

The Rt Honourable Boris Johnson MP
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26 October 2017

Urgent request that the UK negotiate Andy Tsege's release

Dear Foreign Secretary,

Our organisations write in response to your most recent letters on the case of British father-of-three Andy Tsege, the first of which was sent to the former Chair of Parliament's Foreign Affairs Committee, which is monitoring Mr Tsege's case, and the second of which was posted on the FCO's website as an open letter to Mr Tsege's supporters.ⁱ

At the time of writing, Mr Tsege has been held on Ethiopia's death row for over three years, under a death sentence imposed on him *in absentia*, having been seized in an international airport in Yemen June 2014 and transferred into Ethiopian custody. Mr Tsege was convicted for his vocal opposition to the Ethiopian regime. In 2006, Mr Tsege gave a speech to the European parliament, encouraging MEPs to back "the peaceful, just and fair struggle of the people of Ethiopia for freedom and democracy."ⁱⁱ The European parliament has since criticized Ethiopia's human rights record and called on the government to release Mr Tsege and other political prisoners.ⁱⁱⁱ

We believe the lack of progress made in Mr. Tsege's case following three years of torment for Mr. Tsege and his family necessitate a change in the UK Government's approach. Our organisations call for the UK Government to urgently shift its focus to securing Mr. Tsege's return to his home in London and reuniting him with his partner and three children.

Seeking "Legal access" is no substitute for securing Mr Tsege's return

Your recent open letter states that the FCO's priorities are Mr Tsege's "wellbeing, his access to legal representation, and to ensure that the death sentence is not carried out."^{iv}

You state that Mr Tsege "has met with his lawyer to further discuss his case under Ethiopian law."^v It is hard to see how "legal representation" will result in relief for Mr Tsege or how there can be any options under Ethiopian law, as Ethiopia's Prime Minister and former Foreign Minister have since confirmed that "there is no appeal process" available to him, and that it is "not possible" for him to appeal his *in absentia* death sentence.^{vi}

Furthermore, we have concerns about the lawyer's independence and effective counsel. Mr Tsege was unable to choose his own legal representative freely. Rather, he was presented by the Ethiopian authorities with a choice of just four lawyers, as opposed to being provided with the list of twenty registered Ethiopian lawyers published on the British Foreign & Commonwealth Office's website. We also understand that Mr Tsege's discussions with his lawyer have been held within earshot of security officials – in contrast to international standards.

As you know, Mr Tsege was sentenced to death, in his absence, in 2009 while living with his family in London. It was a highly politicized trial, which the US State Department described as an act of "political retaliation" that was "lacking in basic elements of due process".^{vii} We understand that Ethiopia made no extradition requests to the UK for Mr Tsege during his trial or following his conviction.

The focus on securing legal access for Mr Tsege overlooks that there can be no hope of a just legal process for Mr Tsege in Ethiopia's compromised court system – the very system which subjected him

to rendition, incommunicado detention, and an *in absentia* death sentence. In addition, it is out of line with the clear recommendations made by the African Commission on Human and Peoples' Rights and the UN Working Group on Arbitrary Detention, both of which have called upon Ethiopia to release him immediately from detention and return him to the UK.

Only private consular access can help to ensure Mr Tsege's wellbeing

You state that during the Ambassador's last consular visit, "Mr Tsege was doing well and was in good spirits." This is in contradiction with the readout from the visit which states Mr Tsege is still seeing spots from a prison assault earlier this year. Mr Tsege has not been allowed to visit an independent medical professional in the three years of his detention.

There are additional significant concerns for Mr Tsege's wellbeing in detention. UN experts have confirmed that Mr Tsege has been held in incommunicado detention and mistreated during his detention in Ethiopia.^{viii} All UK consular visits to him have not been in private and have been monitored by Ethiopian guards, raising clear concerns that he may not feel able to communicate freely about his treatment. Despite this, you have recently stated that your Department considers the presence of an Ethiopian official in to be "in accordance with...the Vienna Convention on Consular Relations (VCCR), and in line with local laws and regulations"^{ix}

This is contrary to the practice of several States which have indicated that they consider "monitoring of the content of communication as a violation of the right of access and contact as between a consul and a national."^x The UK itself is one of those States, as its Prison Service Instructions for providing visits and services to prisoners expressly states that "[M]easures are in place to ensure that official visits – particularly those from legal advisers and consular officials – should take place within sight but out of hearing range of staff, other prisoners, and their official visitors."^{xi}

In a majority of cases, the only possibility for a detainee who has experienced torture or ill-treatment to provide the consular official with information or to raise a complaint about his treatment is in the context of a private visit. As such, a failure to ensure privacy of communication undermines the entire purpose of communication in the framework of consular visits as envisaged by Article 36 (1) (c) of the VCCR. In this respect it is disingenuous to suggest as you do in your most recent letter that the Ethiopians' refusal of private visits is in accordance with its obligations under this treaty.

