

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'Observatoire

pour la protection
des Défenseurs des Droits de l'Homme

El Observatorio

para la Protección
de los Defensores de los Derechos Humanos

Report

International Fact-Finding Mission

Ethiopia: Human rights defenders under pressure

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Executive summary

“Ethiopia is the headquarters of the African Union, but it is at the forefront of violating the right to freedom of expression and other universally recognised human rights and fundamental freedoms”¹.

Although in 1991 the overthrow of the Derg and of the Mengistu regime represented a sign of hope for democratisation in Ethiopia, the government headed by Prime Minister Mr. Meles Zenawi failed to provide a fair and free environment for respecting the professed commitment to human rights enshrined in the 1994 Constitution. While Ethiopia hosts the African Union and the United Nations Economic Commission for Africa headquarters, thus taking a symbolical leadership in being the custodian of international and regional human rights conventions, the ruling power, led by the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), shows a blatant social and political intolerance, aggravated by a divisive ethnic policy, corruption, police brutality and impunity.

In this context, Ethiopian human rights defenders face numerous constraints in carrying out their activities, and remain at risk of repression, harassment and retaliation. As the international fact-finding mission mandated by the Observatory in Ethiopia from June 26 to July 3, 2004 could observe, methods to silence human rights activists seem to have changed compared to the 1990s, marked by extra-judicial killings, violence and massive arbitrary arrests and detention of defenders. The crackdown on fundamental rights and freedoms – in particular freedoms of association, of expression and of the press – in 2004 and early 2005 took the form of an increased institutionalisation and judicialisation: new restrictive press and NGOs laws are currently under review, and several associations faced legal actions initiated by the government and its Ministries aimed at curtailing their activities. A number of defenders remain subjected to judicial harassment on the grounds of fallacious accusations, such as Messrs. Mesfin Wolde Mariam, president of the Ethiopian Human Rights Council (EHRCO), Birhanu Nega, chairman of the Ethiopian Economic Association, and Abate Angore, member of the executive board of the Ethiopian Teachers' Association (ETA), who are still prosecuted for facts dating back to 2001 for their outspoken position against the police violence that struck a student protest movement. In this regard, the conviction and arrest of Mr. Abate Angore on February 3, 2005, is particularly alarming.

State authorities also intended to replace independent civil society organisations by pro-governmental NGOs. This pernicious strategy, which had already been used in the 1990s against the ETA, was once more resorted to against the Ethiopian Free Journalists' Association (EFJA), whose executive board was re-elected in January 2004 by a general assembly convened by the Minister of Justice and in the absence of EFJA members. On December 24, 2004, however, the Federal First Instance Court ruled the Ministry of Justice's attempt to challenge the “genuine” EFJA's legal existence null and void - a decision that was confirmed by the Federal High Court on March 3, 2005.

Human rights defenders and associations also have to face recurrent smear and discredit campaigns orchestrated by the authorities: several reports published by the Ethiopian Human Rights Council (EHRCO) and denouncing human rights violations in the country gave rise to virulent reactions from the government. Freedoms of expression and of the press remain highly restrained as federal authorities very poorly tolerate criticism of their policies and denunciation of human rights abuses committed on the territory.

On May 15, 2005, Ethiopians will elect the members of the House of Peoples' Representatives (HPR), the lower chamber of the Parliament. Whilst last HPR elections held in May 2000 were marred by reported irregularities and acts of violence against opposition candidates and supporters, notably in rural areas, this national poll is of primary importance for human rights defenders, all the more that the new elected chamber will be in charge of adopting or not the above-mentioned restrictive legislations. It is to be hoped that the Ethiopian government will ensure a free and fair environment for international and human rights NGOs to monitor this poll², and that these elections will mark a new era of respect for international human rights standards and instruments that Ethiopia ratified.

¹ Mr. Kifle Mulat, president of the Ethiopian Free Journalists' Association (EFJA).

² In this regard, the expulsion of three American NGOs, namely the International Republican Institute (IRI), the International Foundation for Electoral Systems (IFES) and the National Democratic Institute (NDI), by Ethiopian authorities on March 30, 2005, on the alleged ground that they were not registered as they were giving training and civic education to voters, is of a particular concern.

I - INTRODUCTION

A. Mission's rationale and objectives

The Federal Democratic Republic of Ethiopia (FDRE) ratified the following international conventions, which create an obligation on State parties to promote and protect the rights enshrined in these instruments:

- the International Covenant on Civil and Political Rights (ICCPR) in 1993
- the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1993
- the International Convention on the Elimination of all forms of Discrimination (ICERD) in 1976
- the Convention on the Rights of the Child (CRC) in 1991
- the Convention against Torture (CAT) in 1994
- the African Charter on Human and Peoples Rights (ACHPR) in 1998
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in June 2004.

Although the rights and freedoms enshrined in these documents are reaffirmed in the 1994 Constitution, which provides for a Bill of Rights³, credible and documented evidence that Ethiopia seriously violates human rights and fundamental freedoms were brought into light in the past few years.

In an environment of declining human rights conditions, human rights defenders who fight for the respect of internationally recognised freedoms are invariably targeted by State persecution, from arbitrary arrest and detention, prosecution on fallacious grounds, torture, harassment, threats, unfair transfer or dismissal from employment, defamation, discrimination, denial of access to lawyers, to such aggravated evils as summary or extra-judicial executions.

As numerous human rights violations were denounced in Ethiopia, the FIDH and the OMCT, in the framework of their joint programme, the Observatory for the protection of human rights defenders, considered it necessary to mandate a mission to Ethiopia to investigate into defenders' situation in the country.

Since the mission was conducted, the Observatory maintained a regular follow-up on the facts and cases reported by its delegation.

The delegation's work was guided by the following goals:

- To document obstacles that inhibit the work of human rights defenders in Ethiopia, according to the rights laid out, notably in the United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, and other sources of international human rights law and in international humanitarian law.
- To document the role that human rights defenders, working as independent monitors, can play in bringing peace and justice to the country.
- To explore specific and achievable recommendations to improve the ability of human rights groups to carry out their work safely and effectively.

It is hoped that this report will contribute to encourage the government of the Federal Democratic Republic of Ethiopia to take the necessary steps to create and maintain an appropriate, conducive environment for human rights defenders to operate freely and efficiently in the country.

B. Working methods and definitions

The delegation agreed to leave the definition of a human rights defender very wide so as to include anyone fighting for the promotion and the protection of universally recognised human rights and fundamental freedoms, including NGOs' members and representatives, human rights lawyers and activists, academics, intellectuals, religious leaders, trade unionists and public officials such as public prosecutors, judges and magistrates.

The United Nations (UN) General Assembly passed a Declaration on Human Rights Defenders on December 9, 1998 that places a duty on State parties to ensure that certain minimum standards or conditions exist where human rights defenders operate⁴. Based on the UN Declaration, the

³ See Annex 3.

⁴ The UN Declaration on Human Rights Defenders provides, *inter alia*, for the right of everyone individually and in association

Observatory for the Protection of Human Rights Defenders uses the following operational definition of a human rights defender:

“Each person victim or risking to be the victim of reprisals, harassment or violations due to his or her compromise exercised individually or in association with others, in conformity with the international instruments of protection of Human Rights, in favour of the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by international instruments”.

The Observatory’s delegation could identify a large range of individuals and organisations as human rights defenders in Ethiopia, among which the Ethiopian Human Rights Council (EHRCO), the Ethiopian Free Journalists Association (EFJA), the Ethiopian Teachers Association (ETA) and the Ethiopian Women Lawyers Association (EWLA), stood out for their intensive activities. It was also clear that a number of people, involved in human rights activities linked to their own environment, such as students, peasant farmers and some judicial officers, fit in the defenders’ definition.

C. Delegation’s composition and activities

The international fact-finding mission mandated by the FIDH and the OMCT in the framework of their joint programme, the Observatory for the protection of human rights defenders, was conducted from June 26 to July 3, 2004, with the help and support of the Ethiopian Human Rights Council (EHRCO).

The Observatory’s delegation was composed of: Mr. Arnold Tsunga, president of the Zimbabwe Human Rights Association (ZimRights), Mr. Mabassa Fall, FIDH permanent representative before the African Union, and Miss Carole Berrih, FIDH Africa department officer.

The delegation could meet with the following civil society representatives and government officials:

Civil society representatives:

- Pr. Mesfin Wolde Mariam, president, and Mr. Ambachew Semma, secretary general of the Ethiopian Human Rights Council (EHRCO).
- Mr. Samuel Hailegiorgis, director of the Ethiopian Bar Association (EBA).
- Mr. Kifle Mulat, president of the Ethiopian Free Press Journalists’ Association (EFJA).
- Mr. Abate Angore, member of the executive board of the Ethiopian Teachers’ Association (ETA).
- Mr. Amare Aregawi, general manager and editor-in-chief of the newspaper *The Reporter*.
- The personal assistant to Mrs. Meaza Ashenafi, director of the Ethiopian Women Lawyers’ Association (EWLA).
- Mrs. Adey Abeb, head of the information and management department, and Mr. Dereje Balcha, head of the networking, policy, research and advocacy department of the Christian Relief and Development Association (CRDA).
- Dr. Yared Tilabun Damte, president of the Rehabilitation Centre for Victims of Torture.
- Mr. Abebe Worke Wolde Yohannes, human rights lawyer, EBA and EHRCO member.
- Pr. Andreas, Addis Ababa University and UNESCO vice president in Ethiopia.

Officials:

- Mrs. Josette Dallant, Ambassador, French Embassy in Ethiopia.
- Mr. William Flens, Second Secretary, US Embassy
- Mr. Bereket Simon, Minister of Information
- Mrs. Genet Zewde, Minister of Education

The delegation regrets that it was unable to meet with several other government officials, such as the Prime Minister, the Minister of Federal Affairs, the Minister of Justice and the Minister of Labour and Social Affairs, although their offices were contacted prior to the mission. Some of them, like the Minister of Federal Affairs, openly refused to receive the delegation because of recent OMCT reports on Ethiopia that they considered unfounded, while others did not reply despite numerous calls. Others accepted to meet the delegation only after its departure.

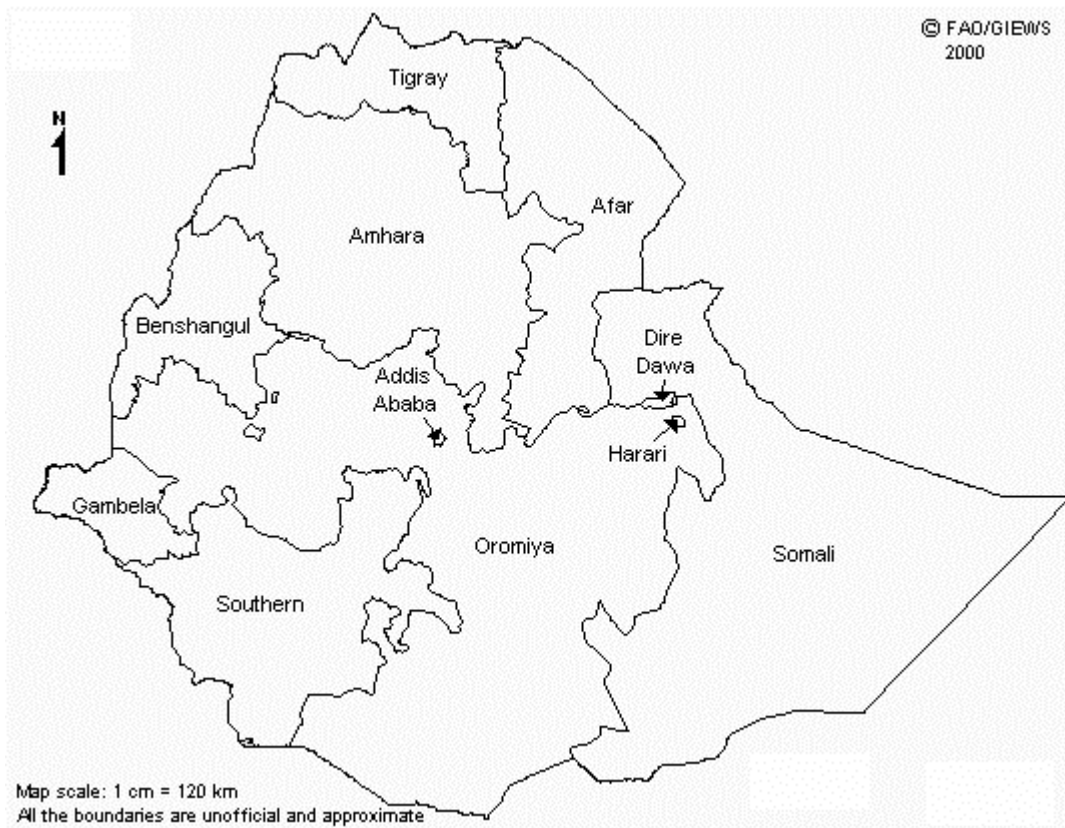
with others to fight for the promotion and protection of the fundamental human rights nationally and internationally. It further places a responsibility on the state to take legislative, judicial, administrative and other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. See Annex 1.

