotion and protection of human rights and fundamental freedoms while countering terrorism; on the promotion and protection of the right to freedom of opinion and expression; on the rights to freedom of peaceful assembly and of association; on the situation of human rights defenders; on torture and other cruel, inhuman or degrading treatment or punishment, *Reference: UA G/SO 218/2 GS/O 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) Terrorism (2005-4) G/SO 214 (53-24) ETH 4/2011*, October 4, 2011, available at: [https://spdb.ohchr.org/hrdb/19th/UA\\_Ethiopia\\_04.10.2011\\_\(4.2011\).pdf](https://spdb.ohchr.org/hrdb/19th/UA_Ethiopia_04.10.2011_(4.2011).pdf) [*hereinafter*, "ETH 4/2011"].

<sup>124</sup> Communication with GH. 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. Anti-Terrorism Proclamation, *supra* note 3, at art. 20(2).

<sup>125</sup> Communication with GH. 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." Human Rights Watch, *Ethiopia: Stop Using Anti-Terror Law to Stifle Peaceful Dissent*, November 21, 2011, available at: <http://www.hrw.org/news/2011/11/21/ethiopia-stop-using-anti-terror-law-stifle-peaceful-dissent>.

<sup>126</sup> There were a total of 24 defendants. Although six of the defendants were journalists, five of them were tried *in absentia*. Only Mr. Nega was tried with the Applicants. The remaining defendants are associated with opposition groups, mainly the UDJ, and are listed in this petition.

<sup>127</sup> William Davison, *Ethiopia Charges Two Politicians and 22 others With Terrorism*, November 11, 2011, available at: <https://adalvoice.wordpress.com/2011/11/12/ethiopia-charges-politicians-and-22-others/>. *See also* Charging Document, *supra* note 8.

<sup>128</sup> Communication with AB; Mandates of the Special Rapporteur(s) on the independence of judges and lawyers; on the promotion and protection of human rights and fundamental freedoms while countering terrorism; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders; and on torture and other cruel, inhuman or degrading treatment or punishment, *Reference: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) Terrorism (2005-4) G/SO 214 (53-24) ETH 7/2011*, December 19, 2011, available at: [https://spdb.ohchr.org/hrdb/20th/UA\\_Ethiopia\\_19.12.2011\\_\(7.2011\).pdf](https://spdb.ohchr.org/hrdb/20th/UA_Ethiopia_19.12.2011_(7.2011).pdf) [*hereinafter*, "Judges and Lawyers"].

<sup>129</sup> Charging Document, *supra* note 8.

<sup>130</sup> Anti-Terrorism Proclamation, *supra* note 3, at art. 4 (*emphasis added*).



broadly, Article 6 of the ATP 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.<sup>131</sup>

Like the charges against the Applicants, the factual allegations contained in the State's charging document were extremely vague. For instance, the State did not provide specific dates on which events underlying their allegations against the Applicants were supposed to have taken place, nor did the charges include any basic elements of the crimes as set out in the ATP and the Criminal Code. Rather, only general statements of alleged involvement in "terrorist" crimes and association with "terrorist" organizations were referred to and vague references to roles made. For example, the only section of the document that contained factual allegations specific to Mr. Aragie alleged that,

By using as cover his constitutional right to freedom of association, since 2003 E.C. (September 2010), in order to overthrow the constitutional system through an organized terrorist act, served as the youth organization leader of the terrorist organization Ginbot 7; together with the agents of the terrorist organization that are in Eritrea and the leaders of this terrorist organization that are in different countries, maintained clandestine communication; accepted terrorism mission, cooperated with the terrorist organization organized in secret in the country in order to reach an agreement for a joint all-inclusive joint armed struggle with terror elements; developed terrorist plans; secretly organized youth organizations in the country; directly led the planned terrorist act; assigned people for terrorist mission, disseminated mobilizing materials in different ways; received materials on terrorism and uprising and passed them on to the members within the country; led meetings that had terrorist missions and by undertaking different mobilizing activities for terrorist ends, took decisions on different terrorist actions.<sup>132</sup>

The factual allegations against the other Applicants were similarly sparse and vague.<sup>133</sup> In general, the Applicants had been charged as principals for collaborating with the Eritrean government to create "chaos in Ethiopia" and for joining forces with "terrorist organizations like OLF and ONLF" and Ginbot 7 under the guise of their "constitutional right to freedom of expression and association."<sup>134</sup> However, the charging documents did not reference any facts to evidence their allegations.

On January 24, 2012, the Lideta Federal High Court confirmed the charges against the Applicants and scheduled the start of the trial for March 5, 2012.<sup>135</sup> However, due to amended pleadings submitted by the State, the trial proceedings did not recommence until March 24,

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<sup>131</sup> *Id.* at art. 6 (*emphasis added*).

<sup>132</sup> Charging Document, *supra* note 8.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* (*emphasis added*).

<sup>135</sup> Committee to Protect Journalists, *Judge confirms charges against Ethiopian dissident blogger*, January 25, 2012, available at: <http://cpj.org/2012/01/ethiopian-blogger-risks-death-penalty-as-judge-con.php>.

2012.<sup>136</sup>

During the trial, the State submitted to the court a series of the Applicants' writings and recordings of UDJ meetings, but failed to offer substantial evidence of terrorism-related activity, relation to terrorist organizations, or call to violence. Instead, prosecutors presented "scratchy, nearly inaudible recordings of telephone conversations and other comments as evidence that the defendants were plotting terrorist acts."<sup>137</sup> The recordings, however, made it clear that the Applicants on tape called for peaceful political reform and that they were solely targeted for exercising their rights to freedom of expression and association with opposition parties rather than any affiliation with a terrorist organization or for plotting terrorist acts. In an attempt to affiliate Applicants with Ginbot 7, the prosecutor listed as an exhibit one book owned by Mr. Ayalew that was written by Ginbot 7—a weak linking at best.

While the prosecution played various recordings (i.e. a speech by Mr. Debebe)<sup>138</sup> it mainly relied on two key recordings in its attempt to prove the Applicants' guilt. First, the prosecution played a 30-minute speech by Mr. Aragie, which was posted on YouTube before a rally that took place in June 2010 in Washington, D.C.<sup>139</sup> The targeted audience for the speech was the Ethiopian diaspora in the United States and the speech called for an "Ethiopian Awakening" (akin to the Arab Spring) and criticized the State's current policy of ethnic-based federalism. Second, the prosecution presented clips from a 70-minute recording of a UDJ meeting held days before the arrests of the Applicants.

In response, the Applicants were permitted to present the recording in full in order to show that the State had selectively used clips out of context. This presentation delegitimized the prosecution's claim that the Applicants posed a threat to national security.<sup>140</sup> The Applicants admitted to calling for peaceful protests and for the end of imprisoning political opponents, but denied advocating for violence or engaging in activities related to terrorism.<sup>141</sup> Furthermore, Mr. Damte testified that he had been coerced while in custody to make a statement of guilt.<sup>142</sup> He also told the court that when he was arrested he was informed that he was being charged with "fighting with another person," and was only told later that he was being charged with terrorism related charges.<sup>143</sup>

Despite the prosecution's claim that it proved "beyond a reasonable doubt" that the Applicants associated with and assisted terrorist organizations by participating in "secret meetings in order to disrupt the peace and security of the State as well as by supplying financial, material, and

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<sup>136</sup> Communication with IJ.

<sup>137</sup> Voice of America, *Ethiopian Terrorism Trial Hears Journalist Defendant*, March 27, 2012, available at: <http://www.voanews.com/content/ethiopian-terrorism-trial-hears-journalist-defendant-144654675/179445.html>.

<sup>138</sup> Amnesty International, *Ethiopia: Conviction of government opponents a 'dark day' for freedom of expression*, June 28, 2012, available at: <https://www.amnesty.org.uk/press-releases/ethiopia-conviction-government-opponents-dark-day-freedom-expression>.

<sup>139</sup> Communication with CD.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

moral support to terrorist organizations,”<sup>144</sup> the prosecution failed to offer any tangible evidence tying the Applicants to any form of terrorist activity or partnership.

On June 27, 2012, the court found the Applicants “guilty as charged”<sup>145</sup> and on July 13, 2012, the court meted out prison sentences for each of the Applicants. The court sentenced Mr. Aragie to a life sentence,<sup>146</sup> Mr. Mekonnen to an 18-year sentence,<sup>147</sup> and Mr. Debebe to a 25-year sentence.<sup>148</sup> The length of the prison sentences for Mr. Ayalew, Mr. Damte, Mr. Yehunalem, and Mr. Terefe is unknown. (Mr. Nega, who had been tried alongside the Applicants and suffered all of the same deprivations of due process, was given a sentence of 18 years, which the Working Group later suggested should be vacated when it requested that the government take steps to secure “the immediate release of Mr. Nega and adequate reparation to him.”)<sup>149</sup>

On September 28, 2012, the Applicants appealed to the Federal Supreme Court, and after several postponements, the court upheld the lower court’s decision on May 2, 2013.<sup>150</sup> Mr. Debebe’s sentence was reduced to 16 years from 25 years in prison on appeal.<sup>151</sup>

## II. Legal Analysis

The continued detention of the Applicants is arbitrary<sup>152</sup> under Categories I, II, III, and V as established by the Working Group. The detention is arbitrary under Category I because the State lacked a legal basis for detaining the Applicants. The detention is arbitrary under Category II because it resulted from the Applicants’ peaceful exercise of their rights to freedom of expression, association, and participation in public affairs. The detention is arbitrary under Category III because the State’s detention and prosecution of the Applicants failed to meet minimum international standards of due process. The detention is also arbitrary under Category V because the Applicants were targeted by the State due to the Applicants’ political opinion.

