



JIMMA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

EXAMINING THE IMPLICATION OF ETHIOPIAN PREVENTION AND SUPPRESSION
OF TERRORISM CRIMES PROCLAMATION ON HUMAN RIGHTS

BY: MULUGETA FIKRU GUDU

CANDIDATE ID. NO. RM 7730/11

mu20092009@gmail.com

ADVISOR GETAHUN ALEMAYHU (PhD)

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A RESEARCH PAPER SUBMITTED FOR THE PARTIAL FULFILLMENT OF THE
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ADVISOR GETAHUN ALEMAYEHU (PhD)

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Acronyms

ACHPR	Africa Commission on Human and People Rights
Art	Article
ATP	Anti-terrorism Proclamation
AU	African Union
CAT	Convention against Torture and Other Cruel, Inhumane or Degrading Treatment Or Punishment
CPC	Criminal Procedure Code
CSOs	Civil Society Organizations
CT	Counterterrorism
EJP	Eminent Jurists Panel
EHRC	Ethiopian Human Rights Commission
ECHR	European Court of Human Rights
FDRE	Federal democratic republic of Ethiopia
FIDH	International Federation for Human Rights
FOE	Freedom of Expression
GAOR	General Assembly Official Record
HRC	Human Rights committee
HRD	Human Rights Defender
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICRC	International committee of the Red Cross
ICLMG	International Civil Liberties Monitoring Groups

IS	Islamic State group
NEPAD	New Partnership for Africa's Development
NISS	National Intelligence Security Service
OAU	Organization of African Unity
OAU CPCT	Organization of African Unity Convention on the Prevention and Combating of Terrorism
OHCHR	Office of the United Nation High Commissioner for Human Rights
UDHR	Universal declaration of human rights
UNGA	United Nation General Assembly
UNSC	United Nation Security Council
UN	United Nation
USA	United State of America

Approval Sheet

Title: Examining the Implication of Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation on Human Rights

I, Mulugeta Fikru, hereby certify that this research paper is my original work. Works of others included in this paper are properly cited.

Candidate

Name _____

Signature _____

Date _____

Principal supervisor

Name _____

Signature _____

Date _____

Approved by board of examiners

Examiner 1

Name _____

Signature _____

Date _____

Examiner 2

Name _____

Signature _____

Date _____

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Abstract

The act of terrorism is a serious threat to peace and security of our Country and International Community causing serious damage to humans and property. The advent of counter-terrorism as a major international objective and subsequent rise of new anti-terrorism laws by states brought a new challenge to human rights, especially civil and political rights. Ethiopia has adopted prevention and suppression of terrorism crimes proclamation to give effect to prevent and suppress terrorist acts, enables adequately to protect rights and freedoms of individuals and ensure accountability of law enforcement bodies enshrined under FDRE constitution as well as regional and international human rights instruments ratified by Ethiopia.

The purpose of this study is analyzing the implication of the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation No.1176/2020 on human rights as well as to assess the improvement, challenges and the prospect of the proclamation. The thesis investigated one central concern: whether the 2020 Ethiopian Prevention and Suppression of Terrorism Crimes law poses a challenge to human rights or not? In seeking to answer these questions the thesis undertook an in-depth analysis of Ethiopia's Prevention and Suppression of Terrorism Crimes Proclamation.

To answer these concerns of the research, the researcher employs doctrinal type research methodology. This is so such methodology serve to analyze wide range of legal instrument in depth. The researcher synthesizes abroad set of national and international law as well as related scholar's works. The researcher also appreciates best design of national laws to terrorism so to up hold human right value in the enforcement of criminal justice.

As pursuant of the research finding, the new legislation came up with new hopes and better prospects for prevention and suppression of terrorism crime in Ethiopia and a brighter chapter for prevention and suppression of terrorism crime generally and human rights especially thereby enhance promotion and protection. But still there is area that needs to develop so protect human right in execution of criminal cases.