ABBREVIATIONS AND ACRONYMS

ACHPR: African Charter on Human and Peoples' Rights
ARO: Associations' Registration Office
AU: African Union
CAT: Convention against Torture
CERD: Convention on the Elimination of all forms of Discrimination
CRC: Convention on the Rights of the Child
EBA: Ethiopian Bar Association
EFJA: Ethiopian Free Press Journalists' Association
EHRCO: Ethiopian Human Rights Council
EPRDF: Ethiopian Peoples' Revolutionary Democratic Front
ETA: Ethiopian Teachers' Association
EWLA: Ethiopian Women Lawyers' Association
FDRE: Federal Democratic Republic of Ethiopia
FIDH: International Federation for Human Rights
ICCPR: International Covenant on Civil and Political Rights
ICESCR: International Covenant on Economic, Social and Cultural Rights
JAC: Judicial Administration Council
NGO: Non-Governmental Organisation
OAU: Organisation of African Unity
OLF: Oromo Liberation Front
OMCT: World Organisation Against Torture
PDRE: People's Democratic Republic of Ethiopia
SNNPRS: Southern Nations, Nationalities and Peoples' Regional State
UN: United Nations
US: United States

II - ETHIOPIA: BACKGROUND INFORMATION

A. Maps⁵



⁵ Sources: CIA World Factbook and UN Food and Agriculture Organisation (FAO).

B. General history

The reign of Haile Selassie I:

- November 1930: Negus Tafari, born Prince Ras Tafari Makonnen, was crowned Haile Selassie I, taking the full title of His Imperial Majesty, Emperor Haile Selassie I, Conquering Lion of the Tribe of Judah, Elect of God, King of Kings of Ethiopia. He introduced reforms to break the nobility's authority, as well as the first written Ethiopian Constitution in 1931.
- October 2, 1935: Mussolini attacked Ethiopia from Eritrea and Italian Somaliland.
- May 1936: Italian troops entered Addis Ababa and announced the annexation of Ethiopia. Haile Selassie was forced into exile in England despite his plea to the League of Nations (joint by Ethiopia in 1923) for intervention.
- 1940: With the assistance of Great Britain, Haile Selassie I sought to cooperate with Ethiopian and other indigenous forces in a campaign to dislodge Italian troops from Ethiopia and British Somaliland.
- May 5, 1941: Haile Selassie re-entered Addis Ababa.
- January 1942: All Italians surrendered to British and Ethiopian forces. An interim Anglo-Ethiopian arrangement was signed, confirming Ethiopia's status as a sovereign State.
- 1952: The United Nations (UN) tried to satisfy the Eritrean demand for self-determination by creating an Eritrean-Ethiopian federation.
- 1955: A new Constitution, which expanded the powers of the Parliament, was adopted.
- 1962: Haile Selassie unilaterally abolished the federation and imposed imperial rule throughout Eritrea.
- 1963: Haile Selassie invited the Organisation for African Unity (OAU) to maintain its headquarters in Addis Ababa after the African Summit Conference, which established this new institution.
- From 1965 on, students and peasants demonstrated in favour of the implementation of land reform and to address corruption and rising prices. Increasing internal pressures, including conflict with Eritrea and severe famine, placed strains on Ethiopian society.
- February 1974: Beginning of the civil unrest.
- September 12, 1974: Haile Selassie was deposed and a provisional administrative council of soldiers, the Derg ("Council"), chaired by Colonel Mengistu Haile Mariam, was established.
- August 22, 1975: Death of Haile Selassie I.

Lieutenant Colonel Mengistu Haile Mariam's government:

- Colonel Mengistu Haile Mariam established an authoritarian government and promoted the massive militarisation of the country, financed by the Soviet Union and the East Block, and assisted by Cuba. Under the "Ye-Itiopia Hibreteseba winet" (Ethiopian Socialism), trade union leaders were jailed and the church banned.
- February 1977: The Ethiopian People's Revolutionary Party (EPRP) initiated terrorist attacks against the Parliament (the White Terror), which led to immediate governmental counteraction (the Red Terror). During this period, government forces systematically killed, imprisoned or were involved in forced disappearances of suspected EPRP members and supporters, notably students.
- Spring 1977: Somalia attacked Ethiopia across the Ogaden desert in pursuit of its irredentary claims to the Somali areas of the country. Somali troops were forced out of the Ogaden in March 1978, with the intervention of Soviet and Cuban troops, which failed in defeating the Eritrean guerrillas.
- 1984-1985: The northwest of the country was struck by drought and famine, leaving hundred thousands of victims.
- February-September 1987: After thirteen years of military rule, the nation officially became the People's Democratic Republic of Ethiopia (PDRE) ruled by a new Constitution establishing a civilian government. Ethiopians elected the National Shengo (National Assembly), and Mengistu Haile Mariam was named President.
- 1989: The Tigrayan People's Liberation Front (TPLF) chaired by Meles Zenawi merged with other ethnically based opposition movements to form the Ethiopian People's Revolutionary Democratic Front (EPRDF) to fight for the demise of the Mengistu regime.
- May 21, 1991: EPRDF forces marched on Addis Ababa and Mengistu fled to Zimbabwe. After May 1991, Eritrea was controlled by the Eritrean People's Liberation Front (EPLF), which set up the Provisional Government of Eritrea under its leader, Issaias Afwerki.

The Transitional Government of Ethiopia (TGE):

- July 1991: The EPRDF and the Oromo Liberation Front (OLF) established the Transitional Government of Ethiopia (TGE), comprised of an 87-member Council of Representatives and guided by a national charter functioning as a transitional Constitution. The mission of this coalition of 27 political and liberation organisations was to transform Ethiopia from a centralised country to a federation. Meles Zenawi, former head of EPRDF, was elected president by the Council of Representatives.
- June 1992: The OLF withdrew from the government.
- March 1993: The Southern Ethiopia Peoples' Democratic Coalition also left the government.
- May 24, 1993: Eritrea gained independence from Ethiopia after a referendum in April 1993. The Government of Eritrea was formed, consisting in a National Assembly with supreme authority, a State Council with executive powers, and a President elected by the National Assembly, Mr. Issaias Afwerki.

The Federal Democratic Republic of Ethiopia (FDRE):

- June 1994: Election of Ethiopia's 547-member Constituent Assembly.
- 8 December 1994: The Constituent Assembly adopted the Constitution of the Federal Democratic Republic of Ethiopia, which sets up a bicameral legislature and a judicial system, guarantees human rights to all Ethiopian citizens⁶, and allows any of Ethiopia's nine regions to secede.
- May-June 1995: Elections for Ethiopia's national Parliament and regional legislatures. Most opposition parties chose to boycott these elections, ensuring a landslide victory (98% of the vote) for the EPRDF.
- August 22, 1995: The 1994 Constitution came into force and Mr. Meles Zenawi was elected Prime Minister of the FDRE. His government promoted a policy of "ethnic federalism", devolving significant powers to regional, ethnically based authorities.
- May 1998-June 1999: Armed conflict with Eritrea.
- May 12, 2000: Massive attack launched against Eritrea.
- May 14, 2000: National elections for the House of People's Representatives (HPR). Numerous acts of violence against opposition candidates and supporters, as well as irregularities - notably in rural areas- were reported. EPRDF was reaffirmed as ruling party of the country.
- December 12, 2000: Under the auspices of the OAU, Ethiopia and Eritrea signed the Algiers Agreement of Cessation of Hostilities. A plan called for the creation of a 25 km buffer zone along the border, patrolled by a United Nations peacekeeping force. The construction of the boundary posts began in May 2003, soon interrupted as both countries rejected the proposed border demarcation.
- April 2001: Student protests and demonstrations were violently repressed by police and government forces, killing over 40 persons.
- October 8, 2001: Parliament re-elected Meles Zenawi Prime Minister for a six-year term.

C. General data⁷

<i>Population</i>	68,000,000
<i>Area</i>	1,127,127 sq km
<i>Ethnic groups</i>	Oromo 40%, Amhara and Tigre 32%, Sidamo 9%, Shankella 6%, Somali 6%, Afar 4%, Gurage 2%, other 1%
<i>Infant mortality rate</i>	102 ‰
<i>Life expectancy at birth</i>	40.88 years
<i>People living with HIV/AIDS</i>	1.5 million (2003 est.)
<i>HIV/AIDS - deaths</i>	120,000 (2003 est.)
<i>Population below poverty line</i>	50% (2003 est.)
<i>GDP growth rate</i>	3.8 % (2004 est.)
<i>GDP per capita</i>	780 US\$

⁶ See Preamble, Article 10 and Chapter 3 of the 1994 Constitution, Annex 3.

⁷ Sources: UNDP Human Development statistics and the CIA World Fact Book.

III – HUMAN RIGHTS DEFENDERS IN A CONTEXT OF ETHNIC FEDERALISM AND TENSIONS

A. “Ethnic federalism” and its impact on human rights defenders

In 1991, a coalition of regional and ethnic liberation movements overthrew the regime of Mengistu Haile Mariam. When the current government, led by the Ethiopian Peoples’ Revolutionary Democratic Front (EPRDF), thereafter came to power, the recognition of Ethiopian ethnic diversity became one of the core principles of the new regime’s policy. This ethnicity-centred vision of State formation led to the establishment of a federation composed of two self-governing administrations (Addis Ababa and Dire Dawa) and nine regional, ethnically-based States, namely: Afar, Amhara, Benishangul Gumuz, Gambella, Harari, Oromia, Somali, Tigray and the Southern Nations, Nationalities and People Regional State (SNNPRS)⁸.

According to Article 46(2) of the federal Constitution, “States shall be determined on the basis of the settlement patterns, language, identity and consent of the people concerned”. The rationale for this type of “ethnic federalism” was to offer an opportunity to promote the rights and benefits of ethnic groups in Ethiopia by allowing the locals to determine their own destiny, to learn in their local language, and to homogeneously work for the interests of their group so as to preserve their own culture and history. Several officials met by the delegation, and notably the Ministers of Education and Information, argued that ethnic federalism was the only alternative to civil war in the country and that it prevented one group from dominating the other.

Equality between States is also theoretically guaranteed by the secession clause enshrined in Article 39 of the FDRE Constitution, which provides that “every Nation, Nationality and People of Ethiopia has an unconditional right to self determination, including the right to secession⁹”. At the time, this provision was presented as the solution to the problems posed by multi-ethnicity in Ethiopia, as well as a constitutional guarantee of the States’ autonomy towards the central government.

Although several provisions of the Constitution pose severe procedural obstacles to the realisation of this secession clause¹⁰, numerous human rights defenders interviewed by the delegation asserted that it tended to be divisive and to encourage ethnic tensions and conflicts. Indeed, important socio-economic disparity among the States engendered increasing ethnic-based fights for resources such as land and pastures, all the more that none of the regions is totally ethnically homogenous (the SNNPRS, for instance, counts over 45 different ethnic groups).

Moreover, while the delegation could observe that the country remains under tight federal government control, several civil society representatives underlined the core political dimension of ethnic federalism, mainly set forth by the EPRDF government - dominated by Prime Minister Meles Zenawi’s Tigrayan People’s Liberation Front (TPLF) -, which obviously takes advantage of this system to perpetuate its position as a dominant party by dividing other ethnic groups. Indeed, all nine Ethiopian States are ruled by EPRDF member or affiliate parties¹¹, and regional political life seems to be highly manipulated by the federal government through the “ethnic argument” which prevents viable trans-ethnic parties from emerging. Although the TPLF only represents a minority of the Ethiopian population, it is predominant in governmental bodies. The Minister of Information, while meeting with the Observatory’s delegation, formally denied that ethnic groups are not equally considered and represented, and argued that Tigrayans are a minority out of the 548 seats in the Parliament. However, diplomatic missions confirmed that there is supremacy of Trigrayans in official organs.

Ethnic hatreds spawned by this scheme are the source of most human rights abuses in Ethiopia, and defenders reported grave violations - including alleged ethnic cleansing in some States - as a result of the government’s ethnic policy¹². Marginalized and non-indigenous groups, who face an

⁸ The nine Ethiopian States are enumerated in Article 47 (1) of the 1994 FDRE Constitution.

⁹ See Annex 4.

¹⁰ See Article 39 (4) of the FDRE Constitution, Annex 3.

¹¹ The four EPRDF member parties are: the Oromo People’s Democratic Organisation (OPDO), the Amhara National Democratic Movement (ANDM), the Southern Ethiopian People’s Democratic Front (SEPDF) and the dominating TPLF.

¹² EHRCO reported on ethnic-based conflicts and resultant human rights violations in Special Report (SR) Nos 27 (dated 13/12/99) where in North Omo 7 people were killed, 11 shot, 10 beaten, 78 detained, 2 disappeared; SR 29; SR 32; SR 34

increased xenophobia in certain regions, remain largely excluded from regional civil and political life, which sometimes leads to the rise of resistance movements: it is notably the case of Mena, Menja and Gafat communities in the SNNPRS and of Falasha or Bete-Israel groups in the Amhara region.

In this context, human rights defenders are at the forefront when working on trans-regional issues or investigating into violations linked to inter-ethnic tensions. On January 5, 2004 for instance, the Ethiopian Human Rights Council (EHRCO) published its 72nd special report on human rights in the Gambella region, in the western part of Ethiopia, undergoing a violent ethnic conflict. This report, entitled *A Ferocious Attack Committed in Gambella Region*¹³, questioned the government's ethnic policy and denounced the assassination of at least 13 civilians by the Ethiopian armed forces. This information was confirmed thereafter by a fact-finding commission established by the Parliament in April 2004. On January 18, 2004, the government however denied that any civilians had been killed by the armed forces and threatened to "take appropriate measures against EHRCO". This statement was widely broadcast on television and published in various newspapers.