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<sup>144</sup> Communication with OP.

<sup>145</sup> Jenny Vaughan, *Famed Ethiopian Journalist, Dissidents Convicted of Terrorism*, Agence France Presse, June 27, 2012, available at: [http://latimesblogs.latimes.com/world\\_now/2012/06/ethiopian-journalist-dissidents-convicted-of-terrorism.html](http://latimesblogs.latimes.com/world_now/2012/06/ethiopian-journalist-dissidents-convicted-of-terrorism.html)

<sup>146</sup> State Department 2012, *supra* note 9.

<sup>147</sup> *Id.*

<sup>148</sup> Open Letter, *supra* note 119.

<sup>149</sup> *Nega v. Ethiopia*, *supra* note 46, at ¶ 46.

<sup>150</sup> Communication with AB.

<sup>151</sup> Agence France Presse, *Ethiopia confirms jail terms for blogger, opposition figure*, May 3, 2013, available at: [http://www.ethiomeia.com/abc\\_text/4086.html](http://www.ethiomeia.com/abc_text/4086.html).

<sup>152</sup> 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 March 23, 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”].

## A. Category I

The detention of the Applicants under Articles 3(1), 3(2), 3(3), 3(4), 4, and 6, and 7(2) of the ATP is arbitrary under Category I. A detention is arbitrary under Category I when there is no legal basis justifying the detention.<sup>153</sup> In this case, there is no legal basis justifying the Applicants' detention because: (1) the law under which the Applicants were charged and convicted is overly broad and vague and thus fails to meet the standard of legal certainty; and (2) the State failed to provide sufficient factual allegations and evidence of terrorist-related activity.

### 1. The ATP is Overly Broad and Vague

The ATP is premised on an extremely broad and vague definition of terrorism, allowing the State to crackdown on legitimate forms of political dissent. The Working Group has previously expressed its concerns about anti-terrorism laws that “by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention.”<sup>154</sup> Since the ATP's enactment in 2009, hundreds of journalists and opposition politicians have been arbitrarily detained for their exercise of fundamental rights such as freedom of expression and association.<sup>155</sup> Under the guise of combating terrorism, the ATP is used to mete out long prison sentences or the death penalty for crimes or other acts that bear little resemblance to a credible definition of terrorism.

For example, Article 3 of the ATP defines “terrorist acts” as follows:

Whosoever or a group intending to advance a political, religious or ideological cause by coercing the government, intimidating the public or section of the public, or destabilizing or destroying the fundamental political, constitutional or, economic or social institutions of the country:

(1) causes a person's death or serious bodily injury; (2) creates serious risk to the safety or health of the public or section of the public; (3) commits kidnapping or hostage taking; (4) causes serious damage to property; (5) causes damage to natural resource, environment, historical or cultural heritages; (6) endangers, seizes or puts under control, causes serious interference or disruption of any public service; or (7) threatens to commit any of the acts stipulated under sub-articles (1) to (6) of this Article; is punishable with rigorous imprisonment from 15 years to life or with death.<sup>156</sup>

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<sup>153</sup> Specifically, a Category I deprivation of liberty occurs “[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual...” United Nations Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47, Annex ¶ 8(b), January 19, 2011, [*hereinafter*, “Revised Methods of Work”].

<sup>154</sup> UN Working Group on Arbitrary Detention, *Question Of The Human Rights Of All Persons Subjected To Any Form Of Detention Or Imprisonment*, UN Doc. E/CN.4/1995/31, December 21, 1994, at ¶ 25(d); *Ali Abd al-Rahman Al-Faqasi Al-Ghamdi v. Saudi Arabia*, UN Working Group on Arbitrary Detention, Communication No. 18/2011, May 5, 2011, at ¶ 20.

<sup>155</sup> *Dismantling Dissent*, *supra* note 53, at 13.

<sup>156</sup> Anti-Terrorism Proclamation, *supra* note 3, at art. 3.

Most acceptably, terrorism refers to the use of violence against civilians for political ends.<sup>157</sup> Yet, the ATP's overbroad definition of terrorist acts includes acts that do not involve violence or injury to people, such as property crimes and disruption of public services. The international community has criticized such overbroad definitions of terrorism. For instance, the United Nations Special Rapporteur on Counter-Terrorism and Human Rights and others have stated that terrorism should be limited to acts committed with the intention of causing death or seriously bodily injury, or the taking of hostages, and should not include property crimes.<sup>158</sup> Therefore, as it stands, the ATP is overbroad in its definition of terrorist acts.

The charges against the Applicants also included the ATP's expansive prohibitions on incitement and encouragement of terrorism. Article 4 of the ATP punishes anyone who "plans, prepares, conspires, incites or attempts to commit any of the [prohibited] terrorist acts."<sup>159</sup> Even more broadly, Article 6 of the ATP, entitled "Encouragement of Terrorism" states:

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 Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.<sup>160</sup>

The words "encouragement" and "inducement" are individually vague, but the phrase "indirect encouragement or other inducement," is so vague as to render the article without meaning. The State ultimately fails to appropriately define and limit the article's scope. In General Comment No. 35, the Committee notes that "[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."<sup>161</sup> In effect, the omission of essential limiting provisions of intent, interpretation, and defenses under the ATP, leaves the law hollow and without any meaningful application.

Furthermore, the United Nations Special Rapporteur on Freedom of Opinion and Expression has stated that restrictions of freedom of expression for national security purposes should only be imposed where the speech was clearly intended to incite imminent violence and where there is a direct and immediate connection between the expression and likelihood of the expression leading to violence.<sup>162</sup> The Special Rapporteur on Freedom of Expression and Access to Information of

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<sup>157</sup> The Oakland Institute, *Ethiopia's Anti-Terrorism Law: A Tool to Stifle Dissent*, January 21, 2016, at 9, available at: [http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI\\_Ethiopia\\_Legal\\_Brief\\_final\\_web.pdf](http://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/OI_Ethiopia_Legal_Brief_final_web.pdf) [*hereinafter*, "Stifle Dissent"].

<sup>158</sup> *Id.* at 10.

<sup>159</sup> Anti-Terrorism Proclamation, *supra* note 3, at art. 4.

<sup>160</sup> Anti-Terrorism Proclamation, *supra* note 3, at art. 6. (*emphasis added*).

<sup>161</sup> General Comment No. 35, *infra* note 167, at ¶ 22. *See also* UN Human Rights Committee, *Concluding Observations: Mauritius*, April 27, 2005, CCPR/CO/83/MUS, at ¶ 12; UN Human Rights Committee, *Concluding Observations: The Russian Federation*, November 24, 2009, at ¶ 24 (noting the pattern of governments using vaguely worded laws to pursue politically motivated claims).

<sup>162</sup> *See* United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression, *Joint Declaration on International Mechanisms for Promoting*

the African Commission on Human Rights and Peoples' Rights, the Organization for American States, and the Organization for Economic Co-operation and Development have reiterated this standard.<sup>163</sup> However, Article 6 of the ATP fails to meet this standard since it criminalizes even “indirect encouragement,” a term which in and of itself is vague.

Overall, the various criminal offenses outlined in the ATP are not defined in a sufficiently foreseeable and precise manner. The law's staggering breadth and vagueness makes it impossible to know or predict what conduct may violate the law and subject an individual to severe criminal sanctions. As the law stands, it contravenes the requirements for legal certainty guaranteed by Article 15(1) of the ICCPR and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”), which contain the principle *nullum crimen sine lege* and prohibit a person being convicted for a criminal offense which did not constitute a criminal offense at the time when it was committed. According to the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism:

The first requirement of article 15, paragraph 1, is that the prohibition of terrorist conduct must be undertaken by national or international prescriptions of law. To be 'prescribed by law' the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct. Terrorism offences should also plainly set out what elements of the crime make it a terrorist crime. Similarly, where any offences are linked to 'terrorist acts', there must be a clear definition of what constitutes such acts.<sup>164</sup>

The Committee has made clear that the ATP does not meet this threshold of legal certainty because it fails to provide appropriately specific definitions and has called upon the State to ensure that the law defined the nature of terrorist acts with sufficient precision to enable

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*Freedom of Expression*, December 21, 2005 (criticizing the use of vague terms such as “promoting” terrorism); *Johannesburg Principles on National Security, Freedom, of Expression and Access to Information*, U.N. Doc. E/CN.4/1996/39 (1996), prin. 6 (expression may be punished as a threat to national security only if a government can demonstrate that the expression is intended and likely to incite imminent violence), available at: <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>.

<sup>163</sup> The United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, *Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation*, December 9, 2008, available at: <http://www.osce.org/fom/35639?download=true>.

<sup>164</sup> See Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Report to the Commission on Human Rights*, E/CN.4/2006/98, December 28, 2005, at ¶ 46. See also UN Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/28/28, December 19, 2014, at ¶ 48 (“This requires that the imposition of criminal liability be limited to clear and precise provisions so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation, which would unduly broaden the scope of the proscribed conduct. Overly vague or broad definitions of terrorism would not meet this requirement and may be used by States as a means to cover peaceful acts, to discriminate against particular individuals or groups or to limit any sort of political opposition.”).

individuals to regulate their conduct.<sup>165</sup> Failure to do so would amount to a violation of, among others, Article 15 of the ICCPR and Article 11(2) of the UDHR, which enshrine the principle of legality,<sup>166</sup> as well as the right to liberty protected by Article 9 of the ICCPR<sup>167</sup> and Articles 3 and 9 of the UDHR.<sup>168</sup>

Here, the charges brought against the Applicants under the ATP fail to meet international standards outlining reasonable definitions of terrorist related activity.