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CHAPTER ONE

INTRODUCTION

1.1 Background to the study

Human rights can be generally understood as those rights which are inherent in human-beings without which they cannot live as human-beings. These are the rights that every human being is entitled to enjoy and to have them protected. They are inherent, equal, universal, inalienable, indivisible, inter-related and inter-dependent. It is the foundation of freedom, justice, and peace in the world.¹ International protection of human rights has started during the adoption of the universal declaration of human rights by the General Assembly of the United Nations on December 10, 1948. Originally the universal declaration of human rights (here after UDHR) has no legal binding force; but now a day most of the rule under such instrument are achieved the status jus cogens norm. Their for the declaration serves more than stand as a mother text of human rights and a constant reference point in the international human rights systems. After the adoption of UDHR, the United Nations (here after UN) adopted the core human rights conventions which have legally binding force on member states.²

According to the UDHR the state has the right to impose reasonable restrictions on the rights and freedoms of an individual to protect the rights and freedoms of the public in general. Imposing reasonable restrictions on the rights and freedoms of the people is for those elements creating a serious risk to the public order on account of their participation in activities destroying life, liberty, and property of others, these laws, far from being at variance with the UDHR, are very much in consonance with its provisions in Article 29.

The effort to eliminate terrorism in international level had started years before the United Nations was established. Terrorism was of concern to the international community as early as 1937, when the League of Nations prepared a draft convention for the prevention and punishment of terrorism.³ International and regional instruments need the state to prevent the commission of terrorist act through, inter alia, criminalization. Whether treated as crimes or acts of warfare, terrorist conduct is distinguishable because of its focus, participants, and victims.

¹Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR).

²Eva Brems, 'Ethiopia before the United Nations Treaty Monitoring Bodies' (2007) Africa Focus 20, 49.

³Javier Ruperez, 'The United Nations in the Fight against Terrorism' Counter-Terrorism Committee Executive Directorate United Nations' (2006)

Each of those factors has parallels with warfare and crime, but terrorism is distinct from its combination of factors.

After the 9/11 attacks in 2001 in the US, terrorism moved from the borders of scientific interest to a subject of major attention. Controversy remained, but the funders of research were now taking it seriously as a subject of interest. Prior to 9/11, research on terrorism had usually been conducted on minimum budgets.⁴ After the 9/11 terrorist attack, the USA took some counter-terrorism measures that have been employed in the USA are a utility of hard and soft power combined which entail military relations or reprisal, military pre-emption, therefore, striking before terrorists do and hard non-military strategies which include economic sanction.⁵ As for the use of soft power techniques deterrence, diplomacy, talking to terrorist groups for more understanding and conciliation and peace are keys. Besides, developing more anti and counter-terrorism laws with the dynamic nature of terrorism.⁶ Since 9/11, with events such as the establishment of the detention camp at Guantánamo Bay and the increase of security and counter-terrorism legislation throughout the world, more attention has been paid to the issue of the extent to which counter-terrorism impacts upon human rights.⁷ Terrorism is a world phenomenon and thus countries are gradually engaged in counter-terrorism.

As a result on September 28, 2001, the Security Council reacted first by adopting 1373 resolution which established the basic principles for combating terrorism. After the months that followed, the passing of Anti-Terrorism Law in the USA influenced the world. Following resolution 1373, many states passed the Anti-Terrorism Act. Similarly, regional organizations adopted their instruments intending to combat terrorism. Some of these measures again become a cause for concern to the international bodies and mechanisms for protecting human rights at all levels: global, regional and national levels.⁸ All States are required to control all forms of terrorist activities within their borders as terrorism represented the globalization of fear and

⁴Andrew Silke, *The Study of Terrorism and Counterterrorism* in Andrew Silke (eds) *Routledge Handbook of Terrorism and Counterterrorism* (2019).

⁵Jordan Kiper, and Richard Sosis, 'why terrorism terrifies us Evolutionary psychology and Terrorism' (2016), 104

⁶Brigitte L.Nacos, *Terrorism and counterterrorism* (5th ed, New York 2016).

⁷UN High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-terrorism Fact Sheet No 32' (2008) United Nations, New York, and Geneva.

