



# ARTICLE 19

## ARTICLE 19 individual submission to the UN Universal Periodic Review of Ethiopia

*For consideration at the 19<sup>th</sup> session of the UN working group in May-April 2014*

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### **Executive summary**

1. In this submission, ARTICLE 19 observes that Ethiopia has mostly failed to comply with the recommendations that they accepted during the 2009 Universal Periodic Review (UPR) to advance protections for the right to freedom of expression and information, and the rights to freedom of peaceful assembly and of association.
2. The situation for freedom of expression and information in Ethiopia has deteriorated rather than improved since 2009. This submission addresses the following:
  - **Abuse of anti-terrorism legislation;**
  - **Restrictive provisions of the Criminal Code** and their abuse to frequently intimidate, harass and prosecute journalists and others critical of the government;
  - **Lack of media independence and plurality;**
  - **Internet blocking and filtering;**
  - **Targeting civil society through restrictive legislation;**
  - **Access to information.**

### **Anti-terrorism legislation abused to prosecute journalists**

3. The Anti-Terrorism Proclamation (652/2009) - which violates international standards on freedom of expression - continues to raise serious concerns for the right to freedom of expression and information. This is despite the commitment of Ethiopia at its first UPR to take measures to ensure that any efforts to counter terrorism are carried out in full compliance with its human rights obligations, including respect for due process and freedom of expression and assembly.
4. ARTICLE 19 remains concerned that:
  - **Broad definitions for "terrorist acts"** encompass a wide range of legitimate expression, and allows critical reporting to be penalised where there is no risk or threat to national security;
  - **Ambiguous offences** include the "moral support of" and "encouraging of" "terrorist acts" (Articles 5 and 6), granting the State broad discretion to criminalise dissent where there is no direct call for engagement in terrorism and where there is no likelihood of such acts occurring;
  - **Broad executive powers** of surveillance (Article 14), warrantless search (Article 16) and seizure (Article 26) and warrantless arrests and detention (Article 19) expose journalists to harassment and intimidation, and undermine the right for journalists to protect the anonymity of their sources.

5. The Anti-Terrorism Proclamation has been used to prosecute 12 journalists:

- **Yusuf Getachew**, Editor in Chief of the newspaper Ye Muslimoch Guday (Muslim Affairs), has been detained at Kality prison since 29 October 2012 charged with plotting acts of terrorism, intending to advance a political, religious or ideological cause by force; and the planning, preparation, conspiracy, incitement and attempt of "terrorist acts". Yusuf had written on alleged corruption at the Supreme Council for Islamic Affairs (Mejlis) and alleged meddling by the government in the religious affairs of the Muslim community. He is being tried in closed proceedings.
- **Solomon Kebede**, Managing Director of Muslim Affairs, was detained on 17 January 2013 and charged on 13 February 2013 with "incitement of terrorism", charges believed to be premised on his journalism. He is being tried in closed proceedings.
- **Reeyot Alemu**, a regular contributor to a weekly newspaper Feteh, was arrested on 21 June 2011 and on 5 September 2011 was sentenced to 14 years in prison and fined 33,000 birrs (US\$1,500) under Articles 3(6), 4, 7 and 9 of the Anti-Terrorism Proclamation and for money laundering under Article 684 of the Criminal Code. She had severely criticised the ruling political party's fundraising methods for a national dam project, and had allegedly drawn parallels between late Libyan leader Muammar Gaddafi and Ethiopia's then Prime Minister, Meles Zenawi. Evidence introduced at the trial included her articles on opposition political groups, as well as intercepted email and telephone correspondence, much of it with other journalists. On 8 January 2012, on appeal, her prison term was reduced to 5 years in prison. She is reportedly in poor health.
- **Wubshet Taye**, Deputy Editor of the weekly newspaper Awramba Times (now defunct), was charged under the same offences as Reeyot Alemu. Wubshet was sentenced to a 14 year jail term on 5 September 2011, now being served at a jail in Zeway.
- **Elias Kifle**, the exiled editor of a Washington-based opposition website "Ethiopia Review", was charged under the same offences as Reeyot Alemu and Wubshet Taye, in addition to "rendering support to terrorism" through providing or making available monetary, financial or other related services for terrorist acts or a terrorist organization (Article 5(1)(d) of the Anti-Terrorism Proclamation). Elias was convicted and received a life sentence in absentia on 26 January 2012. The Ethiopia Review website is now blocked in Ethiopia.
- **Martin Schibbye** and **Johan Persson**, two Swedish journalists, were arrested in July 2011 after crossing from the Puntland region of Somalia into the troubled Ogaden region of Ethiopia, investigating allegations of human rights violations linked to the activities of the Swedish oil company Lundin Oil. On 26 December 2011 they were sentenced to 11 years in prison for engaging in terrorist activities, abetting an illegal terrorist group and entering the country illegally. The pair denied the terrorism charges, but admitted to having entered Ogaden without proper documentation. They received a pardon on 10 September 2012 and were released the following day.
- **Eskinder Nega**, an independent journalist and blogger; **Fasil Yenealem**, of ESAT satellite television; **Abebe Belew**, of Addis Dimts, an internet-based radio