It is therefore quite clear that the ethnic federalism policy of the Ethiopian government not only gives rise to ethnic conflicts and serious human rights violations, but it also creates dangerous conditions for the work of human rights defenders. Most people interviewed during the mission attributed the conflict between the federal State and some civil society organisations such as the Ethiopian Teachers' Association (ETA), the Ethiopian Free Press Journalists' Association (EFJA), student leaders (countrywide) and EHRCO, to disagreements around this divisive policy. According to the Ethiopian authorities, however, this disagreement on federalism is based on the fact that human rights defenders used to belong to the ruling ethnic group during the Mengistu regime.

B. When ethnic policy merges with the fight against terrorism: specific constraints on defenders denouncing human rights abuses in Oromia

The political will to strengthen anti-terrorist rules and legislation has been reinforced since the attacks of September 11, 2001. Ethiopia is notably involved in the fight against terrorism at the African level: the fourth (March 12-16, 2003) and fifth (June 30-July 3, 2004) ordinary sessions of the Executive Council of Ministers of the African Union, which were held in Addis Ababa, respectively established the African Union's Centre for Studies and Research on Terrorism¹⁴, which was inaugurated on October 13, 2004 in Algiers, and recommended¹⁵ the adoption of the Draft Protocol to the OAU Convention on the Prevention and Combating of Terrorism, which was confirmed by the third ordinary session of the AU Assembly of Heads of State and Government¹⁶ held in Addis Ababa (July 6-8, 2004).

At national level, Article 252 of the 1957 Ethiopian Criminal Code considers terrorist activities as criminal offences punishable by life imprisonment and death sentence. Although legitimate and necessary as it is, the fight against terrorism in Ethiopia has been used to the detriment of the respect for human rights, and the Ethiopian government often refers to the global war against terrorism to justify the clamping down on legitimate opposition, peaceful civil protest and human rights defenders.

(18/09/2000) in Eastern Wellega where 8 people were killed & 55 had property destroyed; SR 35 (2/11/00) in Arero where 75 people were killed, 33 wounded, 9 houses destroyed, 570 cattle, 1,624 goats, 16 mules, 176 camels and 80,000 birr looted; SR 38 (23/02/01) where in Eastern Wellega 100 people were killed, 4 injured & in Harar Town 3 killed, 28 injured, & in Eastern Shewa 4 killed, 5 injured; SR 48 (4/02) Oromya region where 8 people were killed, 106 detained, 5 wounded; SR 49 (2/05/04) Tepi, Shekicho Zone where 28 people were killed, 6 injured, 25 detained & 4,738 displaced; SR 51 (4/06/02) Awassa region where 25 people were killed, 26 injured, 36 detained; SR 55 (6/09/02) Agnuak and Nu-er Tribes where 60 people were killed, 41 injured, all houses in 8 kebbels were burnt and 8,780 people displaced.

¹³ Between December 13 and 15, 2003, civilians originating from the Amhara and Tigray regions and federal soldiers reportedly killed hundreds of members of the Anuak ethnic group in Gambella town. See EHRCO Website: www.ehrco.net.

¹⁴ See AU document EX/CL/Dec. 82 (IV), Executive Council's *Decision on the African Centre for Studies and Research on Terrorism (ACSRT)*.

¹⁵ See AU document EX.CL/Dec.125 (V), Executive Council's *Decision on the Draft Protocol to the OAU Convention on the Prevention and Combating of Terrorism*.

¹⁶ See AU document Assembly/AU/Dec.36(III), *Decision on the draft Protocol to the OAU Convention on the Prevention and Combating of Terrorism*.

More specifically, in the context of renewed tensions between the authorities and the Oromo ethnic group¹⁷, and as several terrorist bomb attacks were launched in the country in the past few years¹⁸, the Ethiopian government regularly equated the Oromo Liberation Front (OLF)¹⁹ to a terrorist organisation, also accusing Eritrea of sheltering and backing the OLF and the Ogaden National Liberation Front (ONLF). The conflict between the Ethiopian police and military forces and the OLF gave rise to serious abuses in the Oromia region (it is estimated that in 2004 several thousands members of the Oromo ethnic group were detained on suspicion of having links with the OLF, and cases of extra-judicial killings were also reported by several civil society organisations), and human rights defenders denouncing the violations of Oromo populations' rights were systematically repressed by the authorities.

On January 4, 2004, the Mecha Tulema Association (MTA), an NGO founded over 40 years ago for the defence of Oromos' rights and that has been targeted by the authorities since its creation²⁰, organised a peaceful demonstration in Addis Ababa to protest against the government's decision to move Oromia's regional capital from Addis Ababa to the town of Adama (formerly known as Nazaret). Although the MTA notified the event to the Peaceful Demonstration and Public Gatherings "Permission" office, it was denied authorisation without a reason on January 3, 2004. As MTA leadership claimed that it had fulfilled official requirements for holding the demonstration, participants gathered on January 4, 2004 at Meskel Square, Addis Ababa. The police declared the demonstration illegal and violently dispersed it, before arresting Mr. **Diribi Demissie**, MTA president, several other MTA officials and over 100 demonstrators - most of them students. These persons were taken to the third police station in Addis Ababa, and most of them were released that same day without charges, after being warned against any future demonstrations. Most of the students arrested were suspended for one year by the University's administration, and benefited from MTA financial support. On May 18, 2004, government forces conducted an unwarranted search of the MTA office and premises and arrested Messrs. Diribi Demissie and **Gemechu Feyera**, MTA vice president, among fifteen other Oromos, on suspicion of links with the OLF and of involvement in a grenade attack launched on April 29, 2004 in the Addis Ababa University (AAU), which killed one student. Mr. **Sentayehu Workneh**, MTA treasurer and an employee of the US Embassy²¹ in Addis Ababa, was subsequently arrested on May 20, 2004 and the police searched his home without a warrant; Mrs. **Ayelu Ittisa** and Mr. **Jigsa Adbeta**, members of the MTA secretariat, as well as Mr. **Legesse Detti**, former MTA secretary general, and Messrs. **Legesse Yadeta** and **Dechasa Benti**, board members of the association, were also arrested in the following two weeks and later released. In July 2004, the government officially suspended MTA's licence to operate. On August 9, 2004, Messrs. Diribi Demissie, Gemechu Feyera and Sentayehu Workneh were released by the Federal High Court on a 10,000 birr (940 euros) bail, after police officials appealed the decision for their release ruled by the Federal First Instance Court on July 22 and 23. The three of them were arrested again on August 16, 2004, when the Federal Supreme Court ruled in favour of the Prosecution's appeal against their release. They were freed on a 10,000 birr bail on November 15, 2004, after the prison's authorities first refused to comply with the decision of the Federal High Court (which was confirmed by the Federal Supreme Court in October 2004).

Oromo journalists have also been targeted by the authorities on suspicion of "having links with terrorist organisations and the OLF", forcing at least 12 of them into exile in the course of 2004. Messrs. **Waqjirra Dabessa** and **Insermu Shiferaw**, respectively deputy chief of the news department

¹⁷ The Oromo ethnic group represents over 40% of Ethiopian population. One of the sources of the conflict in the region is the demarcation of the territories owned by indigenous peoples often facing eviction. The Ethiopian government called for a referendum over the Oromo lands in the provinces of Borana, Bale, East and West Hararge of Oromia at the end of 2004. Numerous irregularities were reported during the referendum, while the government allegedly armed Somali militias, who initiated killings in the Cheraro Doba district in Western Hararge, on January 19, 2005.

¹⁸ A bombing of the Segen Hotel in Addis Ababa in July 2003 injured 31 persons, and the September 2003 bombing of a passenger train near Adiquala killed two persons and injured nine others. On April 29, 2004, an unidentified person threw a hand grenade into a television room at Addis Ababa University (AAU) during a Tigrayan language news programme, killing one student and injuring eight others.

¹⁹ The Oromo Liberation Front (OLF), founded in 1974, is a separatist rebel group opposed to the Amhara and Tigrayan dominance in Ethiopia, and fighting for establishing a separate and autonomous Oromia State. It has been particularly active in the South of the country since 1995.

²⁰ In 1966, MTA leaders were assassinated by government forces.

²¹ The US Embassy's officials specifically reported his case to the Observatory's delegation, underlining that Mr. Sentayehu Workneh was subjected to recurrent harassment from the authorities and that he had already been arrested on several occasions in the past.

and member of the Oromo-language service of the *Ethiopia Television (ETV)*, witnessed police violence on January 4, 2004, and broadcast a report about the demonstration dispersion. On April 30, 2004, they were both arrested by federal police and security services who searched their houses without a warrant and seized numbers of documents. Messrs. Shiferaw and Dabessa appeared before the court on May 3, 2004, and remanded in custody upon the request of the police. On July 23, the court ordered their release on bail amounting to 5,000 birr (460 euros), a decision that the police ignored despite the numerous petitions filed by the defence. On August 2, 2004, Messrs. Shiferaw and Dabessa appeared before the Federal High Court and were formally charged under Articles 32, 252 and 522 of the Criminal Code with “passing government information to OLF leaders”, “planning attacks”, “criminal association of a terrorist nature” and “fundraising for the purposes of carrying out acts of terrorism”. They were transferred to Addis Ababa Kerchiele prison. On August 6, 2004, the Federal High Court ordered their release on a 10,000 birr (950 euros) bail and adjourned the case until October 11. Mr. Shiferaw was released on bail on August 9, 2004, but Mr. Dabessa’s request for release was rejected by the police who argued that they had appealed the decision of the Federal High Court, which adjourned the case until October 21. On August 16, 2004, a week after he was released, Mr. Shiferaw was called in to his office at the *ETV*, and arrested again by federal police upon his arrival at *ETV* premises. He was subsequently released in mid-October 2004 on High Court’s orders; however, *ETV* refused to re-hire him, and he was arrested for the third time on January 11, 2005. Mr. Shiferaw and Mr. Dabessa (who has been detained without interruption since his arrest on April 30, 2004) appeared before the Federal High Court on March 7, 2005, when the hearing was postponed to an unknown date.

It is to be noted that, although Messrs. Shiferaw and Dabessa’s case was specifically reported to the Observatory’s delegation on several occasions in July 2004, the Minister of Information refused to communicate any information to the delegation, simply stating that they were about to be charged with links to a terrorist organisation - the OLF - by the Prosecutor’s office. As the authorities withheld the two journalists’ names, the delegation could only find out about their identity, whereabouts and the charges against them through EHRCO information²².

Human rights defenders who denounced the acts of violence perpetrated by the police forces against Oromo students, who organised several demonstrations and movements from February 2004 on to protest against the massive arrests of their colleagues, discrimination²³ and the suspension policy of universities’ administrations, have also been suspected of supporting the OLF. For instance, in March and April 2004, many teachers in Ambo city, 120 km west of Addis Ababa (Northwestern Oromia), were suspended following student protest movements in the region. Although he had not participated in these movements, Mr. **Abebe Shambi**, a civics teacher and the only representative of EHRCO in Ambo, was accused by the authorities and the administration of Ambo primary school where he taught of “propagating the objectives of EHRCO amongst the students” and encouraging them to rebel. On April 26, 2004, Mr. Shambi was suspended from teaching until September 2004, when he was transferred to the Odo Liben primary school in the outskirts of Ambo.

When the Observatory’s delegation met with Mrs. Genet Zewde, Minister of Education, and asked about cases of teachers arrested, detained and dismissed following student protests, she denied any responsibility and explained that she had absolutely no power to change this situation, of which she was allegedly not even aware as these cases were supposedly dealt with at the regional level.

Furthermore, following the publication, on May 7, 2004, of an EHRCO report condemning the terrorist actions led in the Oromia region both by the authorities and the OLF between March and May 2004²⁴, the Ministry of Information launched a vast smear campaign against the association on State radio and television channels. In the two main government-controlled newspapers, the Ministry accused EHRCO of having its own political agenda and of not being a human rights organisation. For the past few years, Mr. **Mesfin Wolde Mariam**, EHRCO president²⁵, has been accused on several occasions by the authorities of being an OLF member, as he was opposed to the conflict with Eritrea and because of its outspoken position against violence against Oromo populations.

²² See EHRCO 22nd regular report: <http://www.ehrco.net>.

²³ A hundred of Oromo students are estimated to have been denied graduation although completing the requirements in their respective fields of study in 2004.

²⁴ See EHRCO 78th special report: <http://www.ehrco.net>.

²⁵ See Part V: Specific cases.

The situation in Oromia seriously affects defenders' work and activities in the region, as they are caught in a stranglehold between the different parties to the conflict. In December 2000 for instance, two EHRCO members, Messrs. **Alemayewu Fanta**, **Wondimagegn Gashu**, and an EHRCO supporter, Mr. **Getaneh Dimtsu**, were arrested in Eastern Wellega (Oromia), while investigating human rights abuses arising from a conflict opposing Amhara and Oromo peasants in the region²⁶. Following instructions from EHRCO's headquarters, Mr. Alemayehu Fanta, head of EHRCO's branch office in Bahir Dar, travelled to Eastern Wellega where he was arrested on December 19, 2000 for entering Oromia without the knowledge and permission of the region's officials, who notably declared: "You were sent by the Amhara regional government, (...) Oromia is for Oromos; Let alone you, even Mary Robinson cannot tell us about human rights law". He was released on a 1,000 birr (95 euros) bail eighteen days later. On December 19, 2000, Mr. Wondimagegn Gashu, a staff member of EHRCO's headquarters, and Mr. Getaneh Dimtsu, an EHRCO supporter, were mishandled and arrested upon their arrival in Eastern Wellega by local officials and Gida Kiramo wereda (district) agents. Mr. Wondimagegn Gashu was detained for a day and a half, and the police instructed him to "return to where he had come from", whereas Mr. Getaneh Dimtsu was detained for 71 days at Nekemte prison for "communicating with the bandits" as he was seen with a tape recorder and a camera; he was released on February 28, 2001 on a 1,500 birr (140 euros) bail. All three were accused of "moving around the conflict area inciting Amhara and Omoro peoples into conflict". Although no charges have officially been brought against them since then, EHRCO members underlined that these facts remain liable of proceedings by the authorities that sometimes take advantage of a judiciary they dominate²⁷ to initiate legal actions against defenders for facts dating back to several years.