⁸International Federation of Human Rights, 'counter-Terrorism versus Human Rights: the key to Compatibility Analysis Report, No. 429/2' (2005).

concept for the role of international law.⁹“We are all determined to fight terrorism to do our utmost to banish it from the earth. But the force we use to fight would always be proportional and focused the actual terrorists. We cannot and must fight them by using their own methods- inflicting indiscriminate violence and tern innocent civilians, including children.”¹⁰

In September 2006, the General Assembly adopted the United Nations Global Counter-Terrorism Strategy,¹¹ as recommended by Kofi Annan in his report entitled *Uniting against Terrorism*. In this report, the then Secretary-General emphasized that effective counter-terrorism measures and the protection of human rights are not conflicting goals but complementary and mutually reinforcing ones.¹²Not only are counter-terrorism and human rights protection interlinked and mutually reinforcing, but compliance with human rights has practical advantages in bringing the perpetrators of terrorist acts to justice. ¹³ According to Hoffman, "history shows that when societies trade human rights for security, most often they get neither. Instead, minorities and other marginalized groups pay the price through violation of their human rights."¹⁴

Africa has been attacked several times by terrorism in recent years, emerging in different parts of the continent as a major challenge. Among other reasons, their activities are results of lethal offshoots of the political use of religion, defective education system and the socio-economic backwardness of the continent, generating national security threats, creating bottlenecks in socio-economic and political development.¹⁵ Among the nations of the world, the sub-Saharan region of Africa is more popular for terror having high terror risk ratings.¹⁶ The international community has put political and economic pressures on African states in the area to ratify international and regional instruments on terrorism. In response, African states including Ethiopia have ratified international instruments on terrorism in general and the OAU Convention

⁹Y. Lakshmi G Rao, ‘Terrorism and its impact on Human Rights’ (2002) AIR (J), 184

¹⁰ Kofi Annan, UN Secretary General (SG/SM/7222 18th November 1999)

¹¹UN General Assembly, The United Nation Global Counter-Terrorism Strategy, (2006) GA Res 60/288, UN GAOR, 60th session, 99th plan mtg, UN Doc A/Res/60/288

¹²Report of the Secretary-General, ‘Uniting Against Terrorism: Recommendations for a Global Counter-terrorism Strategy’ (2006) UN Doc A/60/825/ [5]

¹³Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism* Springer-Verlag Berlin Heidelberg, (2010), 390.

¹⁴ Paul Hoffman, ‘Human rights and terrorism’ (2004) Human Rights Quarterly, 935

¹⁵ Chukwudi Gbadebo Njoku and others, ‘Terrorism in Africa: Mapping the Nigeria and Kenya situation’ (2018) International Journal of Development and Sustainability 7 No. 3, 993

¹⁶Aon Risk, Solution Terrorism and Political Violence Risk Map (2015) Available at <http://www.aon.com/2017-political-risk-terrorism-and-political-violence-maps/pdfs/2017-Aon-Risk-Maps-Report.pdf> (Accessed 24 June 2020)

on Prevention and Combating of Terrorism in particular. It was the first regional instrument enacted to combat terrorism in Africa that defined terrorism in light of the unique historical background of Africa.¹⁷ Viljoen noted that “[o]n the whole, counterterrorist measures pose a much greater risk to Africa's people than terrorism itself.”¹⁸ He stated that the 9/11 terrorist attack in the US increased the adoption of anti-terror legislation by African states, it caused concern that such legislation may be used to repress legitimate opposition, and states would exploit the mood of the time to cloak the stifling and criminalization of internal dissent as "terrorism" ¹⁹

In 2009, Ethiopia has enacted a highly controversial anti-terrorism law, Proclamation No. 652/2009 (hereafter the repealed Proclamation). Within the recommendation of some members of the Ethiopian parliament, different opposition groups, journalists, human rights activists, international human rights organizations and other groups working on human rights and democracy, this proclamation was amended.

This study analyzing the compatibility of the Ethiopian Prevention and Suppression of Terrorism Crimes Law has had on human rights in general and Civil and political rights in particular based on the principles of UDHR, International Covenant on Civil and Political Rights (ICCPR), Organization of African Unity Convention for prevention and Combating Terrorism and the FDRE Constitution.