station; **Abebe Gellaw**, of Addis Voice Radio; **Mesfin Negash**, of Addis Neger Newspaper, and **Abiy Teklemariam**, of Addis Neger Newspaper, were among 24 people prosecuted for terrorism related offences on 10 November 2011 (*Federal Prosecutor vs. Andualem Arage and Others*). All 6 journalists were charged under Articles 3, 4, 5, 6 of the Anti-terrorism Proclamation for committing, inciting, preparing, conspiring, and attempting "terrorist acts". They were additionally charged for high treason and espionage under Articles 248(b) and 252(1)(a) of the Criminal Code. Eskinder Nega was sentenced to 18 years in prison (currently held at Kality prison in Addis Ababa); Mesfin Negash and Abiy Teklemariam were sentenced in absentia to 8 years in prison; Abebe Gelaw and Abebe Belew each received 15 years in prison; and Fasil Yenealem received a life sentence.

6. ARTICLE 19 has also recorded cases of at least 33 journalists fleeing the country in fear of prosecution under the Anti-Terrorism Proclamation. A sample of those cases are:

- **Akemel Negash** and **Isaac Eshetu**, both editors of Muslim Affairs, fled into exile on 31 July 2012 following the arrest and detention of their colleagues Solomon Kebede and Yusuf Getachew (above).
- **Mesfin Negash** and **Abiy Teklemariam**, who were convicted and sentenced in absentia in *Federal Prosecutor Vs. Andualem Arage and Others* (above), had gone into exile earlier in 2009 along with their colleagues **Zerihun Tesfaye**, **Girma Tesfaw**, **Kassahun Yilma** and **Tamrat Negera**. All were editors of 'Addis Neger,' a weekly Amharic newspaper.
- **Dawit Kebede**, Editor of Awaramba Times, was forced to shut down his weekly paper on 21 November 2011 and went into exile after Woubshet Taye, his former deputy editor, was jailed for 14 years on terrorism charges (above). He had also received information that his pardon for a conviction relating to the post-2005 election crisis was to be cancelled.
- **Araya Getachew Alayu** fled on 10 April 2013 after his colleague in Feteah Newspaper, Temesgen Desalegn, was charged under the Criminal Code (see below).
- **Mastewal Birhanu Mamo** fled on 10 April 2013 after being charged with the printing of Feteah Newspaper, which had carried reports about the illness of the late Prime Minister Meles Zenawi. Feteah's Editor, Temesghen Desalegn, and Mastewal (the Publisher) had also been charged with inciting violence in connection to the printing of Feteah Newspaper.

#### **Criminal code abused to intimidate, harass and prosecute journalists**

7. The Criminal Code, incorporated into the Freedom of the Mass Media and Access to Information Proclamation of 2009, contains a number of ambiguous provisions that are not compatible with international standards on freedom of expression, and severely undermine the freedom of all people to criticise the State or its officials:

- **Criminal Defamation and Calumny:** Article 613 recognises 4 variations of defamation and calumny as "crimes against honour", as well as the offence of "insult" (Article 615), with severe penalties available for each. Defences provide very limited protection for truthful statements, or statements that are in the public interest. Article 618 allows for aggravated sentences where these offences are committed against public servants.