## 2. Ethiopia Uses the ATP to Silence Independent Voices

While significant concerns have been raised about the breadth and vagueness of the ATP, the implementation of the law to stifle legitimate dissent raises significant Category I concerns. In fact, the law's breadth and vagueness makes it easy for the State to bring politically-motivated charges against independent voices in Ethiopia. The United Nations Human Rights Commission has stated that nations must "refrain from using counter-terrorism as a *pretext* to restrict the right to freedom of opinion and expression in ways which are contrary to their obligations under international law."<sup>169</sup> This standard has been similarly emphasized by the African Union.<sup>170</sup> Yet, the State continues to exploit the ATP's overbroad and vague definitions of terrorist acts and encouragement of terrorism to punish government critics for exercising their rights to freedom of expression and association. The Working Group has previously stated that restrictions on freedom of expression by way of deprivation of liberty cannot be justified on vague and general reference to interests of national security or public order.<sup>171</sup> Due to Ethiopia's failure to properly explain or document any substantial basis for the Applicants' detention, the Working Group should not be convinced that the detention at issue was or continues to be necessary for reasons of national security. Ethiopia has employed the ATP as an effective tool of oppression in an already repressive political climate.

Moreover, the conviction of the Applicants based on vague factual allegations and almost no evidence reveals the State's nefarious political motivation in detaining the Applicants for exercising their rights to freedom of expression and association. As discussed above, the State did not provide specific dates on which events underlying their allegations against the Applicants were supposed to have taken place, nor did the charges include any basic elements of the crimes

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<sup>165</sup> Human Rights Committee, HRC Concluding Observations: Ethiopia, UN Doc. CCPR/C/ETH/CO/1, August 19, 2011, at ¶ 15.

<sup>166</sup> See e.g., Russian Federation, HRC, UN Doc A/59/40 vol. I (2003), ¶ 64(20); Morocco, HRC, UN Doc A/60/40, vol. I (2004), ¶ 84(20); Israel HRC, UN Doc A/58/40, vol. I (2002), ¶ 85(14); ICCPR, *supra* note 152, at art. 15; UDHR, *supra* note 152, at art. 11(2).

<sup>167</sup> UN Human Rights Committee, *General Comment No. 35*, U.N. Doc. CCPR/C/G/35, 2014, at ¶ 22 [*hereinafter*, "General Comment No. 35"].

<sup>168</sup> UDHR, *supra* note 152, at arts. 3 and 9.

<sup>169</sup> UN Commission on Human Rights, *Commission on Human Rights Resolution 2004/42: The Right to Freedom of Opinion and Expression*, E/CN.4/RES/2004/42, April 19, 2004, at ¶ 4(m), available at: <http://www.refworld.org/docid/43f31370c.html>.

<sup>170</sup> African Commission on Human and Peoples' Rights, "Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism," 37th Ordinary Session, November 21 to December 5, 2005

<sup>171</sup> *Mbanza Judicael v. Republic of Congo*, UN Working Group on Arbitrary Detention, Communication No. 44/2014, November 19, 2014, at ¶ 26.

as set out in the ATP. Rather, the State only made general allegations about the Applicants' supposed involvement in indeterminate "terrorist" crimes and association with an assortment of "terrorist" organizations. The Working Group has previously held that the serious charge of terrorism must be supported by "robust, accurate and irrefutable evidence" before a court of law.<sup>172</sup> The Ethiopian courts disregarded the State's complete failure to present a plausible factual and legal argument and as a result the conviction is inconsistent with the language and the so-called object and purpose of the ATP.

The Working Group has previously held that vague and imprecise charges coupled with the absence of supporting material evidence necessarily amounts to a Category I violation.<sup>173</sup> Thus, having made only vague allegations and supplying no evidence of terrorist activity, the State failed to provide a valid legal basis for the Applicants' detention and their continued detention is a violation under Category I.

## **B. Category II**

The detention of the Applicants on terrorism-related charges in response to their work as opposition politicians 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 rights to freedom of expression, association and participation in public affairs.<sup>174</sup>

### **1. Ethiopia Detained and Prosecuted the Applicants Because They Exercised Their Right to Freedom of Expression and Association**

The rights to freedom of expression and association are expressly protected under international and Ethiopian law.

Article 19(2) of the ICCPR, to which Ethiopia is party,<sup>175</sup> 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."<sup>176</sup> Article 19 of the UDHR also

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<sup>172</sup> *Hasna Ali Yahya Husayn v. Iraq*, UN Working Group on Arbitrary Detention, Communication No. 59/2011, November 21, 2011, at ¶ 18.

<sup>173</sup> *Bettar v. Morocco*, UN Working Group on Arbitrary Detention, Communication No. 3/2013, April 30, 2013, at ¶ 30-31, *61 Individuals v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Communication No. 60/2013, November 22, 2013, at ¶ 22.

<sup>174</sup> 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." *Id.*

<sup>175</sup> 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](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>176</sup> ICCPR, *supra* note 152, at art. 19(2).



safeguards this right.<sup>177</sup> Similarly, Article 29 of the Constitution contains the same protection and specifically guarantees freedom of the press and prohibits censorship.<sup>178</sup> Furthermore, the Constitution mandates that the rights protected by it “shall be interpreted in a manner conforming to the principles” of the ICCPR.<sup>179</sup>

Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”<sup>180</sup> Article 20(1) of the UDHR also guarantees freedom of association.<sup>181</sup> The Human Rights Council has specifically called for States to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views.<sup>182</sup> Similarly, Article 31 of the Constitution states that, “everyone shall have the right to form associations.”<sup>183</sup>

Despite these express protections under international and Ethiopian law, the State arbitrarily detained and prosecuted the Applicants as a direct result of their speech and association in their capacity as opposition politicians. When authorities charged the Applicants under the ATP and the Criminal Code, the State acknowledged that the ultimate motivation behind the prosecution was the Applicants’ critical statements and writings made in their capacity as oppositionists.<sup>184</sup> In introducing its vague factual allegations, prosecutors claimed that the Applicants had “use[d] as cover their constitutional right to freedom of expression and association...” Then, during the criminal proceedings, the State relied solely upon the Applicants’ public writings and speeches and recordings of meetings secretly taped by State agents—none of which advocated the use of violence—to prove the Applicants’ guilt for what amounted to undefined acts of terrorism and unsubstantiated ties to a random assortment of numerous terrorist organizations. Evidence used at the trial (i.e., recordings of meetings) confirms that the Applicants were being targeted by the State for harassment and surveillance in an attempt to discourage their association with the UDJ and Medrek. The harassment of the Applicants, followed by their mass arrests and a highly politicized trial, expose the State’s true motivation of attempting to weaken viable alternative political parties by discouraging association with any group expressing itself in opposition to the government.

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<sup>177</sup> UDHR, *supra* note 152, 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.”).

<sup>178</sup> The Constitution mirrors Article 19(2) of the ICCPR. Constitution of Ethiopia, *supra* note 11, 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).

<sup>179</sup> Constitution of Ethiopia, *supra* note 11, 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.”).

<sup>180</sup> ICCPR, *supra* note 152, at art. 22(1).

<sup>181</sup> UDHR, *supra* note 152, at art. 20(1) (“[e]veryone has the right to freedom of peaceful assembly and association.”).

<sup>182</sup> Human Rights Council Resolution 15/21, U.N. Doc A/HRC/RES/15/21, ¶ 1, October 6, 2010.

<sup>183</sup> Constitution of Ethiopia, *supra* note 11, at art. 31.

<sup>184</sup> Charging Document, *supra* note 8.

The circumstances of the Applicants' arrests, which are consistent with the State's documented pattern and practice of oppressing political opponents, demonstrate that the State's actions were a result of the Applicants' membership in opposition parties and their criticism of the State. This attempt to prevent the Applicants from advocating for peaceful political reform by arbitrarily detaining independent voices is in line with the State's broader history of suppressing the rights to free expression and association with opposing political parties.

## 2. Narrow Limitations

Articles 19<sup>185</sup> and 22<sup>186</sup> of the ICCPR do provide for exceptions for national security, public safety and public order, and Article 22 of the ICCPR also includes an exception for the protection of the rights and freedoms of others; however, such narrow exceptions do not apply to the State's actions in the Applicants' case. The Committee has established a three-part "strict test of justification" in analyzing limitations on such fundamental rights.<sup>187</sup> In order to be permissible under international law, any limitation must be (1) "provided by law," (2) for the protection of an "enumerated purpose" (including the protection of national security), and (3) "necessary" to achieve that purpose.<sup>188</sup>

Although States frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. The Committee has noted that restrictions "may not put in jeopardy the right itself."<sup>189</sup> Further, the State may not merely invoke the national security rationale without a searching review of that claim. Indeed, the State must "specify the precise nature of the threat" posed by the protected activity<sup>190</sup> and then demonstrate the proportionality of the limitation by establishing a "direct and immediate connection between the expression and the threat."<sup>191</sup> In short, general allegations claiming that an individual's

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<sup>185</sup> Article 19(3) of the ICCPR 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) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals." See ICCPR, *supra* note 152.