1.2 Statement of the Problem

Ethiopia’s location in the Horn of Africa which is an area filled with instability and insecurity which makes it a vulnerable country to acts of terrorism.²⁰ The country has been categorized as an intermediate threat to terrorism by a survey conducted by the African Human Security Initiative.²¹ In fact, Ethiopia has been a target of numerous terrorist attacks²², and serious threats of terrorism have prevailed in the country from trans-national and international groups. ²³

¹⁷Martin Ewi & Kwesi Aning ‘Assessing the role of the African Union in preventing and combating terrorism in Africa’ (2006) African Security Review, 36

¹⁸ Frans Viljoen, ‘International human rights law in Africa’ (2007), 299

¹⁹Ibid.

²⁰Robert I. Rotberg (ed), *Battling Terrorism in the Horn of Africa* (2005) Brookings Institution Press, 15.

²¹Charles Goredema & Anelli Botha ‘Africa Commitment for Combating Organized Crime and Terrorism’ (2004) A Review of Eight NEPAD Countries’ African Human Security Initiative, 65.

²²Woldeselase Woldemichael, ‘Terrorism in Ethiopia and the Horn of Africa: Threat, Impact, and Response’ Rehoboth Printers (2010), 126- 132.

²³Ibid

It has impacted the economy and more disturbs the livelihoods of individuals in the countries. The issue of human rights is one of sensitive topics in Ethiopia. It is the major field of debate for a long time between the government and different opposition groups, national and international human rights organizations, and human rights activists. Legislations like the Freedom of Mass Media and Access to Information Law and Anti-Terrorism Law are among the most debatable legislation in the aftermath of the controversial election of 2005. These Proclamations are contested as to their compatibility with human right standards.²⁴One of the reasons for the promulgation of the anti-terrorism proclamation is that Ethiopia has faced a clear and present danger of terrorism and the substantive and procedural laws in place were not capable of addressing this problem.²⁵However, the anti- Terrorism law was amended by "Prevention and Suppression of Terrorism Crimes Proclamation No 1176/2020", because the anti-Terrorism law was not participatory; limit rights and freedom of citizens and there were so many comments and recommendation on governments because the government used the law to its politics and used to attack the opponents.²⁶

Ethiopian lawmakers have replaced 2009 anti-terrorism law that had drawn criticism from rights activists, although Amnesty International said the new version still had the potential to be used against government opponents. For instance, Fisseha Tekle an Amnesty international human rights researcher mentioned that there was also "potential for abuse". An opposition politician Merera Gudina also stated that "We fear ruling party functionaries used to old habits could use the new law to target opponents," especially, the accusation goes to the violations of freedom of expression that went under scrutiny by the proclamation.

Defining 'terrorism' has been an issue that has confounded both policymakers and academics. Terrorism is a social construction, and so one cannot, by definition, speak the truth on the meaning of terrorism.²⁷ The United Nations has failed to come up with a unanimously agreed

²⁴Merera Gudina, 'Twenty Years of Experimenting "Revolutionary Democracy": Elections and Democratization in Ethiopia 1991-2010' (2010)

²⁵ Wondwossen Demissie Kassa, 'Examining some of the Raisons D'être For the Ethiopian Anti-Terrorism Law' (September 2013) Mizan Law Review 7 No.1, 53 <http://dx.doi.org/10.4314/mlr.v7i1.3> (Accessed 18 July 2020)

²⁶የሽብር ወንጀልን ለማላከል እና ለመቆጣጠር በተዘጋጀ ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፡፡ በአርቃቂ ኮሚቴው የተዘጋጀ፡፡

²⁷ Silke (n 4)

definition of terrorism by all states.²⁸ With the absence of a universal definition for the term terrorism, it is likely to result in the serious violation of human rights like the rights to physical integrity, life, freedom, and security especially because of expansive or abusive interpretation of the term as such.²⁹ The proclamation proclaimed with the objective to help Ethiopia avert and control terrorism, defend the country from threats of terrorism and achieve sustainable peace and security.³⁰

The other problem in the proclamation is Article 10 which criminalizes incitement to terrorism in numerous ways. This paper views the problem from the perspective of freedom of expression as recognized in international human rights instruments and the Ethiopian constitution.

The proclamation provides police powers without due process. This gives a chance to the police to violate the basic due process rights by engaging in arbitrary arrest and detention.