- **Protecting the State from criticism:** Article 244 criminalises "attacks against the State and National and other Emblems" and includes abusing, insulting, defaming or slandering the State in public.
  - **Protection of public morals:** Article 639 prohibits "public indecency and outrages against morals"; Article 640 prohibits "obscene or indecent publications"; Article 641 outlaws "obscene or indecent performances" and Article 643 "indecent publicity and advertisements".
  - **National security provisions:** Articles 248 - 250 criminalise treason, high treason, and economic treason, making it an offence to disclose official government documents that compromise "the national interest". Articles 396, 397 and 399 concern similar crimes of "breaches of military secrecy", "breaches of official secrecy", and "breaches of professional secrecy". Article 486 criminalises "inciting the public through false rumours" and Article 486 prohibits "seditious demonstrations".
8. Provisions of the Criminal Code have been abused to prosecute individuals for making false assertions of fact against government authorities, or for other acts of legitimate criticism of or protest against government policy. The threat of prosecution has additionally forced many to flee the country. ARTICLE 19 has recorded the following instances of abuse:
- **Darsema Sori and Khalid Mohammed**, two journalists working for Radio Bilal, a station that has provided extensive coverage of on-going anti-government protests staged by Ethiopian Muslims, were arrested and detained on 2 August 2013 by security officials. The journalists were taken to court the next day and remanded into custody while police continued their investigations.
  - **Muluken Tesfaw**, who works for the weekly newspaper Ethio-Mihdar, was detained on 25 June 2013 for 9 days by the Benishangul Gumuz region authorities while reporting on an internal displacement story. He was released without charge but authorities confiscated his documents, including interviews with displaced people.
  - **Frew Abebe**, the Editor of the weekly Sendek newspaper, was on 15 May 2013 summoned for interrogation in Makalwi. The police attempted to obtain his sources for a story on the widow of the late Meles Zenawi's refusal to vacate the Grand Palace.
  - **Temesgen Desalegn**, the Editor of Feteḥ newspaper, was fined Birr 2,000 in May 2012 on contempt charges for his reporting on the trial of fellow journalist, Eskinder Nega. Temesgen was then on 10 August 2012 charged under the Criminal Code 2004 with: "outrages against the Constitution or the Constitutional Order" (Article 238); "defamation and calumny" (Article 613); and "inciting the public through false rumours" (Article 486), for a number of editions of Feteḥ printed between August 2011 and March 2012. Mastewal Birhanu, the owner of Mastewal Printing and Advertising plc that was publishing Feteḥ Newspaper, fled to exile soon after. The death penalty and life imprisonment are available sentences under Article 238 alone.
  - **Heather Murdock**, a reporter for the U.S. international broadcaster Voice of America (VOA) working in the eastern region of Harar in the Ogaden region was expelled by the government on 17 June 2010. The Ogaden region has continued

to be inaccessible to journalists despite reports of widespread atrocities committed against civilians by government forces.

#### **Lack of media independence and plurality**

9. The Broadcasting Service Proclamation of 2007 gives the government extensive control over the broadcast media, including through the Ethiopian Broadcasting Authority, which is appointed by, and financially dependent upon, the government.
10. The Freedom of the Mass Media and Access to Information Proclamation of 2009 establishes a licensing system for the printed press, where all written publications must be registered (Article 9) and the executive is given broad powers to impound periodicals and books (Article 42). Extensive duties are imposed on the media (Article 40), including a mandatory "right of reply" enforced through criminal penalties. Restrictions on media ownership (Article 7) also discourage growth and investment in the sector.
11. This control is reinforced by a state monopoly over printing presses through the state-owned Berhanena Selam Printing Enterprise (BSPE) and standardised printing contracts with restrictive terms. In particular, Feteah newspaper has been refused print runs at BSPE and smaller printing presses as a result of official condemnation of the content of those papers.
12. Additionally, the economic environment for media does little to advance plurality and independence. Of the 91 newspapers and 160 magazines given licences since 2009 by the Ethiopian Broadcasting Authority, only 17 newspapers and 27 magazines are in circulation, due to the expense of printing, costs of distribution outside of Addis Ababa, and low literacy rates. This is compounded by a lack of private investment in independent media, partly due to a lack of willingness for investors to associate with media that may be critical of the government.