<sup>186</sup> Article 22(2) of the ICCPR provides that "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right." *Id.*

<sup>187</sup> *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, U.N. Doc. CCPR/C/64/D/628/1995, November 3, 1998, at ¶ 10.3. The Working Group has also applied this test to freedom of association. See *Aleksandr Viktorovic Bialastki v. Belarus*, No. 39/2012, May 22, 2012, at ¶ 49.

<sup>188</sup> *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, U.N. Doc. CCPR/C/80/D/926/2000, March 16, 2004, at ¶ 7.2.

<sup>189</sup> See *General Comment No. 34*, UN Human Rights Committee, U.N. Doc. CCPR/C/G/34, September 12, 2011, at ¶ 21, [*hereinafter*, "General Comment No. 34"].

<sup>190</sup> *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, U.N. Doc. CCPR/C/54/518/1992, July 19, 1995, at ¶ 10.4.

<sup>191</sup> *Id.* (finding that "reference to the general nature of the labor movement" and "alleging that the statement issued by the author in collaboration with others was a disguise for the incitement to a national strike" was insufficiently precise to meet the necessity requirement). See also *General Comment No. 34*, *supra* note 189, at ¶ 35.

expression or association threatened national security – without evidence of a specific threat and a proportional response – will not meet this high burden.<sup>192</sup>

In this case, the limitation on the Applicants’ rights to free expression and association was not for a proper purpose. The terrorism and treason charges against the Applicants implicate “national security,” but actually reflect the ATP’s exceedingly broad prohibition on encouraging terrorism, which 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.<sup>193</sup> It was the use of this overreaching law against journalists and opposition politicians that prompted condemnation from international rights organizations, the African Commission on Human and Peoples’ Rights, five United Nations Special Rapporteurs, the United States and the United Kingdom, as well as the European Union.<sup>194</sup>

Overall, the State’s vague factual allegations against the Applicants fail to specify with any precision the nature of the threat posed by the Applicants’ calls for peaceful political reform in Ethiopia. Indeed, theirs is precisely that kind of expression and association—criticizing State 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.

As demonstrated above, the State has failed to indicate with any specificity how the Applicants’ push for peaceful democratic reform threatened the country’s national security. Limiting the Applicants’ rights cannot be considered “necessary” for such purpose and thus their continued detention is an impermissible violation of Articles 19(2) and 22(1) of the ICCPR as well as Articles 19 and 20 of the UDHR and arbitrary pursuant to Category II.

### **3. Ethiopia Detained and Prosecuted the Applicants Because They Exercised Their Rights to Participate in Public Affairs**

The right to participate in public affairs is protected under international and Ethiopian law. Article 21(1) of the UDHR states that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” Similarly, Article 25(a) of the ICCPR protects a citizen’s right “to take part in the conduct of public affairs, directly or through

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<sup>192</sup> 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 the protection of 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. 574/1994. CCPR/C/64/D/574/1994, January 4, 1999, at ¶ 12.4. See also *Sohn v. Republic of Korea*, *supra* note 190, at ¶ 10.4.

<sup>193</sup> Anti-Terrorism Proclamation, *supra* note 3, at art. 6.

<sup>194</sup> International Service for Human Rights, *Submission to 56th session of the African Commission on Human and Peoples’ Rights on the situation of human rights defenders*, April 2015, available at: [https://www.ishr.ch/sites/default/files/article/files/ethiopia\\_-\\_achpr\\_briefing\\_paper\\_on\\_hrds\\_april\\_2015.pdf](https://www.ishr.ch/sites/default/files/article/files/ethiopia_-_achpr_briefing_paper_on_hrds_april_2015.pdf); Stifle Dissent, *supra* note 157, at 5.

freely chosen representatives...”<sup>195</sup> Article 38 of the Constitution frames the right to vote and to be elected for Ethiopian nationals: in theory, citizens have the right to take part in the conduct of public affairs—directly and through freely chosen representatives—and to vote or be elected to office.<sup>196</sup>

The Committee has confirmed that a State interferes with this right when it unreasonably restrains and censors opposition politicians from communicating political ideas. In General Comment No. 25, the Committee clarified that,

In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. It requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.<sup>197</sup>

Here, the Applicants were detained because of their attempts to peacefully take part in the conduct of public affairs by organizing a political party and calling for democratic reform. The charges against the Applicants were fabricated, baseless and brought as a pre-textual means to punish and censor the Applicants for such participation in public affairs, which included public criticism of, and a peaceful attempt to change through democratic processes, the current regime.

The circumstances surrounding the Applicants’ 2011 arrest, detention and conviction are consistent with the State’s documented pattern and practice of silencing opposition politicians by falsely charging them with crimes under the ATP and the Criminal Code. Arrests of opposition politicians and their supporters have been commonly followed by politically motivated prosecutions, show trials, and arbitrarily long prison sentences; all of which attempt to halt political competition. For example, after the 2005 election, which the CUD was commonly believed to have won—though the ruling party declared its own party the winner<sup>198</sup>—many CUD leaders, including Mr. Aragie, were arrested and detained.<sup>199</sup> After immense international outcry, Mr. Aragie was released in 2007 but he and other opposition politicians continued to face State imposed hurdles to political participation,<sup>200</sup> including continuous surveillance by security forces upon their release.<sup>201</sup>

The Applicants not only publicly and repeatedly criticized the State, but also were active leaders of the only viable opposition coalition in Ethiopia at the time of their arrests. Evidence used at

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<sup>195</sup> ICCPR, *supra* note 152.

<sup>196</sup> Constitution of Ethiopia, *supra* note 11, at art. 38(1)(a), (b), and (c).

<sup>197</sup> UN Human Rights Committee, *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote)*, *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, July 12, 1996, at ¶ 26, available at: <http://www.refworld.org/docid/453883fc22.html>.

<sup>198</sup> Communication with AB.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

the 2011 trial, such as extensive recordings of UDJ meetings, made it abundantly clear that the party leadership of the UDJ and affiliated parties were being monitored and targeted in order to prevent them from political activism.<sup>202</sup>

The State's harassment leading up to the 2011 arrests, and the Applicants' convictions and lengthy sentencing evinces a clear intent to silence the UDJ and its coalition. Moreover, the State's action serves not only to violate the Applicants' right to participate in public affairs but also to chill future political reform by other individuals. Such actions constitute violations of Articles 21(1) of the UDHR, 25(a) of the ICCPR and 38 of the Constitution, which makes the Applicants' detention arbitrary pursuant to Category II.

### **C. Category III**

The detention of the Applicants 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."<sup>203</sup> The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles").<sup>204</sup>

Regarding Category III violations, we note that all of the reasons that the Working Group found Mr. Nega's detention to be arbitrary in its 2012 opinion apply here as the Applicants were given the same trial and treatment as Mr. Nega.<sup>205</sup>

#### **1. Ethiopia Violated the Applicants' Right to Release Pending Trial**

Article 9(3) of the ICCPR provides that a detainee "shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody."<sup>206</sup> The Committee has confirmed that where an individual is detained pending trial, such detention must "be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime."<sup>207</sup> Factors relevant to making such individualized determination "should not include vague and expansive standards such as 'public security.'"<sup>208</sup>

Despite the fact that the Applicants' conviction did not occur until eight or nine months after

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<sup>202</sup> Charging Document, *supra* note 8.

<sup>203</sup> Revised Methods of Work, *supra* note 153.

<sup>204</sup> 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 153, 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).

<sup>205</sup> *Nega v. Ethiopia*, *supra* note 46, at ¶ 45.

<sup>206</sup> See ICCPR, *supra* note 152, at art 9(3).

<sup>207</sup> General Comment No. 35, *supra* note 167, at ¶ 38.

<sup>208</sup> *Id.*

their initial arrests, the court did not release any of the Applicants on bail pending trial. Rather, all of the Applicants remained in pre-trial detention from September or October 2011 until June 2012. The fact that the court elected not to release any of the Applicants while awaiting trial evidences that the court never made an individualized determination that it was “reasonable and necessary” to keep the Applicants in custody. Moreover, there is no record of any judicial officer considering the legality of the Applicants’ continuing custody with respect to the likelihood that any Applicant might flee, interfere with evidence or perpetrate further crimes. Clearly, in holding the Applicants in detention without making such individualized determination, the court contravened the Committee guideline that “detention in custody of persons awaiting trial shall be the exception rather than the rule”<sup>209</sup> and violated the Applicants’ right to release pending trial under Article 9(3) of the ICCPR.

## **2. Ethiopia Violated the Applicants’ Right to an Independent Tribunal and the Presumption of Innocence**

Article 10 of the UDHR and Article 14(1) of the ICCPR guarantee the right “to a fair and public hearing” by an independent and impartial tribunal.<sup>210</sup> In addition, 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.”<sup>211</sup> Article 11(1) of the UDHR reiterates this right to a presumption of innocence, as does the Constitution.<sup>212</sup> 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.”<sup>213</sup> The Body of Principles also provides that, as part of an individual’s right to a presumption of innocence, “persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.”<sup>214</sup> Article 10(2)(a) of the ICCPR confirms this right.<sup>215</sup>

The requirement of judicial independence under Article 14 of the ICCPR establishes an objective standard, which is treated as an “absolute requirement[] not capable of limitation.”<sup>216</sup> As noted by the Committee, “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control the former is

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<sup>209</sup> *Id.*

<sup>210</sup> See ICCPR, *supra* note 152, at art 14(1) (“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.”); UDHR, *supra* note 152, at art. 10.