The other problem is that the law doesn't set a period given to remand the suspect for investigation. It is usually during remand time that most police investigations take place and confessions are extracted. In this study the author tries to examine the impact of absence of limit to the period of remand on the rights to liberty in light with the FDRE constitution and international human rights. Another major point of argument against the proclamation is the process of proscribing terrorist organizations. The Proclamation mandates the Ethiopian parliament to proscribe and revocation of proscribe an organization as terrorist organization. The process of proscription lacks sufficient due process and procedural safeguards to prevent violations of human rights. The powers and functions of the House of Peoples' Representatives that provided in the constitution don't include the power to proscribe and revoke individuals or entities proscribed as terrorist organizations.

In general, the provisions related to the definition of terrorist act, criminalization of incitement to terrorism, power of police and process of proscribing terrorist organizations are believed to be stifling the risk of arbitrary detention, the rights to freedom of expressions, association, speech, opinions, privacy, and the press.

²⁸Fredrick H. Gareau, *State terrorism and The United States from Counterinsurgency to the War on Terrorism*(Clarity Press Inc. Atlanta and Zed Book London 2004), 12.

²⁹The preamble of the Organization of Africa Union Convention on Prevention and Combating of Terrorism, adopted by 35th Ordinary Session of Head of States and Governments held in Algiers, Algerian in 1990

³⁰ The preamble of the Prevention and Suppression of Terrorism Crimes proclamation No. 1176/2020, Federal Negarit Gazeta of FDRE, 2nd January 2020, Addis Ababa

The problems like surprise search, arrest by police without due process which were the subject of serious criticism by many opposition members and human rights organizations like, Human rights Watch, Amnesty International, Article 19 and several writers in the repealed law are still not addressed in the new Proclamation.

On the other hand, the government has a different position on this issue. The problem result from the proclamation of Anti-Terrorism was solved by taking measure for those problems including lifting bans on political parties. Anti-Terrorism Working Group Chairperson, Ameha Mekonnen said the new draft proclamation is compatible with international human rights conventions and agreements. For him, the revised law discourages terrorism and enhances respect for human rights, compliance with domestic and international laws and decrees.³¹ In this regard, the Standing Committee on Law, Justice and Democracy Affairs and the Foreign Relations and Peace Affairs Standing Committee representative, Abebe Goddebo, said in a report on the Protocol to Prevent and Control Terrorism: “the proclamation would enable the government to protect the public's peace and security from acts of terrorism, carry out strong preventive and oversight measures, and establish a robust legal framework that imposes penalties on perpetrators, and if the government threatens the rights and freedoms of individuals, it will also be a law that creates accountability for those who are victims of terrorism and that plays a positive role in the democratic process.”³²

This study therefore seeks to investigate whether Ethiopia, as a state party, complies with its obligations under international human rights instruments and the OAU Convention concerning combating acts of terrorism effectively and preventing violations of human rights while countering terrorism. In this regard, as far as new Ethiopian Prevention and Suppression of Terrorism Crimes Law is concerned, there is no full fledged and comprehensive study on the topic assessing and evaluating the implications of the legislation on the protection and promotion of human rights in the country. This means that there is visible knowledge gap, regarding the implications that the proclamation could have on the promotion and protection of human rights in one hand and its possible challenges and prospects on the other.

³¹ ‘Ethiopia: Political Party Leaders, Experts Discuss Draft Anti-Terrorism Law’ Ethiopian News Agency (Addis Ababa, 28 February 2019)

³² ‘The House of Peoples’ Representatives has passed a draft bill to prevent and control terrorism’ Fana Broadcast Corporate (Addis Ababa, 2 January 2020)

1.3 Literature Review

For the present study the researcher conducted a review of the literature relevant to the study. The number of important books and articles were identified. The researcher has visited various libraries, websites to collecting the information and other material relevant to the study. There are several theoretical and empirical studies relating to recognition and protection of human rights on an international and regional level have been undertaken by various scholars. For review, the author has classified available literature into three categories – literature on Human Rights, the literature on terrorism especially the literature on anti-terror laws and other related works.

According to my knowledge and access until the writing of this paper, there is no research conducted directly on the issues of proclamation No. 1176/2020 Prevention and Suppression of Terrorism Crimes Law in Ethiopia. There are some attempts to deal with the issues directly and indirectly on the repealed proclamation. But this study is focused on those are not addressed by the previous work.