²⁶ See EHRCO 38th and 40th special reports: <http://www.ehrco.net>.

²⁷ See Part IV, B.

IV – SHRINKING OF DEMOCRATIC SPACE? ADMINISTRATIVE AND LEGISLATIVE CONSTRAINTS ON THE WORK OF HUMAN RIGHTS DEFENDERS IN ETHIOPIA

A. Police brutality and related impunity

The right to life in Ethiopia is guaranteed by Article 15 of the FDRE Constitution, which provides that “no one shall be deprived of his life except by reason of his conviction in accordance with the law for a serious crime committed by him”. It is also protected by Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Ethiopia ratified on September 11, 1993. Likewise, Article 18 of the FDRE Constitutional and Article 7 of the ICCPR prohibit the use of torture, while Articles 17 of the Constitution and 9 of the ICCPR condemn arbitrary arrest and detention.

In spite of these provisions, between 1991 and 2003, EHRCO recorded a total of 3,919 extra-judicial executions in Ethiopia, 693 torture and non-fatal shootings cases, 1,158 illegal detentions and 81,760 cases of miscarriage of justice in the country²⁸. Between December 2003 and April 2004 only, the association reported 158 extra-judicial killings, 106 cases of bodily injuries, 396 cases of torture and over 220 cases of arbitrary detentions (the number of students’ arrests not being included). Although “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms”²⁹, police forces and State agents are responsible for a number of these cases, which sometimes affect human rights defenders, and play an undeniable role in curtailing fundamental freedoms in the country. According to the diplomatic missions met by the Observatory’s delegation, these cases involve regional and local police forces rather than federal police.

Police brutality mainly arises during ethnic clashes or peaceful demonstrations, which are regularly violently dispersed, in violation of Article 30 of the FDRE Constitution and Article 5 (b) of the UN Declaration on Human Rights Defenders that guarantee freedoms of assembly and peaceful demonstration:

- On December 12 and 13, 2003, a crisis between the Anuak and other ethnic groups was violently repressed by the local police forces, killing at least 13 civilians³⁰.

- On March 11, 2004, in Oromia, the police violently repressed a student demonstration in the Nekemte Secondary School, in Eastern Wellega district. Students were urging for the reinstatement of their colleagues expelled from Addis Ababa University, and protesting against the regional capital’s relocation from Addis Ababa to Adama (Nazaret). The police arrested 15 students on the spot, 12 of whom were released on the same day. Four days later, the police stormed the school and beat up at least 36 student protesters of Nekemte, Derge and Biftu Secondary Schools. Dozens of them were arrested and released later on the same day.

- On March 18, 2004, the local police blocked student protesters of the Holeta College of Agriculture, West Shewa zone, as they were about to march out of the campus. The police arrested and beat several students on the street. Nine of them were detained for 20 days without being judged. Following the student protests, several teachers from schools of Ambo and Guder towns were arrested. On April 9, 2004, several teachers were arrested and their houses searched without court warrants.

Police violence in electoral periods is all the more alarming that it remains unpunished and that human rights defenders denouncing these acts are subsequently targeted by the authorities: in February 2004 for instance, EHRCO published a report on the observation of district elections held on January 25, 2004 in the eastern province (Somali)³¹. The report especially denounced many cases of abuses of and violations against opposition party members and candidates by local police agents. A few days later, the National Elections Council, in its gazette, warned EHRCO that its authorisation to observe elections in the country would be withdrawn if it did not disclose its articles to government authorities before publishing them. There was no follow-up to this threat.

²⁸ See EHRCO Compiled Reports of Volumes 1 and 2, covering the period from December 1991 to August 2002.

²⁹ Article 2 of the UN Declaration on Human Rights Defenders, see Annex 1.

³⁰ See EHRCO 72nd Special Report, *A Ferocious Attack committed in Gambella Region*, January 5, 2004, <http://www.ehrco.net>.

³¹ See EHRCO report, *Observation Report On the Somali Regional State Wereda (district) Councils Elections*, <http://www.ehrco.net>.

Moreover, since mid-2004, EHRCO has documented an increasing number of acts of intimidation and harassment against opposition members or supporters carried out by the police³², undermining a free and fair process for the upcoming elections of members of the House of Peoples' Representatives, which will be held on May 15, 2005:

- On March 30, 2004, officials arrested Mr. Ayalew Sisay, a member of the Kebele peasant association and of the All Ethiopia Unity Party (AEUP), and detained him for one day for refusing to quit its AUEP membership despite the promises of a post in the administration that were offered to him.

- On August 22, 2004, Mr. Fanta Liyew, a guard of the AEUP office in Shebel Berenta district, was attacked during the night with a muzzle of a gun by policemen who forced their way into the premises.

- On August 30, 2004, members of the National Reserve Force and armed men arrested Messrs. Tize Habtamu and Abiyot Tize, both members of the Ethiopian Democratic Unity Party (EDUP), in their house in Awobal district, took them to a town called Lega Neous and beat them so violently that Mr. Tize Habtamu has now difficulty moving and urinating.

- On September 4, 2004, Mr. Ayalew Bayu Deya Tebba escaped an attack by two district police officers who wanted to punish him for his EDUP membership.

Minister of Education Mrs. Genet Zewde declared that, although police forces "try to restrain their emotions and follow their code of ethics" and are trained through some civic education programmes, they remain brutal and very little aware of the rule of law. She also stated that, due to the patriarchal structure of Ethiopian society, women were particularly targeted by violence, but she denied the institutionalised use of torture and the ongoing impunity. US Embassy officials, however, asserted that most investigations carried out on police brutality never concern major incidents and that most of the cases are simply dealt with through internal disciplinary measures – a statement that was later confirmed to the delegation by civil society organisations. Mr. Mesfin Wolde Mariam, EHRCO president, notably declared: "To my recollection, not a single policeman who has violated the right to life has been prosecuted. The police killers get transferred from one place where they will have committed extra-judicial killings to the other. Perpetrators are not brought to justice and no compensation is paid to the victims. No redress, no remedies: killing, torture, involuntary disappearances, false imprisonment go unpunished".

B. The weaknesses of the judicial system

Article 37(1) of the FDRE Constitution stipulates: "everyone shall have the right to submit his justiciable grievances to and obtain a decree or judgment from a court of law or any other tribunal given by law the power of adjudication".

Human rights defenders interviewed during the mission, however, severely criticised the administration of justice in the country and underlined the threat posed by long-term provisional imprisonments and other abuses of the right to due process of law. In June 2004, EHRCO estimated that over 10,000 people were in prison without a trial in Ethiopia and had never been afforded an opportunity to have a hearing in court, in violation of article 9(3) and (4) of the ICCPR, which guarantee the right to be brought promptly before a judge. Several human rights defenders, as well as lawyers and members of the Ethiopian Bar Association (EBA), also strongly asserted that the judiciary, as weak and easily influenced as it is, is not truly independent.

The appointment of judges is of first concern: human rights defenders and lawyers interviewed by the delegation considered that the process is far from being transparent and is largely marred by the interests and influence of the executive, who in fact detains a strong discretionary power over judges' appointment, although the whole process is theoretically fulfilled by the Judicial Administration Council (JAC). It is to be noted that the independent EBA has no representative within the JAC, which is composed of members of Parliament and senior judges, and that neither lawyers nor civil society representatives are consulted or involved in the appointment process, the criteria of which remain largely unknown. Moreover, the executive often discretionarily dismisses judges. These dismissals, which are "never challenged nor questioned"³³, take the form of forced resignations or renewed political appointments. The latter method consists in appointing judges on ethnic grounds according to

³² See EHRCO 79th and 80th special reports: <http://www.ehrco.net>.

³³ Interview with lawyer Mr. Abebe Wolde Worke Yohannes.

a quota system. Concordant testimonies stated that numbers of judges quit their position because of the lack of freedom of work, thus participating in the judiciary's under-staffing.

Nevertheless, lawyers and NGO members unanimously agreed that there is a very high turnover rate among judges, who are often appointed very young by the executive: most of them have just graduated from a civil service college where they have been trained along ethnic and political lines, with poor academic record to fulfil their function and no human rights training. The Minister of Information, Mr. Bereket Simon, explained that the federal government has no influence on universities' programmes, which come under regional States' responsibility, and acknowledged that many law schools were facing difficulties and inadequacy as some training programmes were drafted in the 1950s - therefore not including international human rights conventions. Such low quality appointments, which result in a poor level of justice practiced by incompetent judges who hold government-oriented decisions, seriously tarnishes the reputation of the judicial system in the country³⁴ and does not comply with fundamental principles of impartiality and independence.

Such a judiciary poses particular threats to human rights defenders, who often consider it as an impediment to their activities rather than an efficient, equitable legal recourse and the guarantor of universally recognised human rights. Indeed, defenders remain potentially subjected to serious judicial persecutions. This is notably the case of Messrs. **Mesfin Wolde Mariam**, EHRCO president, and **Birhanu Nega**, chairman of the Ethiopian Economic Association, who are still prosecuted on grounds of fallacious accusations for facts dating back to 2001 for their outspoken position against the police violence that struck a student protest movement in April 2001. Their trial has been postponed over and over again since their arrest in 2001 and the next hearing is scheduled for August 5, 2005. Mr. **Abate Angore**, a member of the executive board of the Ethiopian Teachers' Association (ETA), is facing the same type of harassment, and was convicted on February 3, 2005, for facts dating back to 2001 in similar circumstances, whereas he had already been judged in 2002 for this affair³⁵.

This situation is all the more problematic that lawyers' independence is far from being guaranteed by this judicial system. When meeting with the Observatory's delegation, members of the EBA explained that lawyers have to be registered with the Ministry of Justice to be authorised to work. In compliance with its mandate, the Ministry has therefore set up a Committee composed of five people tasked with checking the eligibility of lawyers before granting them a licence to practice law. This Committee is also mandated to deal with discipline or misconduct cases involving lawyers. As it is also able to make recommendations to the Minister of Justice about lawyers' registration or disciplinary measures, the legal profession is in fact placed under the direct authority of the Minister of Justice. The status of the Minister is very revealing of the dependence and links between the judiciary and the executive: indeed, the Minister of Justice is also the Chief Prosecutor (Attorney General), and thus not only decides whom to prosecute, but also pursues the prosecution whilst overseeing judges' appointment and lawyers' registration.

As this registration system thus does not make it compulsory for lawyers to belong to the Ethiopian Bar Association (EBA), the EBA gathers less than 50% of the lawyers in the country and has no regulatory authority. The Association, which was created forty years ago, has been lobbying the government in order to allow legal professionals to be self-regulated in terms of registration, discipline and ethics of the profession, this self-regulation being a prerequisite for the independence of the legal profession: several lawyers denounced that the overwhelming power of the Minister of Justice, which has authority for granting or withdrawing lawyers' licence, subjects the latter to manipulation by the executive branch.

In this context, human rights lawyers who support defenders or oppose the State in courtrooms remain at a constant risk of being subjected to spurious disciplinary charges or withdrawal of their licence by the Ministry of Justice, as in Mr. **Abebe Wolde Worke Yohannes'** case³⁶. It is to be noted that several cases of harassment and professional reprisals against human rights lawyers were reported to the Observatory's delegation. However, most of the lawyers concerned preferred their identity and cases not to be mentioned for fear of retaliation. Consequently, urgent reforms are

³⁴ The Observatory's delegation was notably reported that the President of Ethiopia, Mr. Girma Wolde-Giorgis Lucha, declared on national media that "judges are thieves".

³⁵ See Part V: Specific cases.

³⁶ *Idem*.

required so that the legal profession will eventually be an effective actor in the building and strengthening of democracy in Ethiopia.

However, some improvements are to be noted, notably compared to the mid-1990s when the judiciary was clearly the ruling power's tool to silence defenders. In March 2005 for instance, the Federal High Court confirmed the ruling of the First Instance Court issued in December 2004 against the Ministry of Justice's attempt to challenge the Ethiopian Free Press Journalists' Association (EFJA)'s legal existence³⁷. Likewise, the Federal High Court ruled in December 2004 that the independent ETA, which was refused registration due to proceedings initiated by a "surrogate" ETA backed by the government, was the one legal³⁸. These positive steps, however, remain fragile as these decisions have been challenged by the executive - and notably by the Ministry of Justice: State agents and representatives may simply ignore courts' rulings, or in some cases instrumentalise the legislature's majority to foster the adoption of new laws retrospectively applicable when they dislike a judicial order³⁹.

When meeting with the Observatory's delegation, the Minister of Information Mr. Bereket Simon acknowledged that the Ethiopian judicial system suffered from an efficiency problem and asserted that reforms were underway to modernise the judiciary and increase the judges' efficiency. However, when asked for details about these reforms, the Minister was unable to provide any further explanations.

C. Renewed legislative constraints on human rights defenders' activities: "Even on paper, the danger is coming"⁴⁰

As all defenders interviewed by the delegation underlined, most Ethiopian laws entail human rights provisions, in addition to the Bill of Rights enshrined in the 1994 Constitution guaranteeing the respect for universally recognised human rights and fundamental freedoms to all Ethiopian citizens⁴¹.