<sup>211</sup> See ICCPR, *supra* note 152, at art. 14(2) (“Everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has all the guarantees necessary for his defense.”).

<sup>212</sup> See Constitution of Ethiopia, *supra* note 11, 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.”).

<sup>213</sup> Body of Principles, *supra* note 152, at prin. 36(1).

<sup>214</sup> *Id.* at prin. 8.

<sup>215</sup> ICCPR, *supra* note 174, at art. 10(2)(a) (“Accused persons shall, save in exceptional circumstances, be segregated from unconvicted persons...”).

<sup>216</sup> Alex Conte, *Defining Civil and Political Rights*, Ashgate 2009 2nd ed., at 165.

incompatible with the notion of an independent tribunal.”<sup>217</sup> 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.”<sup>218</sup> Further, to protect the defendant, the “media should avoid news coverage undermining the presumption of innocence.”<sup>219</sup>

The State violated the Applicants’ right to be tried by an independent tribunal and the Applicants’ right to the presumption of innocence by publicly expressing certainty about the Applicant’s guilt at the highest levels. In October 2011, then Prime Minister Meles Zenawi assured the national parliament that the Applicants were guilty, stating that the State had abundant evidence that could prove the detainees’ involvement in terrorist activities.<sup>220</sup> The Prime Minister told the Parliament, “We did not take actions before gathering enough evidence that can prove their guilt before the court of justice. We waited until we made sure we have everything we need to convince the court they are terrorists.”<sup>221</sup> Other high-level State officials repeatedly made public statements casting the Applicants as a group of terrorists. State media claimed that the Applicants were members of the banned Ginbot 7 party and portrayed them as spies “for foreign forces.” The State’s spokesperson publicly alleged that the Applicants were “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.<sup>222</sup> In late November 2011, State media broadcasted a three-part program titled “Akeldama,” in which Mr. Aragie and Mr. Mekonnen were filmed in detention, describing their alleged involvement in what the documentary brands a “terrorist plot.”<sup>223</sup>

In addition, during pre-trial detention, and in contravention to his right to enjoy a presumption of innocence, Mr. Aragie was forced to share a prison cell with an inmate convicted for murder and serving a life sentence.<sup>224</sup> Authorities also failed to intervene when this inmate, who had been in jail for over 16 years, physically assaulted and harassed Mr. Aragie, resulting in serious injuries.<sup>225</sup>

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<sup>217</sup> *General Comment No. 32*, UN Human Rights Committee, U.N. Doc. CCPR/C/G/32, 2007, at ¶ 19, [*hereinafter*, “General Comment No. 32”].

<sup>218</sup> *Id.* at ¶ 30.

<sup>219</sup> *Id.*

<sup>220</sup> Here, the Prime Minister was referencing the journalists and opposition politicians recently arrested under the ATP and Criminal Code, including the Applicants. *See* Dismantling Dissent, *supra* note 53, at 22; Committee to Protect Journalists, *Ethiopia steps up terrorism allegations against journalists*, October 24, 2011, available at: [www.cpj.org/2011/10/ethiopia-steps-up-terrorism-allegations-against-jo.php](http://www.cpj.org/2011/10/ethiopia-steps-up-terrorism-allegations-against-jo.php).

<sup>221</sup> *Id.*

<sup>222</sup> Voice of America, *Government Critics Detained in Ethiopian Anti-Terror Sweep*, September 14, 2011, available at: <http://www.voanews.com/content/government-critics-detained-in-ethiopian-anti-terror-sweep-129845693/158852.html>.

<sup>223</sup> Human Rights Watch, *Ethiopia: Terrorism Law Used to Crush Free Speech, Donors Should Condemn Verdicts, Demand Legal Reforms*, June 27, 2012, available at: <https://www.hrw.org/news/2012/06/27/ethiopia-terrorism-law-used-crush-free-speech> [*hereinafter*, “Crush Free Speech”]; Communications with AB.

<sup>224</sup> Ethiopian Review, *Adualem Aragie beaten up in prison*, February 17, 2012, available at: <http://www.ethiopianreview.com/index/36706>.

<sup>225</sup> *Id.*; Communication with AB. After the convicted cellmate attacked Mr. Aragie, the same cellmate was moved to the cell of another UDJ leader. However, the exact identity of that UDJ leader is unknown. *See* UDJ, *supra* note 91.

Public comments by the Prime Minister and other State spokespersons undermined the Applicants' presumption of innocence and should be interpreted as an exertion of undue influence by the executive on the nominally independent judiciary. As explained above, the Ethiopian courts do not operate free from political interference and declarations of guilt by high-ranking State officials can only be viewed as attempts by the State to sway the outcome of the proceedings. Such attempts violate the Applicants' 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. In its attempts to influence the outcome of the proceedings, the State violated the Applicants' right to the presumption of innocence. The fact that the State never afforded the Applicants with a presumption of innocence is also reflected in certain of the Applicants' being held alongside convicted prisoners while in pre-trial detention.

### **3. Ethiopia Violated the Applicants' 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 have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing."<sup>226</sup> Principles 17 and 18 of the Body of Principles reiterate this right.<sup>227</sup> Similarly, the Constitution protects the right of individuals held in custody "to communicate, and to be visited by... their legal counsel."<sup>228</sup> While the ICCPR does not specify at what point a detained individual must have access to an attorney, "[t]he right to communicate with counsel requires that the accused is given prompt access to counsel."<sup>229</sup> The Committee has also confirmed "States parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."<sup>230</sup> In *Kelly v. Jamaica*, the Committee held that the State violated

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<sup>226</sup> ICCPR, *supra* note 152, at art. 14(3)(b). Although the language of Article 14 refers to the right of individuals "in the determination of criminal charges," the right to communicate with and have the assistance of legal counsel should apply in this case. Although the Applicants were 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.

<sup>227</sup> Body of Principles, *supra* note 152. ("Principle 17(1) A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it. . . . Principle 18(1) A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. (2) A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel. (3) The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. (4) Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.")

<sup>228</sup> Constitution of Ethiopia, *supra* note 11, at art. 21(2)

<sup>229</sup> General Comment No. 32, *supra* note 217, 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 152, at prin. 15.

<sup>230</sup> General Comment No. 35, *supra* note 167, at ¶ 35.



the petitioner's rights under Article 14(3)(b) where it ignored his request to speak to an attorney for five days.<sup>231</sup> 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."<sup>232</sup>

In this case, the State denied the Applicants prompt access to legal counsel. After their arrests, authorities held the Applicants without access to an attorney until November 10, 2011.<sup>233</sup> This restriction on the Applicants' right to communicate with legal counsel for nearly two months fell well outside the bounds established for "prompt" access, and therefore violated their due process rights under Article 14(3)(b).

In addition, 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."<sup>234</sup> However, after the arrest of several Applicants, the State conducted two hearings—one on September 15, 2011 and another 28 days later—and authorized the continued detention without allowing access to any legal assistance before or during the proceedings.<sup>235</sup> This limitation on the Applicants' right to any assistance of legal counsel, let alone of their own choosing, during pre-trial detention violated Article 14(3)(d).

#### **4. Ethiopia Violated Applicants' 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."<sup>236</sup> The Constitution similarly provides that detained individuals "shall have the opportunity to communicate with and be visited by, their spouses or partners [and] close relatives..."<sup>237</sup> However, despite these clear protections, during pre-trial detention the State prevented some Applicants from seeing family members for approximately a month and others for up to two months.<sup>238</sup> While Principle 19 of the Body of Principles recognizes that this right may be subject to reasonable conditions,<sup>239</sup> denying an individual access to family for one to two months without justification cannot be considered a reasonable condition.

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<sup>231</sup> *Kelly v. Jamaica*, UN Human Rights Committee, Communication No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993, July 17, 1996, at ¶ 9.2.

<sup>232</sup> *Musaev v. Uzbekistan*, UN Working Group on Arbitrary Detention, Communication No. 14/2008, U.N. Doc. A/HRC/10/21/Add.1, July 26, 2007, at ¶ 40.

<sup>233</sup> Applicants were only allowed to see an attorney at the November 10, 2011 hearing at which the charges were formally presented.

<sup>234</sup> ICCPR, *supra* note 152, at art. 14(3)(d).

<sup>235</sup> ETH 4/2011, *supra* note 123.

<sup>236</sup> Body of Principles, *supra* note 152, at prin. 19.

<sup>237</sup> Constitution of Ethiopia, *supra* note 11, at art. 21(2).

<sup>238</sup> Communication with AB; Dismantling Dissent, *supra* note 53, at 24.

<sup>239</sup> Body of Principles, *supra* note 152, at prin. 19 ("Subject to reasonable conditions and restrictions as specified by law or lawful regulations.").

As of June 2016, the State continues to limit Mr. Aragie's visits with family members.<sup>240</sup> Of specific concern is that visits are short, usually no more than 30 minutes, and a guard sits in the room during such visitations.<sup>241</sup> It is likely that the remaining Applicants are treated similarly.