A research namely, ‘Ethiopian Anti-Terrorism Law And Human Rights Nexus: An Appraisal’ has been conducted in the year 2014 By Shimelis Hailu for his partial fulfillment of the requirements of the Master of Arts in International Relations under the School Of Graduate Studies, Addis Ababa University. In his paper he identifies and assesses the impacts 2009 Ethiopian Anti-Terrorism Law has had on human rights. Especially the power to proscribe terrorist organization is given to HPR, the authors tried to show it given the chance to the government’s label targeting human rights Defenders, political parties and civil society organizations, this poses a serious threat to the space for political dialogues in the country; the definition of terrorism crime is ambiguous and the inclusion of property crimes and disruption of public services committed without any intent to cause death or serious injuries. Act of political dissent such as public demonstrations, non-violent marches and minor acts of violence committed in the contexts of political activism are categorized as terrorist acts carrying a penalty of minimum of 15 years imprisonment or death so long as they causes the results in sub-articles (4), (5) and (6).³³

³³ Shimels Hailu, ‘Ethiopian Anti-Terrorism Law and Human Rights Nexus: An Appraisal’ (MA thesis Addis Ababa University 2014)

He also argue that the 2009 anti-terrorism proclamation in Article 6 of “encouraging terrorism”, threaten the internationally protected and promoted human rights-freedom of expression. The Proclamation highly affects journalists and their sources and it highly forced them to provide only selected information.³⁴ They have no freedom of using and exposing information related to terrorism. The phrase „encouraging terrorism“ is vaguely defined and it will criminalize the peaceful exercise of the rights of freedom of expression. This law forced journalists to be silent from expressing their feelings and opinions on critical political issues.³⁵

Another article namely ‘The Scope of Definition of a Terrorist Act under Ethiopian Law: Appraisal of its Compatibility with Regional and International Counterterrorism Instruments’ has been conducted in 2014 by Wondwossen Demissie Kassa. His article was concerned with the debate related to the Anti-terrorism Proclamation No. 652/2009 particularly with respect to the overly broad definition of the concept of terrorism as a result of which citizens not involved in a genuinely terrorist act are prosecuted and jailed and the Ethiopian government defends the law pointing that it is borrowed from jurisdictions with advanced legal system and rule of law. The problem is still continued by incorporating property crimes and in some amendment like exception of obstruction public or social service under Art 4 of the proclamation. In his explanation he stated that the definition of terrorism includes acts that do not involve violence or injury to people, such as property crimes and disruption of public services is incorporated. In this study the author concerned that the definition of ‘public service’ is exceptionally wide-ranging including; and trying to analyze how the provision in the exception of terrorist act is problematic because ambiguously described the phrase ‘similar rights’. Additionally, tries to analyses the proclamation in lights with the principle of legality issues with Ethiopia’s obligations under the ICCPR Article 15 and by using qualitative requirements of the European Court of Human Rights in the principle of legality implies like accessibility and foresee ability.³⁶

And also in his another article namely ‘Court’s Reluctance to Safeguard Rights of the Accused in the Ethiopian Counter-terrorism Prosecutions and its Broader Implication’ written in the year 2022 has examines Federal High Court rulings in two counterterrorism prosecutions where the

³⁴ Ibid

³⁵ Article 19 Law Programme, Comment on Anti-Terrorism Proclamation, 2009, of Ethiopia March 2010

³⁶ SW and CR v UK (1995) 21 EHRR 363, § 44-46; Kafkaris v Cyprus, at par. 140

accused challenged the admissibility of intercepted materials into evidence for not being obtained with court warrant.³⁷

Husen Ahmed Tura in his article titled ‘The impact of Ethiopia's Anti-Terrorism Law on Freedom of Expression’ written in the year 2017 has discussed the impact of Proc. No. 652/2009 of Ethiopia's anti-terrorism law on the enjoyment of the right to freedom of expression and information. He particularly analyzed how the broad and vague terminologies to define terrorist act and ‘encouragement of terrorism’ violate freedom of expression, and how it affects political opposition. The weakness in the previous Proclamation was focused on how the ‘encouragement’ of terrorism while the critic on 2020 Proclamation related with technical legal words of ‘incitements’ with some improvement in accordance to the recommendation. The provision is problematic because it criminalizes speech, ambiguously described as “incitement,” of terrorist acts, even if there is the intended crime has not materialized or attempted.³⁸