However, according to Pr. Mesfin Wolde Mariam, EHRCO president, "the law means nothing in this country". Moreover, new laws, currently at drafting stage, are all the more alarming that their provisions clearly contradict the Constitution. Although the Council of Constitutional Enquiry (equivalent to a Constitutional Court), established by Article 82 of the Constitution should fulfil its mandate and review the constitutionality of these new laws, this Council is in fact inoperative, as its referral modalities are not provided for by the Constitution and remain largely unknown among the population. Moreover, the question was raised of the qualification of its members.

Furthermore, the Commission for Human Rights, the head of which was appointed by Parliament on June 29, 2004, along with the Ombudsman⁴², is entitled for proposing amendments to laws. However, this institution, which shall be responsible for investigating and redressing human rights violations committed on citizens as well as for promoting and teaching human rights to the population and police forces, is not yet operative. Moreover, it also suffers from a credibility problem, as its head - as well as the Ombudsman - were appointed without prior consultation with civil society, which expressed reservations about their competence and independence: the head of the Commission, Mr. Kassa Gebre Hiwot, is a former ambassador, without any particular experience in the field of human rights, and the Ombudsman, Mr. Abay Tekle Beyene, is a young academic and former member of the Amhara State Electoral Commission, which is close to the executive power.

1. Restrictive legislation and draft law on associations and NGOs

The legislation currently in force on freedom of association stems from the 1960 Civil Code's provisions on associations and the 1964 Associations Registration Regulation Act.

³⁷ See Part V: Specific cases.

³⁸ *Idem*.

³⁹ Most people interviewed explained that the Parliament was composed of 98 to 99% of supporters of the government. The cases under the Anti-Corruption Law fall into this category with over 54 people in jail for an indefinite period as of June 30, 2004 under this draconian proclamation which ousted the jurisdiction of the Court to grant bail.

⁴⁰ Interview with Mr. Amara Aregawi, editor-in-chief of the newspaper *The Reporter*.

⁴¹ See Annex 3.

⁴² In compliance with Article 55 of the Ethiopian Constitution providing for the creation of national human rights institutions, the Human Rights Commission and the Ombudsman were officially established in July 2001.

These laws oblige associations to register with the Ministry of Justice after completing a registration process that is essentially controlled by the authorities. To register, NGOs have to present the association's by-laws and memorandum, the names and profiles of its members, a list of the activities planned inside and outside the country, as well as guarantees of solvency from its donors – the latter requirement being very problematic as an NGO first has to be legally registered to apply for funding.

The licence to carry out activities, which has to be periodically renewed, is granted by the Ministry of Justice, which is free to withdraw or modify it. Many human rights organisations have stressed the discretionary powers of the Ministry, which grants or renews registration in a selective manner. Organisations such as EHRCO, EFJA and ETA have all had numerous problems in registering⁴³, all the more that there is no set time limit between filing for and receiving authorisation, while pro-governmental NGOs get registered very quickly and easily. As Pr. Mesfin Wolde Mariam declared: "The Ministry of Justice registers NGOs and gives rules of procedure. In practice, the processing of application is arbitrary. Rules are interpreted differently for different organisations. Inordinate delays are experienced in many cases while other applications are efficiently processed for no cogent reason. Human rights groups have more difficulties in getting registration than humanitarian organisations. If licence is not granted, then the aggrieved party appeals to the Minister of Justice whose office will have been the one that turned down the application in the first place!"⁴⁴.

The Observatory's delegation noticed that the lack of clarity as to the criteria according to which an application for registration can be granted or rejected renders the whole registration process discretionary and thus undermines the work of human rights defenders by creating substantial uncertainty about their future if they were seen as recording, documenting and reporting on human rights violations in a manner that displeased the government.

Since 2001, the Ministry of Justice has been studying a new draft law on NGOs. The first draft that was presented in 2001 had been severely criticised by various civil society associations that collectively had formed a working group. This group was institutionalised in 2003 in the form of a NGO Legal Framework Consultative Taskforce⁴⁵, which participated in the formulation of the new draft law. A public debate was held in July 2004 on the newly proposed text, but many independent human rights associations were not invited to participate.

Although this draft law authorises associations to organise themselves in networks, it allows the Minister of Justice extensive powers to interfere in the internal affairs of NGOs and thus contributes to maintaining a strict control over civil society. The Ministry of Justice, for instance, can decide on the administrative dissolution of an association, dismiss its members (whether elected or not), and order confiscation of documents or a search of the premises without a warrant. The bill is to be submitted to the Council of Ministers in 2005, and then to the Parliament for adoption as a law. In late October 2004, the NGO Legal Framework Consultative Taskforce presented an alternative draft legislation for public debate.

2. Freedom of peaceful assembly and demonstration

Article 30 (1) of the FDRE Constitution states: "everyone shall have the freedom, in association with others, to peaceably assemble without arms, engage in public demonstration and the right to petition. Appropriate procedure may be enacted to ensure that public meetings and demonstrations do not disrupt public activities, or that such meetings and demonstrations do not violate public morals, peace and democratic rights".

However, the Peaceful Demonstration and Public Political Meeting Procedure Proclamation (No. 3/1991) adopted on August 12, 1991 and supposedly guaranteeing freedom of peaceful assembly turns out to be a core obstacle for organising such events. Article 4.1 of the Proclamation requires that

⁴³ See Part V: Specific cases.

⁴⁴ Interview with Pr. Mesfin Wolde Mariam, EHRCO president.

⁴⁵ The NGO Legal Framework Consultative Taskforce is notably composed of Action Aid Ethiopia (AAE), Action Professionals' Association for the People (APAP), AIDOW, Catholic Relief Service (CRS), Cher Ethiopia, Christian Relief and Development Association (CRDA), Christian Children's Fund of Canada (CCFC), Consortium of Reproductive Health Association (CORHA), Ethiopian Women's Lawyer Association (EWLA), Forum for Social Studies (FSS), Hope Enterprise, HUNDEE, Inter Africa Group (IAG) and PACT Ethiopia.

the organiser of a peaceful demonstration or political meeting submit written notice to local authorities forty-eight hours in advance. The notice should specify the objective of the demonstration or meeting; its place, date, and hour; estimates of the number of expected participants; the required assistance from authorities for maintaining law and order. Article 5.1 requires the organisers to provide their full name, address, and signature(s), while Article 6.1 empowers the concerned official to notify the organiser of the need of holding the event in a different place or time if this was deemed necessary for maintaining law and order. Organisers thus have to notify the Peaceful Demonstration and Public Gatherings “Permission” office (in Addis Ababa) in order to be granted permission to hold the event. This office, however, frequently denies authorisation to requests of peaceful demonstration presented by human rights and civil society groups, opposition parties, and professional associations. Moreover, demonstrations are time-restricted and security forces often use excessive force to disperse participants.

On September 5, 2003 for instance, the ETA addressed a letter to the Demonstration and Public Gathering “Permission” office notifying that it would stage a public gathering to observe the International Teachers Day on October 6, 2003. The office sent this notification of ETA to the Ministry of Justice, which stated that ETA has not renewed its registration with the Ministry⁴⁶. Citing this as an excuse, the Demonstration and Public Gathering “Permission” office informed ETA that the requested public gathering could not be held. As a result, the event could not be conducted as was planned.

On November 10, 2003, students who were denied placement to higher institutions by the Ministry of Education despite scoring the requisite grades set by the Ministry requested the Demonstration and Public Gathering office to stage a peaceful demonstration to make their grievances heard. However, the office simply told them that they were not allowed to stage such an event, without giving any reason for the refusal.

Lastly, the Mecha Tulema Association (MTA) notified the “Permission” office that it would organise a peaceful demonstration on January 4, 2004 to protest against the decision taken by the government to transfer the capital city of Oromia from Addis Ababa to Adama (Nazaret). On January 3, 2004, however, the office notified that the demonstration could not be held, without providing reasons. Despite this denial of “permission”, demonstrators showed up at Meskel Square on January 4 and were forcibly dispersed before the demonstration started⁴⁷.

3. *The Draft Proclamation to Provide for the Freedom of the Press*

Freedoms of expression and the press are guaranteed by Article 29 of the FDRE Constitution, notably its sub-section 2, which provides that “everyone shall have the right to freedom of expression without interference (...) including 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 other media of his choice”. If sub-section 4 asserts that “the press shall be granted institutional independence and legal protection to enable it to accommodate different opinions and ensure the free flow of information, ideas and opinions that are necessary in a democratic society”, the press appear to be the bête noire of the regime, which initiated a true clampdown on independent journalists and media: as Mr. Kifle Mulat stated, “Ethiopia is like a prison for journalists”, and over 310 Ethiopian journalists⁴⁸ are estimated to live in exile as a result of the government’s hostility.

In January 2003, the government presented a very restrictive draft law entitled “Proclamation to Provide for the Freedom of the Press”. This bill included many restrictive provisions and was staunchly rejected by civil society and international experts. The government very slightly modified it and then presented it again at the beginning of 2004.

On February 27, 2004, Mr. Bereket Simon, Minister of Information, announced his intention to submit the bill to the Council of Ministers before March 5, 2004. After being approved by the Council, it was to be submitted to the Parliament for adoption as a law. Protests from civil society and journalists convinced the Minister to convene a meeting with representatives of the Ethiopian media in Addis

⁴⁶ See Part V: Specific cases.

⁴⁷ See Part III, B.

⁴⁸ Interview with Mr. Kifle Mulat, EFJA president and 2004 Bob Geldof Award.

Ababa from July 21 to 23, 2004. After that consultation, to which independent journalists were not invited, a new version of the text was presented.

This new text, presented at the end of July 2004, was hardly different from the original one. Article 5 providing for the "Right to Carry on Press Activity"⁴⁹ includes a list of conditions (including age, nationality, and legal background) to be met in order to obtain a licence (Articles 9 and 10), the whole process being under the control of the Ministry of Information. The bill also provides for the creation of a government-controlled Press Council in charge of drawing up a code of conduct for journalists, and gives the courts pre-censorship powers. Lastly, Article 47 provides for heavy fines and prison sentences of up to 5 years for violating the law⁵⁰.

On September 28, 2004, another consultative meeting was convened by the Minister of Information. International organisations for the defence of journalists were also invited. Mr. Simon Bereket agreed to revise certain provisions of the bill, in particular on licensing journalists, the independence of the Press Council, and respect for confidentiality of sources but not those related to heavy penal and criminal sanctions for violating the press law.

In early 2005, national and international protest over the draft Proclamation seemed to have dissuaded the government from putting it through Parliament. On March 28, 2005, however, members of Parliament were asked to pass into law 71 articles as additions to the new Criminal Code⁵¹, among which notably appeared whole verbatim articles of the draft Proclamation referring to liability for press offences. Although several members of the House of Peoples' Representatives expressed their concern about the inclusion of these provisions, the House passed the document into law. According to legal professionals, the promulgating of these additions not only undermines the purpose of a new Criminal Code but also constitutes a violation of the law-making process, as it was not tabled for a number of hearings whilst regarding provisions in substance.

⁴⁹ Article 5 of the Draft Proclamation, "Right to Carry on Press Activity" provides that:

«(1) Subject to international commitments entered in to by Ethiopia and the provisions of the law regarding foreign citizens of Ethiopian origin, any person who,

a/ Is an Ethiopian national;

b/ Is Eighteen years of age;

c/ Has not been barred by a court of law from exercising his civil or political rights;

d/ Has not, wholly or partially, lost his legal capacity;

e/ Has his residence in Ethiopia;

f/ Has not been stripped, wholly or in part, his parental authority by court decision;

g/ Was accused but not punished of a serious crime, offences against good conduct and the family as prescribed in Articles of the Criminal Code, theft, false pretense, fraudulent mismanagement, breach of trust, extortion, or who was not sentenced to imprisonment for defamation and or reinstated after serving his sentence,

May individually or jointly with other Ethiopian nationals carry on any press activity.»

⁵⁰ Article 47 of the Draft Proclamation provides that:

1. If the owner of a periodical publishes a periodical with out having a certificate of registration, or with out being qualified under article- he shall be sentenced to imprisonment of six months up to one year and with a fine up to 10,000 birr [...]

3. If a person published a periodical the publication of which is banned under article he shall be punished with imprisonment for not less than one year and not more than three years or with a fine not less than birr 10,000 and not more than birr 50,000.

4. Or if a person allows his name to appear on a periodical as editor in chief or deputy editor in chief without being qualified he shall be liable to a fine not exceeding birr 5,000, if the contents of a periodical have been declared to be criminal or if the circumstances are otherwise exceptionally aggravating, he may be sentenced to imprisonment for up to one year [...]

7. Any one who has lent his name in any way whatsoever to an applicant for a certificate of registration for any printed matter or broadcasting license who owns or controls a company within the meanings of article will be punished by a term of imprisonment of six months to one year and a fine of 10,000 birr to 200,000 birr, the same penalty shall be applicable to any beneficiary of such transaction [...]

13. Where the editor in chief, or programme editor has failed to publish the reply or corrections sent to him pursuant to article of this proclamation, he shall be liable to a fine upto 10,000. Where the offence is committed during election, he shall be liable up to one year imprisonment in addition to the fine.

14. Where an editor, his agent, publisher, journalist, editor of the programme importer, distributor, or vendor or the news is found distributing press products whose distribution is prohibited pursuant of sub-article 1 and 2 of article 6 of this proclamation, he shall be liable to 2-5 years imprisonment [...].