## 5. Ethiopia Violated Applicants' Right to be Free of Cruel, Inhuman, or Degrading Treatment or Punishment

The right to freedom from cruel, inhuman and degrading treatment and torture is well protected by international and Ethiopian law. Article 5 of the UDHR and Article 7 of the ICCPR both state that "[n]o one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."<sup>242</sup> Principle 6 of the Body of Principles reiterates this right.<sup>243</sup> Articles 1 and 4 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Torture Convention"), to which Ethiopia is party, and Article 14(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.<sup>244</sup> The prohibition against torture and cruel, inhuman, or degrading treatment or punishment is also embedded in the Constitution at Article 18(1).<sup>245</sup> Any imposition of suffering that is not severe enough to qualify as torture still constitutes cruel, inhuman or degrading treatment<sup>246</sup> and "should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental..."<sup>247</sup> Finally, "no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment."<sup>248</sup>

The State's treatment of the Applicants during pre-trial and post-trial detention violates international and Ethiopian law on the prohibition of torture and cruel, inhuman or degrading treatment. During the pre-trial detention period, State officials placed several of the Applicants under duress in an attempt to coerce confessions. Several of the Applicants, including Mr. Aragie and Mr. Mekonnen, confessed under such duress to engaging in terrorist related plots on national television.<sup>249</sup> Furthermore, as described in section I(B)(3) above, Mr. Mekonnen, Mr. Ayalew, and Mr. Debebe alleged that they suffered significant torture while in custody.

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<sup>240</sup> Communication with AB.

<sup>241</sup> *Id.*

<sup>242</sup> ICCPR, *supra* note 152; UDHR, *supra* note 152.

<sup>243</sup> Body of Principles, *supra* note 174, at prin. 6 ("No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.\* No circumstance whatever may be invoked as justification for torture or other cruel, inhuman or degrading treatment or punishment.").

<sup>244</sup> *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, arts. 1-2, 4-7, June 26, 1987, 1465 U.N.T.S. 85.

<sup>245</sup> Article 18(1) states that, "[e]veryone has the right to protection against cruel, inhuman or degrading treatment or punishment." Constitution of Ethiopia, *supra* note 11.

<sup>246</sup> M. Nowak, U.N. Covenants on Civil and Political Rights: CCPR Commentary 445, 2nd ed., Kehl am Rhein: Engel, 2005, at 163.

<sup>247</sup> Body of Principles, *supra* note 174, at prin. 7(1).

<sup>248</sup> *Id.*, at prin. 21. Also, "it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess..." *Id.*

<sup>249</sup> Communication with AB; Crush Free Speech, *supra* note 223.

In addition, Mr. Aragie lodged a complaint after he was beaten by a convicted prisoner—allegedly, at the instigation of prison authorities—on February 15, 2012 in Kality Prison, but his complaint was dismissed.<sup>250</sup> The court prevented further questioning by Mr. Aragie’s attorneys and, without further investigation, accepted the prison administrator’s response contradicting Mr. Aragie’s claims.<sup>251</sup> Four years after the brutal attack, Mr. Aragie still suffers from vertigo and severe back pain, but the State continues to deny requests for medical care, in contravention of international law.<sup>252</sup> Mr. Mekonnen and Mr. Debebe have also been moved to Kality Prison for unknown health conditions.<sup>253</sup>

Prison conditions for the Applicants are very poor; for instance, Mr. Aragie’s prison cell, which he shares with two other prisoners, has no window and he cannot exercise because his prison cell is too small.<sup>254</sup>

In its attempt to obtain forced confessions, the State violated the Applicants’ right to be free from cruel, inhuman and degrading treatment and torture under the UDHR, ICCPR, Torture Convention, Body of Principles, and the Constitution. Such abuse did not end with the trial, as the prison authorities continue to deny injured or sick Applicants of the necessary medical treatment and to keep them in confined in harsh conditions.

#### **D. Category V**

The continued detention of the Applicants is arbitrary under Category V. A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory “based on . . . political or other opinion . . . and [aims] towards or can result in ignoring the equality of human rights.”<sup>255</sup> The minimum international standards of equal protection applicable in this case are established by the ICCPR and the jurisprudence of the Working Group.

Article 26 of the ICCPR guarantees that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against

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<sup>250</sup> Crush Free Speech, *supra* note 223; Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Reference: UA G/SO 218/2 G/SO 214 (53-24) ETH 1/2012*, March 16, 2012, available at: [spdb.ohchr.org/hrdb/21st/public\\_-\\_UA\\_Ethiopia-16.03.12\\_\(1.2012\).pdf](http://spdb.ohchr.org/hrdb/21st/public_-_UA_Ethiopia-16.03.12_(1.2012).pdf); Negaso Gidada, *Andualem Aragie beaten up in prison*, February 17, 2012, available at: <http://www.ethiopianreview.com/index/36706>.

<sup>251</sup> Crush Free Speech, *supra* note 223.

<sup>252</sup> Communication with AB. The CAT has concluded that failure to provide medical care to detainees can amount to cruel and degrading treatment under the Torture Convention. Committee against Torture, *Report of Committee against Torture*, Supp. No. 44 (A/53/44), ¶ 175, 1998, available at: <http://www.freedom-now.org/wp-content/uploads/2015/10/CAT-Report-Supp.-No.-44-A5344.pdf> [*hereinafter*, “Report of CAT”]. Principle 24 of the Body of Principles states that “medical care and treatment shall be provided whenever necessary” to persons who are detained or imprisoned. Body of Principles, *supra* note 152.

<sup>253</sup> Communication with EF.

<sup>254</sup> Communication with AB.

<sup>255</sup> Revised Methods of Work, *supra* note 174, at § III(8)(e) (“When the deprivation of liberty constitutes a violation of the 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; disability or other status, and which aims towards or can result in ignoring the equality of human rights.”).

discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>256</sup> Article 7 of the UDHR also provides the right to equal treatment before the law.<sup>257</sup> In recognition of the importance of this right, Article 4(1) of the ICCPR confirms that states may not derogate from their obligation of non-discrimination even in times of emergency.<sup>258</sup> The Committee has confirmed that the right to non-discrimination is particularly crucial when it comes to criminal proceedings, as it is a matter of equal access and equality of arms to “[ensure] that the parties to the proceedings in question are treated without any discrimination.”<sup>259</sup> The importance of this right to equality is emphasized by Ethiopia’s domestic law, in which the Constitution guarantees that “[t]he law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”<sup>260</sup>

The State targeted the Applicants in part because of their political identity as members of an opposition party. The arrests and detentions of the Applicants occurred in an atmosphere of pervasive discrimination against those critical of the State. In addition to the general context of discrimination against independent political voices in Ethiopia, members of the UDJ had an especially tenuous relationship with the EPRDF due to UDJ’s stature as the most formidable opposition political party at the time of the Applicants’ arrests.

In a previous opinion, the Working Group took into consideration various factors surrounding the defendant’s conviction in its determination that the conviction was a pre-text for censoring the defendant’s political opinion.<sup>261</sup> Amongst other factors, the Working Group took note of the history and pattern of previous proceedings brought against the defendant, and aspects of the political climate in that State.<sup>262</sup>

Here, there are several factors which evidence that the Applicants’ convictions were politically motivated and in direct response to their political identity. Such factors include: (1) the previous arrest of Mr. Aragie and other leaders of UDJ, (2) the pattern of threats, harassment, and

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<sup>256</sup>ICCPR, *supra* note 152, at art. 26. *See also id.* at 2(1) which contains a general anti-discrimination guarantee (“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); Body of Principles, *supra* note 152, at prin. 5 (“These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.”).

<sup>257</sup> UDHR, *supra* note 152, at art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law.”).

<sup>258</sup> ICCPR, *supra* note 152, at art. 4(1) (“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”).

<sup>259</sup> General Comment No. 32, *supra* note 217, at ¶ 8.

<sup>260</sup> Article 25 Right to Equality.

<sup>261</sup> *Nasheed v. Maldives*, UN Working Group on Arbitrary Detention, Communication No. 33/2015, U.N. Doc. A/HRC/WGAD/2015, September 17, 2015, at ¶ 97.

<sup>262</sup> *Id.*

surveillance of the Applicants for their work as oppositionists, (3) the nature of the evidence used against the Applicants which illustrated only their opinion critical to the government, and (4) the political climate of oppression prevalent in Ethiopia. Overall, the Applicants' conviction resulted from their identity as opposition party member as well as the exercise of their rights to express views contrary to the State, to associate with and form political parties and coalitions, and to participate freely in public life.

Because the Applicants were targeted partly because of their identity as opposition party member, the State violated the Applicants' right to equality before the law and thus their detentions are arbitrary under Category V.

### **E. Conclusion**

As established above, the detention of the Applicants is a result of their legitimate activities as opposition politicians in violation of their rights to the freedoms of expression, association, and participation in public affairs. Further, in detaining and prosecuting the Applicants, the State failed to meet certain minimum international standards for due process. Finally, in targeting the Applicants based in part on their political affiliation, the State discriminated against them in violation of international law. As such, the Applicants' detentions are arbitrary pursuant to Categories II, III, and V.

### ***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 June 27, 2012 the Ethiopian Federal High Court convicted the Applicants under the ATP and the Criminal Code. On July 13, 2012, the Lideta Federal High Court in Addis Abba sentenced the Applicants; they received sentences ranging from 16 years to life in prison. The Applicants appealed to the Federal Supreme Court on September 28, 2012 and on May 2, 2013 the Federal Supreme Court upheld the Applicants' convictions.<sup>263</sup>

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

Maran Turner  
Kate Barth  
Freedom Now  
1776 K Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20006  
United States of America  
+1 (202) 223-3733 (tel)  
+1 (202) 223-1006 (fax)  
kbarth@freedom-now.org

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<sup>263</sup> Communication with AB.