Ethiopia must be held to account for its promises – secure a family visit

As you are aware, Andy's family has not spoken to him since his abduction, aside from a short surprise phone call over two and a half years ago.

In March of this year, following a visit to Ethiopia, you announced that you had secured a visit for Mr Tsege's partner and their three children. Over six months later, the Ethiopian embassy has still refused to accept the family's visa application and your office has not been able to secure the necessary documentation from Ethiopia to allow them to travel there to visit Mr Tsege.

Ethiopia has repeatedly gone back on promises it made to the British Government. The Ethiopian Government has refused to give assurances that Andy's death sentence will not be carried out. Andy's life is in danger as long as he continues to be arbitrarily detained in Ethiopia.

The urgent need for a change in approach to secure Mr Tsege's return

After over three years of detention and despite promises by the Ethiopian Government, Mr Tsege does not receive regular consular visits, has not been able to see his partner and children, and is still without independent legal representation. Ethiopia has repeatedly gone back on its assurances to the UK in relation to Mr Tsege's case. It is not clear that the Ethiopian Government would act differently regarding assurances that his death sentence will not be carried out.

You recently hosted the Ethiopian Prime Minister and he was invited to Downing Street, where he met with Prime Minister Theresa May. While we understand that Mr Tsege's case was raised at the meeting, it is becoming increasingly clear that after three years of raising Mr Tsege's case, a different approach

in this case must be taken to continue effective collaboration with Ethiopia within a rule-based international system.

We are not requesting that the UK publically call for Mr Tsege's release or otherwise "penalise" Ethiopia. Rather, we are suggesting that the UK government take steps in Mr Tsege's case – as it has in other cases of British nationals unlawfully detained abroad – to ensure that he is returned home to the UK as a matter of urgency. The UK has previously been able to negotiate the return of prisoners through Prison Transfer Agreements or by assisting in the negotiation of clemency agreements. This approach has also worked in Ethiopian cases in the past. For example, Sweden secured the return of two of its journalists back home through a pardon^{xiii} and it is said that the US Government was instrumental in contributing to the release of members of the Zone 9 blogger initiative ahead of a visit to Ethiopia by President Obama.^{xiii}

The only way to ensure Mr. Tsege's safety and wellbeing is for the UK to urgently seek Mr Tsege's return home to London. We urge you to reconsider your priorities in Mr Tsege's case, and to negotiate his return to the UK.

Sincerely,

Maya Foa
Director
Reprieve



Dr Carla Ferstman
Director
Redress



Henry Maina
Eastern Africa Director
Article 19



David Mepham
UK Director
Human Rights Watch



Soleyana S Gebremichael
EHRP Coordinator
Ethiopia Human Rights Project



ⁱ [FCO correspondence on the case of Andy Tsege to supporters](#); [FCO correspondence to the FAC on the case of Andy Tsege](#)

ⁱⁱ <http://www.voanews.com/a/ethiopias-opposition-group-threatens-armed-resistance/2878413.html>

ⁱⁱⁱ <http://www.europarl.europa.eu/news/en/press-room/20170509IPR73947/human-rights-h-hichilema-in-zambia-dr-gudina-in-ethiopia-south-sudan>

^{iv}; [FCO correspondence to the FAC on the case of Andy Tsege](#)

^{vi} Note of a meeting between the Secretary of State for International Development and the Prime Minister of Ethiopia, 16 July 2015, disclosed to Ms Hailemariam on 29 January 2016 pursuant to a Subject Access Request under the Data Protection Act 1998; Note of a meeting with the Foreign Minister of Ethiopia, Dr Tedros Adhanom, 21 July 2015, disclosed to Ms Hailemariam on 29 January 2016 pursuant to a Subject Access Request under the Data Protection Act 1998.

^{vii} 'Scenesetter for Codel Meeks visit to Ethiopia: February 16-17, 2010', cable from US Embassy Addis Ababa, 8 February 2010: https://wikileaks.org/plusd/cables/10ADDISABABA244_a.html

^{viii} The UN Special Rapporteur on Torture has stated that Ethiopia's treatment of Mr Tsege has violated the Convention Against Torture. Report of UN Special Rapporteur on Torture to Human Rights Council (March 2016), para 148.

^{ix} [FCO correspondence to the FAC on the case of Andy Tsege](#)

^x See, The Law of Consular Access: A Documentary Guide; Norway is another example of a State which by statute requires the communication to be private; the US Department of State also considers that only private communication can achieve the purpose of consular access.

^{xi} National Offender Management Service, 'Providing Visits and Services to Visitors', 2nd Revision, 28 April 2016.

^{xii} <http://www.reuters.com/article/us-ethiopia-sweden-journalists-idUSBRE8891D320120910>;

<https://www.hrw.org/news/2015/10/16/dispatches-ethiopias-zone-9-bloggers-acquitted-free-speech-still-trial>

^{xiii} <http://www.martinennalsaward.org/hrd/zone-9-bloggers-2/>