17. A publisher or editor in chief or journalist of the press who received money or contributions in kind in violation of the related provisions of this Proclamation shall be liable to a punishment of one year up to five years imprisonment and a fine up to 20,000 birr...».

⁵¹ The new Criminal Code was adopted by the House of Peoples' Representatives on July 2, 2004 and will come into force in early May 2005. It replaces the 1957 Criminal Code.

V- SPECIFIC CASES

A. Civil society organisations

1. *The Ethiopian Human Rights Council (EHRCO)*

EHRCO was created in 1991 and counts over 1500 members throughout the country. Its monitoring mandate over human rights in Ethiopia often stirred up the authorities' hostility, while some diplomatic missions' representatives met by the delegation acknowledged the reliability and accuracy of EHRCO's information⁵². All EHRCO human rights reports (81 Special Reports and 22 Regular Reports in March 2005) have been sent to the government, but no answer has ever been received.

As required by the 1960 Ethiopian Civil Code, EHRCO applied for registration with the Ministry of Justice in 1991. Although the association complied with all registration requirements, the Ministry of Justice did not respond to this application for seven years, resulting in EHRCO operating without a licence. As Article 8(c) of the 1964 Associations' Registration Regulation Act provides that any denial of registration should be communicated in writing to the applicant with the specific reasons mentioned and that the application is deemed to be accepted if it has not been responded within a month, EHRCO proceeded on the deeming clause and worked as if it was registered.

In mid-March 1994, EHRCO issued a booklet entitled *Democracy, Rule of Law and Human Rights in Ethiopia: Rhetoric and Practice*, which was published with the financial help of the Swiss Embassy in Ethiopia. Short after, the Commercial Bank of Ethiopia froze EHRCO's account without fulfilling the lawful procedure on the alleged grounds that the association was not registered and thus illegally operating. EHRCO thereafter experienced huge difficulties in meeting its financial obligations for running its operations and programmes. In 1997, EHRCO was finally granted its licence and its account was reinstated, allowing the association to access its funds.

EHRCO members and supporters have since many years been subjected to severe acts of reprisals (assassination, arbitrary arrest and detention, harassment etc.).

In 1997, Mr. **Assefa Manu**, an EHRCO member, was killed on the street in daylight, most probably by State security agents who allegedly used German and British governments' cars. The case was never brought to justice, as the perpetrators' identity could never be established.

On April 9, 2001, Pr. **Mesfin Wolde Mariam**, EHRCO president, and Mr. **Birhanu Nega**, chairman of the Ethiopian Economic Association, made a lecture at Addis Ababa University (AAU) on human rights and academic freedom⁵³. After this lecture, students demanded the authorities to be granted the full right to assembly, as well as the rights to create their own organisations and their own magazines or newsletters. On April 17, 2001, a peaceful students demonstration was violently repressed by the police and, on the following days, the repression of demonstrations led to riots resulting in dozens of deaths and hundred injured, while thousands of participants were arrested.

Messrs. Mesfin Wolde Mariam and Birhanu Nega were arrested by the police on May 8, 2001, and were charged with encouraging students "to demand respect of their rights by rioting rather than through legal means" (Articles 32-1 and 480 of the Criminal Code) as well as with colluding with the Ethiopian Democratic League (EDL), an organisation considered illegal at that time (but which has been registered since), in order to "create a clandestine party in order to change the Constitution by illegal means" (Articles 32-1 and 250 of the Criminal Code). Messrs. Mesfin Wolde Mariam and Birhanu Nega were released on June 5, 2001 on a 10,000 birr bail after going on a hunger strike to protest against their conditions of detention.

The charges have not been dropped yet, and the hearing has been postponed on numerous occasions since their release: on February 9, 2005, it was adjourned until July 28, 2004, then August 5, 2005⁵⁴.

⁵² "EHRCO members are cautious and document fairly accurately. It is one of the few local NGOs with credibility. We rely on their documentation and take them very seriously. As a result, there is an acrimonious relationship between EHRCO and the government". Source: Senior Diplomat interviewed in Addis Ababa on July 1, 2004.

⁵³ Human rights teaching is protected by Article 15 of the UN Declaration on Human Rights Defenders.

⁵⁴ See Observatory's Annual Reports 2001, 2002, 2003 and 2004, as well as the report submitted by Mrs. Hina Jilani, Special Representative of UN Secretary-General on Human Rights Defenders, pursuant to the Commission on Human Rights' resolution

More generally, EHRCO is often perceived by the authorities as a political, opposition organisation. As Mr. **Ambachew Semma**, EHRCO secretary general, explained to the Observatory's delegation: "EHRCO is not allowed by the government to teach human rights at school: it tried to organise human rights clubs at schools but was stopped by the authorities on the grounds that it has a political agenda. However, active participants in politics are not allowed to hold or campaign for office in the association as it is non-partisan and advocates for positive change in a peaceful and non-violent manner".

EHRCO reports, notably, are regularly challenged by the authorities who accuse the association of "spoon feeding" foreign elements by transmitting human rights information that the government often publicly deny through smear and discredit campaigns⁵⁵.

2. *The Ethiopian Teachers' Association (ETA)*

The Ethiopian Teachers' Association (ETA) was created in 1949 and has over 120,000 members throughout the country. Its goal is to promote an equitable, fair education policy.

In the early 1990s, as a result of government interference and pressure, a "new" ETA was set up. In early 1993, the independent ETA accounts were frozen under the pretext that the association was not registered. As a consequence, two organisations with the same name are operating at present.

On May 30, 1996, Dr. **Taye Woldesmiate**, ETA president, was arrested at Bole International Airport as he returned from a European trip. In June 1999, he was accused of "armed conspiracy against the State" and condemned to a 15 years jail term by the Federal High Court. On May 9, 2002, an appeal to the Federal Supreme Court reversed the finding, but declared Dr. Taye guilty of "provocation and preparation [of] offence against the national State" and sentenced him to five years in prison - longer than he had already served. Dr. Taye, who remained in solitary confinement for four months and was shackled in handcuffs 24 hours a day for two years out of his six years of imprisonment, was released from prison on May 14, 2002.

In May 1997, Ethiopian police killed Dr. Taye's replacement, Mr. **Assefa Manu**.

In 2004, the ETA reported that over a dozen of ETA members were transferred or dismissed solely for their support to the association.

In 2004, the authorities also attempted to liquidate the "genuine" ETA: on January 30, 2004, its premises were sealed off under the pretext that the association was not registered. On December 15, 2004, the Federal High Court ruled that the "old" ETA was the one legal and required its accounts to be unfrozen and the offices, unsealed. The government ignored this decision and the "new" ETA lodged an appeal with the Federal Supreme Court on December 25, 2004. The hearing was scheduled for March 11, 2005, when it was postponed until April 1 then May 2005.

In the meanwhile, Mr. **Abate Angore**, an ETA board member, was summoned on December 14, 2004, to appear before the Federal First Instance Court on January 13, 2005, for fact dating back to April 2001 and for which he had already been judged and acquitted in July 2002⁵⁶. On February 2, 2005, Mr. Abate Angore was arrested and detained for one day, before being sentenced by the court to a two months jail term on February 3, 2005. Mr. Abate Angore was released the same day on a 300 birr bail. There is every indication that the proceedings against him were aimed at weakening ETA's position after the rulings in its favour in December 2004.

2000/61, February 27, 2002, p. 74-75 (E/CN.4/2002/106).

⁵⁵ See Parts III, A and B, and IV, A.

⁵⁶ In April 2001, Mr. Abate Angore issued a statement condemning police violence that repressed the student protest in early and mid-April that year. In May 2001, he was accused of encouraging the students to riot, and was acquitted by the Federal First Instance Court on July 11, 2002.

B. Legal professionals as human rights defenders in Ethiopia

1. *The Ethiopian Women Lawyers Association (EWLA)*

The EWLA is a professional organisation composed of over 300 members throughout the country, which was registered in 1995 and licensed in 1996. It aims at advocating for women's rights and providing legal support to women victims of harassment, discrimination, domestic violence and sexual abuses.

On August 23, 2001, EWLA publicly criticised the Ministry of Justice for its failure to effectively investigate, arrest and prosecute the known perpetrator in an ongoing case of domestic violence. On August 25, the Minister of Justice officially announced that EWLA was suspended for allegedly "engaging in activities different from those it was mandated by law", without substantiating its allegations. In early September 2001, the Ministry suspended EWLA's registration without officially informing the association of the reasons for the. This suspension was finally lifted in October 2001. As a result of the suspension, however, all the activities of EWLA were suspended, some 50 of its employees were laid off and all the casework carried out by EWLA lawyers in the courts was interrupted. It was further reported that four girls under the care of the association and for whom it was paying school fees had their education interrupted because the association's bank account was frozen.

Since end 2001, EWLA could normally resume its activities, and is to date particularly engaged in drafting legislation promoting and protecting women's rights in Ethiopia.

2. *Mr. Abebe Wolde Worke Yohannes' case*

On February 24, 2004, Mr. **Abebe Wolde Worke Yohannes**, a lawyer, member of the Ethiopian Bar Association (EBA) and member of EHRCO's executive council, was sentenced by the Federal Supreme Court to 20 days of detention following a clash he had with one of his clients about his professional fees. While the Court was examining the client's claim, it decided to render judgement and sanctioned Mr. Wolde Yohannes, although it has no competence for taking such a step. Furthermore, the Minister of Justice threatened to revoke his lawyer's licence. By the end of 2004, the threat had not been taken any further yet.

There is every indication that Mr. Wolde Yohannes, who is a defence lawyer for ETA and Messrs. Mesfin Wolde Mariam and Nega⁵⁷, was harassed solely because of his human rights activities. Indeed, he regularly denounces State interference in these associations' activities, edits articles in support of human rights in EHRCO publications, and defends victims of State persecution.

B. Journalists as human rights defenders in Ethiopia

1. *The Ethiopian Free Journalists' Association (EFJA)*

The Ethiopian Free Press Journalists' Association (EFJA), created in March 1993, is composed of over 150 members across the country. It strives to protect the independence of journalists and promotes freedom of expression. EFJA was registered with the Associations Registration Office and attained official recognition in March 2000.

Its executive committee, which was elected in December 2001, received a summons by the government on November 10, 2003, under the pretext that EFJA had not submitted its financial report to the Ministry of Justice since 2000. Furthermore, the authorities demanded EFJA to submit the association's financial reports and audited accounts statement, although Ethiopian law waives this requirement for organisations with budget below 55,000 Ethiopian birr (5,000 euros)⁵⁸.

⁵⁷ See above.

⁵⁸ As Mr. Kifle Mulat reported, "the acting head of the Associations' Registration Office, Mr. Getachew Gonfa, gave us a directive over the telephone that we should get our accounts audited by a chartered accountant and submit the financial report to his office. After we sent the report, which was presented to and approved by the EFJA third Congress in 2000, Mr. Getachew Gonfa called me to his office and gave me verbal directive to submit the names and full addresses of members; [and] in addition to (...) get three additional auditors providing their names, the financial report and two-year financial reports".

Since EFJA directors feared the association's licence would not be renewed (according to Ethiopian law, all associations have to get their licence renewed regularly), they submitted the reports to the authorities and declared that an auditor would be appointed to check the accounts. Alongside this administrative harassment, EFJA was subjected to a sweeping denigration campaign in the pro-governmental media.

On December 2, 2003, the government officially announced its decision to suspend EFJA. The Associations Registration Office in a letter (*Ref. no.11/2155/w-493*) to the EFJA executive committee, forbidding, in particular, the following people "to carry out any further activities within EFJA": Messrs. **Kifle Mulat**, chairman of EFJA, **Taye Belachew**, vice-chairman, **Sisay Agena**, treasurer, **Tamiru Geda**, public relations manager, and **Habtam Assefa**, accountant.

On December 5, 2003, EFJA appealed this decision with the Ministry of Justice, which never took up the matter⁵⁹. Moreover, EFJA's accounts were frozen.

In the meanwhile, the government tried to take control of the association. On January 4, 2004, the Minister of Justice decided to set up and appoint a new executive committee. As this attempt failed because of protests by EFJA members, the Minister imposed, on January 18, 2004, the election of a new committee by a congress that was established and convened especially for the occasion, and in which EFJA journalists did not take part – although the authorities claimed that 32 of them participated in the meeting⁶⁰. On January 27, 2004, following the election, the "real" EFJA lodged a complaint against the Ministry of Justice with the Federal First Instance Court, before most of its members resigned on January 31, 2004.

The "fake" EFJA started its activities, e.g. it participated in the seminar organised by the Ministry of Information on the new press law⁶¹.

On December 24, 2004, the 4th Chamber of the Federal First Instance Court ruled that the suspension of EFJA and its senior staff was illegal and declared the election of the new executive committee, organised by the Ministry of Justice, null and void, since EFJA congress should be exclusively composed of permanent EFJA members. The Court also ordered the Ministry of Justice to pay for EFJA's legal costs.

The Ministry appealed the decision with the Federal High Court, which upheld the decision of the Federal First Instance Court on March 3, 2005, thus recognising the "genuine" EFJA's legal existence. On March 12, 2005, EFJA could celebrate its 12th anniversary.

2. Mr. Atnafu Alemayehu's case

On March 29, 2004, armed police beat up Mr. **Atnafu Alemayehu**, deputy editor-in-chief of the *Tobia* newspaper and magazine, at Kara Kore, Oromia State, after he carried enquiries into resident's complaints about the demolition of their houses. Mr. Atnafu Alemayehu was detained for one day and released after posting bail of 1,000 birr at Alemgena police station. The complaint he lodged with the police station for the beating and confiscation of his tape recorder was not considered.