**ANNEX A**

**CHARGING DOCUMENT**

Ref. No. F/M/F/M/M/No. 00180/04

Date: 10/11/2011

**To the Federal High Court**

**Lideta Criminal Bench**

**Addis Ababa**

Prosecutor's File No. 00180/04

Federal Police File No. B107/2004

**Plaintiff: Federal High Prosecutor**

**Defendants:** 1<sup>st</sup>/ Andualem Arage Wale, Age 37 years

Address: Arada Sub-City, Woreda 7, Kebele 10

2<sup>nd</sup>/ Nathnael Mekonnen GebreKidan, Age 34 years

Alias: Sim Hawaret

Address: Arada Sub-City, Woreda 10, Kebele\_\_

3<sup>rd</sup>/ Yohannes Terefe Kebede, Age 45 years

Alias: Paulos Ferede

Address: Amhara Region, Bahir Dar City, Kebele 16

4<sup>th</sup>/ Yeshewale Yehunalem/Shambel/ Age 57 years

Alias: Sisemo Gure

Address: Amhara Region, Bahir Dar City, Kebele 11

5<sup>th</sup>/ Kinfemichael Debebe Bereded, Age 42 years

Alias: Abebe Keleto

Address: Lideta Sub-City, Woreda 2, Kebele 8

6<sup>th</sup>/ Mitiku Damte Weraku, Age 42 years

Alias: Baychegir

Address: Yeka Sub-City, Woreda 10, Kebele 02

7<sup>th</sup>/ Eskinder Nega Fenta, Age 43 years

Address: Gulele Sub-City, Woreda 11, Kebele 14

8<sup>th</sup>/ Andualem Ayalew Gelaw, Age 36 years

Address: Kirkos Sub-City, Kebele 01/19

9<sup>th</sup> Andargachew Tsege

Address: In Absentia

10<sup>th</sup>/ Berhanu Nega Bongar /Dr./

Address: In Absentia

11<sup>th</sup>/ Wube Robe

Address: In Absentia

12<sup>th</sup>/ Ephrem Madebo

Address: In Absentia

13<sup>th</sup>/ Mesfin Aman

Address: In Absentia

14<sup>th</sup>/ Zelele Tsega Selassie

Address: In Absentia

15<sup>th</sup>/ Fasil Yenealem

Address: In Absentia

16<sup>th</sup>/ Abebe Belew

Address: In Absentia

17<sup>th</sup>/ Abebe Gelaw

Address: In Absentia

18<sup>th</sup>/ Neamen Zeleke

Address: In Absentia

19<sup>th</sup>/ Elias Molla /Elias Terit/

Address: In Absentia

20<sup>th</sup>/ Desalegn Arage Wale

Address: In Absentia

21<sup>st</sup>/ Colonel Alebel Amare

Address: In Absentia

22<sup>nd</sup>/ Obango Meto

Address: In Absentia

23<sup>rd</sup>/ Mesfin Negash

Address: In Absentia

24<sup>th</sup>/ Abiy TekleMariam

Address: In Absentia

**1<sup>st</sup> Charge against All Defendants**

The Crime

For violating Article 32(1)a and 38(1) of the 2004 FDRE Criminal Code and Article 4, 3(1),2,3,4 and 6 of the Anti-Terrorism Proclamation No. 652/2009.

#### Details of the Crime

The defendants have been charged as principal criminals for receiving logistical, military and financial support from the Eritrean Government, which has been classified as a terrorist organization by the House of Peoples' Representatives and has been operating to create chaos in Ethiopia and still finds itself at war.

They joined forces with terrorist organizations like OLF and ONLF, and since 2003 E.C. (September 2010) have been members of and taken leadership of the terrorist organization Ginbot 7 which has a strategy of armed struggle /uprising/ to forcibly put an end to the Constitutional system and the country's political, social, economic and constitutional institutions; reached a joint criminal conspiracy agreement where they completely endorsed the goal and outcome of the crime and participated in leadership and execution roles, and, planned, incited and prepared towards carrying out a terrorist attack; in particular, by accepted and carried out terrorist missions from the Eritrean Government, and towards that end, divided the workload and established local and foreign terrorist networks; recruited members and prepared them in clandestine, and adhered to the guidance regulations on implementation, communications and organization they developed for terrorist activities; they sent their members to Eritrea for training beneficial for military and terrorist acts, and allowed them back into the country and prepared them for terrorist acts, organized an assassination team or hit men; by creating clandestine communication and coordination using as cover their constitutional right to freedom of expression and association for their terrorist mission and using that as a strategy, disseminated calls for terrorist actions; conducted and used others in inciting and mobilizing activities; called for chaotic/violent meetings and demonstrations; agreed to jointly work on their terrorist mission and strategy with the Eritrean media, media in foreign countries set up for terrorist mission as well like ESAT television, radio, internet and other information networks and Paltalk for terrorist mobilization;

⇒ **1<sup>st</sup> Defendant Andualem Arage**, by using as cover his constitutional right to freedom of association, since 2003 E.C. (September 2010), in order to overthrow the constitutional system through an organized terrorist act, served as the youth organization leader of the terrorist organization Ginbot 7; together with the agents of the terrorist organization that are in Eritrea and the leaders of this terrorist organization that are in different countries, maintained clandestine communication; accepted terrorist mission, cooperated with the terrorist organization organised in secret in the



country in order to reach an agreement for a joint all-inclusive joint armed struggle with terror elements; developed terrorist plans; secretly organized youth organizations in the country; directly led the planned terrorist act; assigned people for terrorist mission, disseminated mobilizing materials in different ways; received materials on terrorism and uprising and passed them on to the members within the country; led meetings that had terrorist missions and by undertaking different mobilizing activities for terrorist ends, took decisions on different terrorist actions.

**2<sup>nd</sup> Defendant Nathnael Mekonnen** by using as cover his constitutional right to freedom of association, since 2003 E.C. (September 2010), in order to overthrow the constitutional system through an organized terrorist act, served as the agent and youth organizer of the terrorist organization Ginbot 7 in the country; maintained clandestine communication with the agents of the terrorist organization that are in Eritrea and the leaders of this terrorist organization that are in different countries; accepted terrorist mission; was responsible for the recruitment and organization of persons for terrorist actions; identified terror tactics and roadmaps and made plans for terrorist action; disseminated various mobilizing texts through different means; received materials on terrorism and uprising and passed them on to the members within the country; led meetings that had terrorist missions and took decisions on different terrorist actions.

**3<sup>rd</sup> Defendant Yohannes Terefe**, since 2002 E.C. (September 2009) has been a member of and served in the leadership of the terrorist organization Ginbot 7; maintained clandestine communication with the leaders that are in foreign countries and accepted terrorist mission; was responsible for the recruitment and organization of persons for terrorist actions; sent the recruited persons to Eritrea for military and political training; gave to members Ginbot 7's political vision, travel guide and military organization; gave travel allowance to those going to Eritrea for training; directly led the planned terrorism; received funds sent in clandestine from foreign countries, passed it on to the executors of the terrorist mission; called and led meetings that had terrorist missions and took decisions on different terrorist actions.

**4<sup>th</sup> Defendant Shambel Yeshiwas Yehun** since 2001 E.C. (September 2008), served as the agent and youth organizer of the terrorist organization Ginbot 7 in the country; maintained clandestine communication with the leaders of the terrorist organization and generally accepted the terrorist mission; was responsible for the recruitment and organization of persons for terrorist actions and sent them to Eritrea for training; identified terror targets, tactics and roadmaps and made plans for terrorist action; disseminated various mobilizing texts through different means; received materials on terrorism and uprising and passed them on to the

members within the country; received funds sent in clandestine from foreign countries, passed it on to the executors of the terrorist mission; recruited and organized people for terrorist mission; called meetings that had terrorist missions and took decisions on different terrorist actions.

[Continued about Defendant No. 5 Kinfemichael Debebe Bereded]

Called meetings that had terrorist missions and took decisions on different terrorist actions.

**7<sup>th</sup> Defendant Eskinder Nega-** 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 organised 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.

**8<sup>th</sup> Defendant Andualem Ayalew-** Since 2003 E.C. (September 2010), in order to put an end to the Constitution and the constitutional system through an organized terrorist act, maintained clandestine communication with the leaders of the terrorist organization Ginbot 7 which are in different counties; served in leadership position and as representative of Sudan within Ginbot 7; accepted terrorist mission; collected information that he directly passed on to the Eritrean Government and other terrorist organizations; at different times, received, used and passed on money from this terrorist organization to be used for terrorist mission; led the terrorist action as the Sudan representative;

**9<sup>th</sup> Defendant Adargachew Tsege** has been a founder and high level leader of Ginbot 7 since an unknown date in Tir/Yekatit 2003 E.C. (January/ February/ March 2010); through the leaders and members of the terrorist organization, the recruits sent to Eritrea for training were received by high Eritrean intelligence and military officials, Colonel Fitsum and Tesfa, and were then admitted into the military training for information on secure computer usage for encrypted file storing and sharing, political training, including on the mission of the terrorist organization; through the Eritrean military leaders, they received training on how to assemble and disassemble guns, shooting and set up bombs; following this, upon their return to the country, made them recruited by Ginbot 7; ensured they returned into the country in clandestine by paying money; by identifying conducive places for terrorist action, gave them terrorist

assignments to plant bombs, to directly or indirectly assassinate government officials, to destroy government institutions and rob financial institutions.