Hiruy Wubie in his paper entitled: “The impact of terrorism and counterterrorism on human rights protection: the UN Response and Ethiopian experience” in 2010 is meant to reflect on the tension between terrorism and counterterrorism on the one hand and human rights protection on the other. Having made conceptual discussions on terrorism and counterterrorism and their impacts on human rights, it reflects on the salient responses that the United Nations made towards the dilemma. With this framework in hand, it shows the Ethiopian experience focusing on the repealed proclamation No. 692/2009 anti-terrorism law.

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism articulates the following criticism with regards to Ethiopia new the Prevention and Suppression of Terrorism 2020 in the draft law; Prevention and Suppression of Terrorism 2020 was drafted by relatively the process of revision be transparent and accessible, inviting the widest possible engagement from stakeholders.

³⁷ Wondwossen Demissie Kassa, ‘Court’s Reluctance to Safeguard Rights of the Accused in the Ethiopian Counter-terrorism Prosecutions and its Broader Implication’(2022) 16(1) *Mizan Law Review*:197-208.<http://dx.doi.org/10.4314/mlr.v16i1.7> accessed 09 January 2023

³⁸ Proclamation 2020 (n 30) Article 10/3/

The proposed legislation include defining terrorism rightly as a “serious threat to peace and security” affecting both persons and property, and the view that government should take “strong precautionary and preparatory acts centered [on] the nature of the crime”. In this regard, they caution that an emphasis on damage to property harm steers the domestic legal standard away from the core emphasis found in agreed international treaties on terrorism and UN Security Council Resolution 1566 on the targeting of civilians. They urge that the government to maintain a definition of terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by this mandate (A/HRC/16/51).

The Special Rapporteur argue that his provision (article 6) planning and preparation, the definition of what might constitute planning and preparation under Article 2(6) creates a challenge of legal certainty, and legal concerns of *nullem crimen sine lege*. Conspiracy (article 7) also raised similar concerns. The Special Rapporteur recommends that these offences have greater definitional clarity.

Additionally, the proclamations punish incitement to terrorism in numerous ways under article 10. They argue that they recall the standards for incitement in listed in the ICCPR Art.19 (3). The proclamation section does not distinguish between situations of legitimate storage and dissemination of information to the public, for example in the context of news reporting.³⁹

Petros Fanta in his article titled ‘Acts Considered as Terrorism Crimes and Compatibility of Counter-terrorism Measures to International Standards: In Context of Ethiopia’ written in the year 2022 has discussed critically observe and examine definition of terrorism, acts that constitute terrorism and other acts which can be considered as contributory to terrorism crimes under Ethiopian relevant laws adopted to combat terrorism; specially Preventive and Suppression of Terrorism Crimes Proclamation No.1176/2020.⁴⁰

Literature review revealed that most of the previous studies on counter-terrorism have mainly focused on the repealed proclamation No. 692/2009 law. Nevertheless, there are still gaps in the literature on counterterrorism in areas. The proclamation No.1176/2020 was drafted by relatively

³⁹ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Commentary on Ethiopia’s draft Prevention and Suppression of Terrorism Crimes law (OL ETH 3/2019)

⁴⁰ Petros Fanta, ‘Acts Considered as Terrorism Crimes and Compatibility of Counter-terrorism Measures to International Standards: In Context of Ethiopia’(2022) <https://doi.org/10.30958/ajl.8-4-8> accessed 09 January 2023

extensive consultation. The process of revision is transparent and accessible, inviting the widest possible engagement from stakeholders.⁴¹