⁵⁹ "In accordance with Article 16 of Proclamation No. 321/1959 E.C, an appeal can be lodged with the Ministry against the measure taken by the Associations' Registration Office. This Article also stipulates that the Ministry is expected to examine the case and render a decision by notifying the appelants in writing. The Minister of Justice, Mr. Harqua Haroye, never responded to the 5-pages appeal written on December 5, 2003 by EFJA leadership requesting the reversal of the injunction decision passed on the plaintiffs who are suspended from their powers and duties. Source: EFJA report.

⁶⁰ According to Mr. Kifle Mulat: "It has been said that 32 EFJA members were present at the meeting which was said to have been held. This is absolutely unacceptable. The meeting was called by the [Ministry of Justice] Associations' Registration office, the officials of which presided over the congress. The officials, (...) in violation of EFJA's administrative regulations, brought together people who are unknown to EFJA and conducted elections. Only 10 out of the 32 individuals whom the Ministry claimed to have participated in this illegal meeting are known to EFJA. Moreover, the Associations' Registration Office does not have the legitimate power to remove the leadership and call a General Assembly".

⁶¹ See Part IV, C, 4.

VI - CONCLUSION AND RECOMMENDATIONS

Human rights defenders in Ethiopia often find themselves on a collision course with the authorities, and have to face their hostility, while their impartiality and independence remain severely challenged and repressed by State agents.

In addition to the continuous harassment, violence, and reprisals that defenders have to face in the country, the drafting of new repressive NGO and press laws is particularly alarming as it evinces the increased judicialisation of State repression, aimed at neutralising independent civil society by hampering its legal recognition and controlling its voicing means. In such a context, the Observatory is deeply concerned that this clampdown on freedoms of association and expression creates an unfavourable environment for human rights defenders to efficiently monitor and promote fundamental rights and freedoms in the country, especially with the upcoming national elections on May 15, 2005.

Considering all the information gathered during its mission, the Observatory for the Protection of Human Rights Defenders urges the Ethiopian government to:

- Put an immediate end to all acts of harassment and reprisals against human rights defenders, in compliance with Article 12.2 of the UN Declaration on Human Rights Defenders adopted by the UN General Assembly on December 9, 1998, which provides that "[t]he State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration", and in compliance with the resolution on human rights defenders in Africa, adopted by the 35th session of the African Commission on Human and Peoples' Rights, on June 4, 2004;

- Immediately order impartial investigations into all cases of direct threats, intimidation and harassment perpetrated against human rights defenders, in order to identify their authors, to prosecute them and to judge them in conformity with the law;

- Ensure that the charges against the defenders facing legal action mentioned in the report be dropped, since they are arbitrary and aim at sanctioning their freedoms of expression and association;

- Ensure the respect for the freedoms of association, peaceful assembly and expression, in accordance with Articles 5 and 6 of the UN Declaration on Human Rights Defenders and provisions of the International Covenant on Civil and Political Rights, the African Rights Charter on Human and Peoples' Rights and ensure that national laws and legislative measures comply with these provisions;

- Put an immediate end to judicial harassment of independent civil society organisations, respect court's decision ruled in their favour and ensure they be authorised to resume their activities and be officially recognised;

- Facilitate an adequate and transparent registration system for civil society organisations in the country, in order to foster and strengthen the establishment of an independent civil society;

- Allow media pluralism in accordance with international human rights instruments, stopping any kind of harassment directed against independent press;

- Revise the draft NGO Bill and the draft Proclamation to provide for the freedom of the press, in the light of the provisions of the UN Declaration on Human Rights Defenders, and other international instruments binding Ethiopia, notably the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, as well as the Bill of Rights enshrined in the 1994 Ethiopian Constitution;

- Guarantee the independence of the judiciary and ensure that adequate protection is offered to its members in the exercise of their functions;

- Ensure that the fight against terrorism does not hinder or violate fundamental human rights and freedoms provided by the Universal Declaration for Human Rights and the international and regional instruments ratified by Ethiopia, notably the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, and to guarantee that anti-terrorist measures do not target specific ethnic groups nor foster ethnic hatred;

- Conform with the provisions of the UN Declaration on Human Rights Defenders, in particular its Article 1 which provides that "every person has the right, individually or collectively, to promote the protection and fulfilment of human rights and fundamental liberties at the national and international levels";

- Conform more generally with the provisions of the Universal Declaration of Human Rights and with other international instruments binding Ethiopia, notably the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights, as well as with the Bill of Rights enshrined in the 1994 Ethiopian Constitution.

Annex 1 – United Nations Declaration on Human Rights Defenders, A/RES/53/144, December 9, 1998.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms

THE GENERAL ASSEMBLY,

REAFFIRMING the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

REAFFIRMING also the importance of the Universal Declaration of Human Rights and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. As basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

STRESSING that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

ACKNOWLEDGING the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

RECOGNIZING the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

REITERATING that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,

STRESSING that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

RECOGNIZING the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

DECLARES:

Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realisation of those rights and freedoms should be conducted.

Article 4

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments and commitments applicable in this field.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organisations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organisations.

Article 6

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms.

Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, inter alia:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments; (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

1. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

Article 11

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Article 14

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, inter alia:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

Article 16

Individuals, non-governmental organisations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Article 17

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 18

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.

2. Individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

3. Individuals, groups, institutions and non-governmental organisations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realised.

Article 19

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

Article 20

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental organisations contrary to the provisions of the Charter of the United Nations.

Annex 2 – Resolution on human rights defenders in Africa, adopted by the 35th session of the African Commission on Human and Peoples’ Rights, June 4, 2004

The African Commission on Human and Peoples’ Rights meeting at its 35th Ordinary Session held from 21st May to 4th June 2004, in Banjul, The Gambia;

Recognising the crucial contribution of the work of human rights defenders in promoting human rights, democracy and the rule of law in Africa;

Seriously concerned about the persistence of violations targeting individuals and members of their families, groups or organisations working to promote and protect human and peoples’ rights and by the growing risks faced by human rights defenders in Africa;

Noting with deep concern that impunity for threats, attacks and acts of intimidation against human rights defenders persists and that this impacts negatively on the work and safety of human rights defenders;

Recalling that it is entrusted by the African Charter on Human and Peoples’ Rights with the mandate to promote human and peoples’ rights and ensure their protection in Africa;

Reaffirming the importance of the observance of the purposes and principles of the African Charter for the promotion and protection of all human rights and fundamental freedoms for human rights defenders and all persons on the continent;

Bearing in mind the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders);

Mindful that in the Grand Bay (Mauritius) Declaration, the Organisation of African Unity called on Member States «to take appropriate steps to implement the UN Declaration on Human Rights Defenders in Africa»;

Mindful that the Kigali Declaration recognises «the important role that the human rights defenders play in the promotion and protection of human rights in Africa»

Recalling its decision to include on its agenda the situation of human rights defenders and to nominate a Special Rapporteur on human rights defenders;

Now DECIDES to appoint a Special Rapporteur on Human Rights Defenders in Africa for a period of two years with the following mandate:

- To seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;
- To submit reports at every ordinary session of the African Commission on the situation of human rights defenders in Africa;
- To cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;
- To develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- To raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa

Further DECIDES to nominate Commissioner Jainaba John as Special Rapporteur on Human Rights Defenders in Africa for the current duration of her mandate within the African Commission;

REITERATES its support for the work carried out by human rights defenders in Africa;

CALLS UPON Member States to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports;

INVITES its members to mainstream the issue of human rights defenders in their activities;

URGES Member States to co-operate with and assist the Special Rapporteur in the performance of his/her tasks and to provide all necessary information for the fulfilment of his/her mandate;

REQUESTS the African Union to provide adequate resources, assistance and support in the implementation of this Resolution.

Done in Banjul, The Gambia, June 4, 2004.

Annex 3 - Extract of the FDRE Constitution: the Ethiopian Bill of Rights, December 8, 1994:

Preamble:

"We, the Nations, Nationalities and Peoples of Ethiopia:

Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development

Firmly convinced that the fulfilment of this objective requires full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination (...)"

CHAPTER TWO: FUNDAMENTAL PRINCIPLES

Article 10: Human and Democratic Rights

1. Human rights and freedoms as inherent rights of man are inalienable and inviolable.
2. The human and democratic rights of peoples and citizens shall be protected.

**CHAPTER THREE:
FUNDAMENTAL RIGHTS AND FREEDOMS**

Article 13: Scope and Interpretation

1. The provisions of this Chapter shall, at all levels, apply to the federal and state legislative, executive and judicial branches of government.

2. The fundamental rights and freedoms enumerated in this Chapter shall be interpreted in a manner consistent with the Universal Declaration of Human Rights, international human rights covenants and conventions ratified by Ethiopia.

PART ONE: HUMAN RIGHTS

Article 14: Right to Life, Liberty and Security of the Person.

Everyone by virtue of being human, has the inalienable and inviolable right to life, liberty and security of person.

Article 15: Right to Life.

Every human being has the right to life. No one shall be deprived of his life except by reason of his conviction in accordance with the law for a serious crime committed by him.

Article 16: Right to the Security of the Person

Every one shall have the right to the security of the person.

Article 17: Right to Liberty

1. No one shall be deprived of his liberty except in accordance with such procedures as are laid down by law.
2. No one shall be arrested or detained without being charged or convicted of a crime except in accordance with such procedures as are laid down by law.

Article 18: Prohibition of Inhuman Treatment

1. Everyone shall have the right not to be subjected to cruel, inhuman or degrading treatment or punishment.
2. No one shall be held in slavery or servitude; trafficking in human beings, for whatever purpose it might be, is prohibited.
3. No one shall be required to perform forced or compulsory labour.
4. For the purpose of this article, the term "forced or compulsory labour" shall not include:-
 - a) Any labour which is, in accordance with the law, required of a prisoner while in detention, or of a person during conditional release from such detention;
 - b) Any service required of a person who is a conscientious objector in lieu of military service;
 - c) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community.
 - d) Any voluntary economic or social developmental activity undertaken by the people of the community concerned.

Article 19: Rights of Persons under Arrest

1. Anyone arrested on criminal charges shall have the right to be informed promptly and in detail, in a language which he understands, of the nature and cause of the charge against him.

2. Everyone shall have the right to keep silent and be warned promptly, in a language which he understands, that any statement he may make may be used in evidence against him.

3. Everyone shall have the right to be brought before a court of law within 48 hours after his arrest. This shall not include a reasonable time taken in the journey to a court of law. He shall have the right to be specifically informed that there is sufficient cause for his arrest as soon as he appears in court.

4. Everyone shall be entitled to an inalienable right of habeas corpus where the police officers or the public prosecutor fails to bring the accused to court within the time limit provided by law. Where the interest of justice so requires, or where remand has been requested for further investigation, the court may order the accused to be kept in custody for a duration as is deemed necessary. Remand granted by a court shall be such as to enable the responsible officials of the public prosecution to investigate and speedily bring the case to a court of law.

5. Everyone shall have the right not to be forced to make any confessions or admissions of any evidence that may be brought against him during the trial. No evidence obtained in such a manner shall be legally admissible.

6. Anyone arrested shall have the right to be released on bail. The courts may however, for reasons specified by law, reject the application for bail, allow a conditional release or demand the production of sufficient sureties.

Article 20: Rights of the Accused.

1. Everyone charged with an offence shall be entitled to a public hearing before an ordinary court of law without undue delay; the trial may, however, be conducted in camera only for the purposes of protecting the private lives of the parties, public morals and moral security.
2. Everyone charged with an offence shall be adequately informed in writing of the charges brought against him.
3. Everyone charged with an offence shall be presumed innocent until proved guilty by a court of law and not to be compelled to testify against himself.
4. Everyone charged with an offence shall be entitled to inspect any evidence brought against him, examine witnesses testifying against him, present or obtain the production of any evidence or obtain the attendance of witnesses in their defence.
5. Everyone charged with an offence shall have the right to defend himself through legal assistance of his own choosing and to have free legal assistance assigned to him by the government where the interests of justice so require and he does not have sufficient means to pay for it.
6. Everyone charged with an offence shall have the right to his conviction or sentence being reviewed on appeal by a competent court of law.
7. Everyone charged with an offence shall have the right to be provided with an interpreter by the government, where the trial is conducted in a language which he does not understand.

Article 21: Right of Persons in Custody and Convicted Prisoners

1. Any person in custody or a convicted prisoner shall have the right to humane treatment which accords with his human dignity.
2. Any person in custody or a convicted prisoner shall have the right to communicate with and be visited by spouse(s), close relatives and friends, medical attendants, religious and legal counselors.

Article 22: Non-retroactivity of Criminal Laws

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under the law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed.
2. The provisions of sub-Article 1 of this article notwithstanding, laws enacted after the commission of the offence shall apply before or after sentence where they are favourable to the accused.

Article 23: Prohibition of Double Jeopardy

No one shall be liable to be tried or submitted again for an offence for which he has been finally convicted or acquitted in accordance with the criminal laws and procedure.

Article 24: Right to Human Dignity and Good Reputation

1. Everyone shall have the right to his human dignity and good reputation.
2. Everyone shall have the right to freely develop his personality in a manner consistent with the rights of others.
3. Everyone shall have the right to recognition everywhere as a person before the law.

Article 25: Right to Equality

All persons shall be equal before the law and shall be entitled to equal protection of the law without any discrimination whatsoever. All persons shall be entitled to equal and adequate guarantees without distinction of any kind such as race, nation, nationality, colour, sex, language, religion, political or social origin, property, birth or other status.