**10<sup>th</sup> Defendant Berhanu Nega /Dr./** Chairman and member of the executive committee of Ginbot 7, has been leading the terrorist action of this terrorist organization and giving direction to the high level leaders in-country and abroad; led the terrorist action of the terrorist organization by making calls and speeches for uprising.

[Page missing]

**15<sup>th</sup> Defendant Fassil Yenealem-** Leader and voice of the terrorist organization Ginbot 7 and managing editor of Ethiopian Satellite Television (ESAT), has been maintaining clandestine communication with the leaders and members of the terrorist organization that are in the country; since 2003 E.C. (September 2010) to recruit members for the terrorist organization, provided guidance and financial support, by using as cover a legal political organization to achieve the organization's terrorism and uprising mission through financial and moral support for the members.

**16<sup>th</sup> Defendant Abebe Belew, 17<sup>th</sup> Defendant Abebe Gelaw and 18<sup>th</sup> Defendant Neamen Zeleke-** The defendants have been working in the Board leadership of the Ethiopian Satellite Television (ESAT), which is known to be the voice of the terrorist organization Ginbot 7, the 16<sup>th</sup> defendant as the spokesperson and 17<sup>th</sup> and 18<sup>th</sup> defendants as members; by using its television programme, conducted wide-ranging enticing activities and made others do the same to achieve the terrorist organization's joint plan with the Eritrean Government for chaos and uprising.

**19<sup>th</sup> Defendant Elias Molla /Elias Terit/ and 20<sup>th</sup> defendant Desalegn Arage-** They are members of the terrorist organization Ginbot 7; were recruited by leaders in the country; went to Eritrea to execute terrorist missions; and are members of the military wing of the terrorist organization.

**21<sup>st</sup> Defendant Colonel Alebel Amare-** Part of the high level leadership of Ginbot 7 and head of its military wing; led the terrorist organization by maintaining communication in clandestine with members that are in the country.

**22<sup>nd</sup> Defendant Ato Obang Meto-** Part of the high level leadership of the terrorist organization Ginbot 7 and head of public relations; led the terrorist action by maintaining communication in clandestine with members that are in the country, and emailing and disseminating different materials to mobilize for uprising.

On the whole, all the defendants are charged as principal criminals for conspiring, inciting, planning and preparing the terrorist actions they undertook.

### **2<sup>nd</sup> Charge**

#### **For 1<sup>st</sup> to 18<sup>th</sup> Defendants**

##### **The Crime**

For violating Article 32(1)a and 38(1) of the 2004 FDRE Criminal Code and Article 7 (2) of the Anti-Terrorism Proclamation No. 652/2009.

##### **Details of the Crime**

1<sup>st</sup> defendant, the youth organization leader in the country of the terrorist organization Ginbot 7; 2<sup>nd</sup> to 6<sup>th</sup> defendants, local agents and youth organization leaders; 8<sup>th</sup> defendant, leader and representative in Sudan of the terrorist organization Ginbot 7; 9<sup>th</sup> defendant, leader and secretary general; 10<sup>th</sup> defendant, chairman of the terrorist organization Ginbot 7; 11<sup>th</sup> defendant, leader and chairperson of the organization's affairs committee of the terrorist organization Ginbot 7; 12<sup>th</sup> defendant, leader of the terrorist organization Ginbot 7 and head of diplomatic affairs; 13<sup>th</sup> defendant, leader and representative in Belgium of the terrorist organization Ginbot 7; 14<sup>th</sup> defendant, leader and representative in Uganda of the terrorist organization Ginbot 7; 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> defendants, leaders of the terrorist organization Ginbot 7 and its voice being board members and leaders of ESAT; 21<sup>st</sup> defendant, being head of the organization's public relations, he is a principal criminal for, at a time and place indicated in the first charge, undertaking and making others undertake terrorist acts, secretly recruiting others for leadership, decision-making and execution of terrorist missions of the terrorist organization and for participation in different ways to take part in terrorist acts.

### **3<sup>rd</sup> Charge**

#### **Against 19<sup>th</sup> and 20<sup>th</sup> defendants**

For violating Article 32(1)a and 38(1) of the 2004 FDRE Criminal Code and Article 7(1) of the Anti-Terrorism Proclamation No. 652/2009.

##### **The Details of the Crime**

19<sup>th</sup> Defendant Desalegn Arage and 20<sup>th</sup> defendant Elias Molla, are charged with participation in terrorist act for membership of a terrorist organization, secretly undertaking and make others undertake terrorist missions at a time and place indicated in the first charge, being members of the military wing of Ginbot 7 in Eritrea.

#### **4<sup>th</sup> Charge**

#### **Against all Defendants**

#### **The Crime**

For violating Article 32(1)a and 248(b) of the 2004 FDRE Criminal Code.

#### **The Details of the Crime**

The defendants are charged with high treason as principal criminals, for, while in Ethiopia, with the Eritrean Government that was at war with Ethiopia and in collaboration with Ginbot 7, which works for the interests of the Eritrean Government, secretly meeting with officials of the Eritrean Government; giving terrorist mission training to terrorists as indicated in the first charge, to implement the Eritrean Government's agenda of creating chaos in Ethiopia; enabling them to come into the country in clandestine; maintaining direct and indirect secret communication with leaders of the terrorist organization Ginbot 7, which works for the interests of the Eritrean Government; planning to implement the Eritrean Government's agenda of creating terror and chaos in Ethiopia; recruiting for the terrorist organization's local membership, and sending them to Eritrea, and through the 1<sup>st</sup> defendant Eritrea's military officials, enabling them to take the terrorism training mentioned in the 1<sup>st</sup> charge; maintaining clandestine communication with officials of the Eritrean Government and the leaders of Ginbot 7, facilitating a situation whereby the Eritrean Government could implement its terrorist agenda towards Ethiopia.

#### **5<sup>th</sup> Charge**

#### **Against All Defendants**

#### **The Crime**

For violating Article 32(1)a; 38(1) and 252(1)a of the 2004 FDRE Criminal Code.

#### **Details of the Crime**

The defendants, are charged as principal criminals for espionage, for, in the manner mentioned in the first charge, together with Eritrean Government that is at war with Ethiopia and to the interest of the terrorist organization Ginbot 7, which seeks to forcibly put an end to the Constitution and the constitutional system, in way that jeopardizes the interests of Ethiopia, organized political, diplomatic and military espionage and passed on information gathered, thereby creating a conducive situation for the Eritrean Government.

#### **6<sup>th</sup> Charge**

#### **Against 23rd and 24th Defendants**

#### **The Crime**

For violating Article 32(1)a and 38(6) of the 2004 FDRE Criminal Code and Article 5 (1) of the Anti-Terrorism Proclamation No. 652/2009.

#### Details of the Crime

The defendants are charged as principal criminals with the crime of aiding terrorist acts for, knowing they are aiding terrorist acts, via Addis Neger's public website <http://addisnegeronline.com>, gave recognition and professional support to the destructive and rebellious goals of persons that took part in terrorist acts for Ginbot 7, Oromo Liberation Front (OLF), and Ogaden National Liberation Front (ONLF), which have been classified by the FDRE House of Peoples' Representatives as a terrorist organization and others legally organized under the guise of free press.

[Signed: Tewodros Beharu Fekade]

#### **1.B/Documentary Evidence**

\_\_\_ page-long documentary evidence against all defendants.

C. Audio/Video [handwritten]

#### **Exhibit**

1. Found from the 8<sup>th</sup> defendant: 211 page-long book prepared by Ginbot 7's Research Team used by Ginbot 7 to preach its rebellious goal that is not peaceful and generally showing the terrorist mission it embraces; 1330 Ethiopian Birr; 10,000 cedi, Ghanaian currency; 30 Eritrean Nakfa; 50 Sudanese Pound; 1 coin of Sudanese pound; one ADVENT computer with charger; one Nokia with camera, model C1, registered under exhibit file No.103/2004 and exhibit file No.85/04.
2. Found from the 5<sup>th</sup> defendant: 2320 Ethiopian Birr sent for terrorist mission, registered under A/M/No.29/2004.
3. Found from the 7<sup>th</sup> defendant: one HP laptop with charger; one Nokia cell phone with sim card; one flash disk.
4. Found from the 1<sup>st</sup> defendant: one iPhone cell phone; one Samsung cell phone, registered under A/M/No.71/04.
5. Found from the 2<sup>nd</sup> defendant: one Siemens cell phone without sim card; one Nokia cell phone with sim card.

6. Found from the 3<sup>rd</sup> defendant: one Toshiba laptop with charger; one Nokia cell phone with no camera; two Nokia cell phones; two cell phone chargers, registered under A/M/No.83/04.
7. Found from the 6<sup>th</sup> defendant: one red Nokia cell phone with sim card, registered under A/M/No.78/04.

**Notice:-** 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> defendants, since 14 September 2011; 5<sup>th</sup> defendant since 26 September 2011; 6<sup>th</sup> defendant, since 29 September 2011; 3<sup>rd</sup> and 4<sup>th</sup> defendants, since 13 October 2011; 8<sup>th</sup> defendant, since 25 October 2011 are all arrest in the Federal Police Criminal Investigation Prison.

For defendants 9<sup>th</sup> to 24<sup>th</sup>, we would like to declare that we will present documentary evidence when they appear.

[Handwritten

Notice:- I hereby declare that they have been certified against the originals.]

Hiwot Mamushet  
Criminal Affairs Registrar  
Signature

[certification stamp]