#### **Internet blocking and filtering**

13. Despite Ethiopia having one of the lowest rates of internet penetration in Africa, the government has continuously filtered content and engaged in blocking, often attempting to limit access to criticism voiced by the Ethiopian diaspora. In June 2012, Ethio Telecom took steps to block the use of the secure browser, Tor, which allows users to bypass blocked websites and browse anonymously.
14. The Ethiopian government has also blocked numerous websites from being accessed in the country, especially those carrying politically critical content. Similarly, blogs that attract attention from officials have also been blocked, for example: [www.opride.com](http://www.opride.com); [www.ethiomeia.com](http://www.ethiomeia.com); [www.nazret.com](http://www.nazret.com); [www.zehabesha.com](http://www.zehabesha.com). International news sites, including for Al Jazeera and CNN, are amongst other websites that are frequently blocked.

#### **Restrictions on civil society**

15. Civil society has continued to be targeted by restrictive legislation. The Charities and Societies Proclamation of 2009 remains in effect, despite recommendations at the last UPR (rejected by Ethiopia) to amend or repeal those provisions in the Law that were inconsistent with international standards on the right to freedom of expression, association and assembly. The recommendation to allow Non-Governmental Organisations to receive foreign funding was similarly rejected.

16. The Charities and Societies Proclamation only allows "Ethiopian Charities and Societies" to engage in human rights activities and related social justice or political programmes. The definition of what "Ethiopian Charities and Societies" means is narrow, and excludes entities that receive 10% or more of their funding from foreign sources, thus making it impossible for any organisation with foreign financial support to work on domestic human rights or political issues. This essentially makes working on these issues impossible, as there are few funding opportunities for work in this field internal to Ethiopia.

#### **Access to information**

17. Part III of the Freedom of the Mass Media and Access to Information Proclamation establishes a legal framework for the right of access to information, with implementation beginning in January 2012 under the oversight of the office of the Ombudsman. While this is a positive development, ministerial guidelines have not been published to outline how the access to information law can be actualised. Public officials rarely give out public information, especially when sought by academics or private media. Access is limited to state-owned media outlets and individuals need to pass through highly bureaucratic procedures to get information.

#### **Recommendations**

18. In light of these concerns, ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the government of Ethiopia to:

- Repeal the Anti-terrorism Proclamation of 2009, and ensure that all legislation complies with international standards on the right to freedom of expression;
- Reform the Criminal Code in line with international standards on freedom of expression, including by revising national security provisions, and repealing criminal defamation and offences that protect the honour of the State and its officials;
- Immediately cease the intimidation, harassment, arrest and detention of journalists under the Anti-Terrorism Proclamation of 2009 and the Criminal Code;
- Immediately release journalists detained under the Anti-Terrorism Proclamation and the Criminal Code for exercising their right to freedom of expression, and afford them adequate redress for the violation of their rights;
- Lift state control over the print and broadcast media, and take legislative and policy measures to foster media independence and plurality in line with international standards;
- Immediately cease filtering and blocking of online content: all filtering, blocking, removal and other technical or legal limits on access to content are serious restrictions on freedom of expression and can only be justified, if they strictly comply with the three-part test under international law;
- Repeal the Proclamation on Charities and Societies of 2009, and take legislative and policy measures to create a safe and enabling environment for civil society to operate free from hindrance and insecurity;
- Issue ministerial guidelines to effectively implement the right of access to information, together with wholesale legal and policy reforms to tackle laws and practices that entrench secrecy and shield the government from scrutiny and criticism.