Article 26: Right to Privacy

1. Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.
2. Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices.
3. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.

Article 27: Freedom of Religion, Belief and Opinion

1. Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to hold or to adopt a religion or belief of his choice, and the freedom, either individually or in community with others, and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. Without prejudice to the provisions of sub-Article 2 of Article 90, believers may establish institutions of religious education and administration in order to propagate and organize their religion.
3. No one shall be subject to coercion or other means which would restrict or prevent his freedom to hold a belief of his choice.
4. Parents and legal guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions.
5. Freedom to express or manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, peace, health, education, public morality or the fundamental rights and freedoms of others, and to ensure the independence of the state from religion.

Article 28: Crimes Against Humanity

1. Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.
2. In the case of persons convicted of any crime stated in sub-Article 1 of this Article and sentenced with the death penalty, the Head of State may, without prejudice to the provisions here in above, commute the punishment to life imprisonment.

PART TWO: DEMOCRATIC RIGHTS

Article 29: Right to Hold Opinions, Thoughts and Free Expressions

1. Everyone shall have the right to hold opinions without any interference.
2. Everyone shall have the right to freedom of expression without interference. 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 other media of his choice.
3. Freedom of the press and mass media as well as freedom of artistic creation is guaranteed. Press freedom shall, in particular, include the rights enumerated hereunder: a) that censorship in any form is prohibited. b) the opportunity to have access to information of interest to the public.
4. The press shall be granted institutional independence and legal protection to enable it to accommodate different opinions and ensure the free flow of information, ideas and opinions that are necessary in a democratic society.
5. Any media financed or controlled by the government shall be organised in a manner suitable for the accommodation of differences of opinion.
6. Nothing in the foregoing shall absolve anyone of liability arising from laws enacted to protect public morals, peace, human dignity and democratic rights of citizens.

Article 30: Freedom of Assembly, Public Demonstration and the Right to Petition.

1. Everyone shall have the freedom, in association with others, to peaceably assemble without arms, engage in public demonstration and the right to petition. Appropriate procedure may be enacted to ensure that public meetings and demonstrations do not disrupt public activities, or that such meetings and demonstrations do not violate public morals, peace and democratic rights.
2. This right shall not absolve anyone of liability arising from the laws enacted to protect public morals, peace, human dignity and democratic rights of citizens.

Article 31: Right to Association

Everyone shall have the right to form associations for whatever purpose. Associations formed in violation of the appropriate laws or associations formed with the objective of overthrowing the constitutional order or associations carrying out these activities shall be prohibited.

Article 32: Freedom of Movement

1. Every Ethiopian or any other person lawfully within Ethiopia shall have the freedom to freely move and establish his residence within Ethiopia as well as to travel abroad.
2. Every Ethiopian shall have the right to return to his country.

Article 33: Rights to Nationality

1. No Ethiopian national shall be deprived of his or her Ethiopian nationality against his or her will. Marriage of an Ethiopian national of either sex to a foreign national shall not annul his or her Ethiopian nationality.
2. Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law.
3. Any national has the right to change his Ethiopian nationality.
4. Ethiopian nationality may be conferred upon foreigners in accordance with law enacted and procedures established consistent with international agreements ratified by Ethiopia.

Article 34: Marital, Personal and Family Rights

1. Men and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law, have the right to marry and found a family. They have equal rights while entering into, during marriage and at the time of divorce. Laws shall be enacted to ensure the protection of rights and interests of children at the time of divorce.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental unit of society and is entitled to protection by society and the State.
4. In accordance with provisions to be specified by law, a law giving recognition to marriage concluded under systems of religious or customary laws may be enacted.
5. This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

Article 35: Rights of Women

1. Women shall have equal rights with men in the enjoyment of the rights and protections guaranteed by this Constitution to all Ethiopians.
2. Women shall, as prescribed by this Constitution, have equal rights with men in respect to marriage.
3. Considering that women have traditionally been viewed with inferiority and are discriminated against, they have the right to the benefit of affirmative actions undertaken for the purpose of introducing corrective changes to such heritage. The aim of such measures is to ensure that special attention is given to enabling women to participate and compete equally with men in the political, economic and social fields both within public and private organisations.
4. The State has the duty to guarantee the right of women to be free from the influence of harmful customary practices. All laws, stereotyped ideas and customs, which oppress women or otherwise adversely affect their physical and mental well-being are prohibited.
5. (a) Women shall have the right to maternity leave with full remuneration. The duration of maternity leave shall be determined by law having regard to the nature of the work, the woman's health and the welfare of the child and its family.
(b) Maternity leave may, by law, be made to include pregnancy leave with full remuneration.
6. Women shall have the right to demand that their opinions be heard on matters of national development policies, on plan and project implementation, and in particular, on projects affecting their interests.

7. Women shall have the right to acquire, administer, control, enjoy and dispose of property. They shall, in particular, have equal rights with men regarding the use, transfer, administration and control of land. They shall enjoy the same rights with men with respect to inheritance.

8. Women shall have the right of access to education and information on family planning and the capability to benefit thereby so as to protect their good health and prevent health hazards resulting from childbirth.

Article 36: Rights of Children

1. Every child has the right:

(a) To life; (b) To a name and nationality; (c) To know and be cared for by his or her parents or legal guardians; (d) Not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being; (e) To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

2. In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child.

3. Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults.

4. Children born out of wedlock shall have the same rights as children born of wedlock.

5. The State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education.

Article 37: Right to Access to Justice

1. Everyone shall have the right to submit his justiciable grievances to and obtain a decree or judgment from a court of law or any other tribunal given by law the power of adjudication.

2. The following are entitled to the right to obtain the decree or judgment referred to under Sub-Article (1) of this Article:

(a) any association with respect to the private or common interests of its members.

(b) an individual or a member of a group representing any group or persons having similar interests.

Article 38: Right to Vote and to be Elected

1. Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, language, religion, political or other opinion or other status, has the following rights:

(a) To take part in the conduct of public affairs, directly and through freely chosen representatives;

(b) On the attainment of 18 years of age, to vote in accordance with law;

(c) To vote and to be elected at periodic elections to any office at any level of government; elections shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.

2. The right of everyone to be a member of his own will in a political organisation, labour union, trade organisation, or employers' or professional association shall be respected if he or she meets the special and general requirements stipulated by such organisation.

3. Elections to positions of responsibility with any of the organisations referred to under sub-Article 2 of this Article shall be conducted in a free and democratic manner.

4. The provisions of sub-Articles 2 and 3 of this Article shall apply to civic organisations which significantly affect the public interest.

Article 39: Rights of Nations, Nationalities, and Peoples

1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.

2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.

3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government, which includes the right to establish institutions of government in the territory that it inhabits, and to equitable representation in state and Federal governments.

4. The right to self-determination, including secession, of every Nation, Nationality and People shall come into effect:

(a) When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned;

(b) When the Federal Government has organised a referendum which must take place within three years from the time it received the concerned council's decision for secession;

(c) When the demand for secession is supported by majority vote in the referendum;

(d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and

(e) When the division of assets is effected in a manner prescribed by law.

5. A "Nation, Nationality or People" for the purpose of this Constitution, is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.

Article 40: Right to Property

1. Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise.

2. "Private property", for the purpose of this Article, shall mean any tangible or intangible product which has value and is produced by the labour, creativity, enterprise or capital of an individual citizen, associations which enjoy juridical personality under the law, or in appropriate circumstances, by communities specifically empowered by law to own property in common.

3. The right to ownership of rural and urban land, as well as of all natural resources, is exclusively vested in the State and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of exchange.

4. Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law.

5. Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.

6. Without prejudice to the right of Ethiopian Nations, Nationalities, and Peoples to the ownership of land, government shall ensure the right of private investors to the use of land on the basis of payment arrangements established by law. Particulars shall be determined by law.

7. Every Ethiopian shall have the full right to the immovable property he builds and to the permanent improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and, where the right of use expires, to remove his property, transfer his title, or claim compensation for it. Particulars shall be determined by law.

8. Without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property.

Article 41: Economic, Social and Cultural Rights

1. Every Ethiopian shall have the right to engage in any economic activity and gain his living by work which he freely chooses.

2. Every Ethiopian shall have the right to choose his vocation, work and profession.

3. Every Ethiopian citizen shall have the right to equal access to social services run with state funds.

4. The State shall allocate progressively increasing funds for the purposes of promoting the people's access to health, education and other social services.

5. The State shall, within the limits permitted by the economic capability of the country, care for and rehabilitate the physically and mentally handicapped, the aged, and children deprived of their parents or guardians.

6. The State shall devise policies designed to create employment of the poor and unemployed; issue programmes designed to open up work opportunities in the public sector and undertake projects.

7. The State shall take necessary measures to expand the opportunities of citizens to engage in gainful employment. 8. Peasants shall have the right to be paid a fair recompense for their produce which would enable them to progressively attain an improved standard of living and in proportion to their productive contribution to the national wealth. The State shall be guided by this objective in determining its economic and social development policies.

9. The State shall have the responsibility to preserve the cultural and historical heritage and contribute to the promotion of the development of the Arts.

Article 42: Workers' Rights

1. (a) Factory and service sector employees, peasants, agricultural workers, other rural workers, government employees below a certain level of responsibility and the nature of whose employment so requires, shall have the right to form associations for the purpose of improving their economic and employment conditions. This right shall include the right to form trade union and other associations, and to negotiate with their employers and other organisations affecting their interests.

(b) The category of workers referred to in paragraph (a) of this Article shall have the right to express their grievances, which shall include the right to strike.

(c) Government employees who may benefit from the rights recognised under paragraphs (a) and (b) of this Article shall be determined by law.

(d) The right of women workers to equal pay for equal work is guaranteed. 2. Workers shall have the right to appropriately defined working hours, breaks, leisure, periodic leave with pay, paid public holidays, and a safe and healthy working environment.

3. Laws issued for the implementation of these rights shall, without derogating from the rights recognised under Sub- Article (1) of this Article, lay down procedures for the establishment of the said trade unions and the manner of conducting collective bargaining.

Article 43: Right to Development

1. The right of the peoples of Ethiopia collectively, or the nations, nationalities and peoples in Ethiopia, individually, to improve their standard of living and to sustainable development is guaranteed.

2. Citizens shall have the right to participate in national development, and in particular, to demand that their opinions be heard on matters of policies and of projects pertaining to the community of which they are members.

3. International agreements entered into or relations formed by the State shall be such as to guarantee the right to the sustainable development of Ethiopia.

4. The main objectives of development activities shall be the citizen's development and the fulfilment of their basic needs.

Article 44: Environmental Rights

1. Everyone has the right to a clean and healthy environment.

2. Everyone who is uprooted from the place of his residence by virtue of programmes undertaken by the Government, or one whose livelihood has been affected shall have the right to receive adequate monetary or other alternative compensation, including transfer, with assistance, to another locality.

ANNEX 4 - The judiciary in question: extract of the trial of Dr. Taye Woldesmiate, ETA president, June 1999

Dr. Taye Woldesmiate, who was arrested in May 1996 as a result of the authorities' clampdown on the "genuine" ETA, which they tried to replace by a pro-governmental association, appeared before the Federal High Court in June 1999. The court accused him of "conspiracy against the State" and sentenced him to a 15 years jail term after a trial marred with irregularities. Here is an extract of one of the hearings:

The Lawyer: "Yesterday I went to Addis Ababa prison and requested to talk to my client in private. However the officials turned down my request. As my client wants to make an appeal to the court, I pray the Court to hear my client's appeal".

The Judge: "We are tired of repeatedly hearing his complaints. We do not want to hear any more".

Dr. Taye Woldesmiate to Court: "If I can't complain my grievance to this Court, then whom can I complain to? After all, it is this Court, which ordered my detention. When a person put to prison by the Court is mistreated, shouldn't the Court listen to his grievances and take an action to stop his suffering?"

The Court: "We have finished, you can sue the person who has wronged you. Police move them out".

Dr. Taye: "Whom shall I appeal to? Where shall I sue?"

The Judge: "Policemen, take the other Defendants, bring him back".

The Judge to Dr. Taye: "Sit down, you do not deserve respect. Policemen, make him sit down. "Why are you not behaving yourself like other prisoners? Why don't the others complain like you?"

Dr. Taye: "How can you say this when you haven't even heard my complaint?"

Another Judge: "Do you know the procedure followed by this Court?"

Dr. Taye: "I haven't come here to take an exam, but to get justice".

The Judge: "What are you ranting here?"

Dr Taye: "I have only appealed for justice. Is appealing for justice ranting?"

The court allegedly ordered the police to immediately handcuff Dr Taye⁶².

⁶² See Compiled Reports of EHRCO (Vol II) p4

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'Observatoire

pour la protection
des Défenseurs des Droits de l'Homme

El Observatorio

para la Protección
de los Defensores de los Derechos Humanos

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Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion at a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the Organisation of African Unity, the Council of Europe and the European Union.

The activities of the Observatory are based on the consultation and the co-operation with national, regional, and international non governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria for the examination and admissibility of cases that are communicated to it. It also targets action based interpretations of the definition of "Human Rights Defenders" applied by OMCT and FIDH.

The competence of the Observatory embraces the cases which correspond to the following "operational definition" : "Each person victim or risking to be the victim of reprisals, harassment or violations, due to its compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

Un programme de la FIDH et de l'OMCT - An FIDH and OMCT venture - Un programa de la FIDH y de la OMCT

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