This research is however entirely different from the above research works for it focuses on, the new Proclamation and its impact suppression of terrorism crimes laws in Ethiopia and their perspectives on human rights; analyses the incitement of terrorist act therein vis-a-vis the international human rights standards especially with the requirements of article 19(3) of ICCPR, decision of European Court of Human Rights (ECHR) and Johannesburg Principles on freedom of expression and the proscription of terrorist organization by the House of Peoples' Representatives. The researcher analyses thoughtfully that the Proclamation not smart to observe human right standards that set under international human right instruments like ICCPR, the CAT and the African Charter. Additionally the study analyzing legal concepts, theories, principles and different international cases relevant to the new Proclamation for the Prevention and Suppression of Terrorism Crimes law and its implications on the protection and promotion of human rights. Admittedly, as far as the new Proclamation is concerned it is too soon to find adequate literatures on the area with the exception of some UN Special Rapporteur report in the draft law. The researcher couldn't find research works written in a current subject matter, the topic. Hence, there is a clear gap of literature on the topic at hand at the time when the researcher started conducting the thesis. Therefore, the researcher motivated to assess and examine the implications of the Ethiopian prevention and suppression of terrorism crimes Proclamation No. 1176/2020 on the promotion and protection of Human Rights in Ethiopia to try his best to fill the existing knowledge gap on the area. It is the position of the author that Anti-terrorism laws are very much essential to tackle terrorism acts but shouldn't be used to override the basic human rights of the individuals.

1.4 Objective of the Study

1.4.1 General Objectives of the Study

The general objectives of the study are to analyze the impact of the Ethiopian Prevention and Suppression of Terrorism Crimes law has had on human rights in general. The study also

⁴¹የ ሽብር ወንጀልን ለመከላከል እና ለመቆጣጠር በተዘጋጀ ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር ማብራሪያ፡፡ በአርቃቂ ኮሚቴው የተዘጋጀ፡፡

investigates the compatibility of the Ethiopian Prevention and Suppression of Terrorism Crimes law on international human rights instruments.

1.4.2. Specific Objectives of the Study

Specifically, the study attempts to:

- ❖ Identify and analyze the proscription and revocation of terrorist organization on Ethiopian Prevention and Suppression of Terrorism Crimes law with international and regional human rights instruments in general and civil and political rights in particular.
- ❖ Identify and analyze the power of police on Ethiopian Prevention and Suppression of Terrorism Crimes law with international and regional human rights instruments in general and civil and political rights in particular.
- ❖ To assess, the improvements, the challenges and prospects of the Ethiopian Prevention and Suppression of Terrorism Crimes law in the protection and promotion of human rights;

1.5 Research Questions

The general research question of this paper seeks to discuss whether the 2020 Ethiopian Prevention and Suppression of Terrorism Crimes law poses a challenge to human rights or not.

The specific questions addressed under this umbrella are:

- ❖ Is the proscription and revocation of terrorist organization process on the Prevention and Suppression of Terrorism Crimes Law compatible with international human rights instruments?
- ❖ Is the power of police on the Prevention and Suppression of Terrorism Crimes Law conformity with due process concern of international human rights instruments?
- ❖ What are the improvements, the challenges and prospects of the Proclamation vis-à-vis Ethiopia's international human rights obligations?"
- ❖ What are the specific implications of the new Proclamation on the effective Prevention and Suppression of Terrorism Crimes Law on the protection and promotion of human rights?

1.6 Research Methodology

This study comprehensively analyses the existing legal documents aimed at countering terrorism in recent Prevention and Suppression of Terrorism Crimes law in Ethiopia. The study is purely doctrinal research which emphasis on the analyzing legal concepts, theories and principles on the new Ethiopia Prevention and Suppression of Terrorism Crimes law and its implications on the protection and promotion of human rights. The study will mainly use an analytical approach; a descriptive approach is used whenever appropriate to inform the analysis. The analysis begins by exploring, through literature review and textual analysis, trends highlighting the emergence of human rights protection and state commitment to combat an act of terrorism. The implications, if any, of the Prevention and Suppression of Terrorism Crimes Proclamation of Ethiopia on human rights is examined mainly through critically analyzing the corpus of the Proclamation, reviewing the literature available on the topic and government action taken based on the Proclamation.

In undertaking this analysis, the writer will use the following methods. Primary sources, including the various relevant international and regional statues treaties and declarations related to human rights and counter-terrorism measures adopted by Ethiopia. The secondary sources that are used include books, articles, magazines, reports, and studies on the topic as well as news reports on different events, government documents. The study uses desktop, internet and library research to gather the primary and secondary information for analysis.

1.7 Significance of study

The purpose of the study is to assess the effectiveness of the Prevention and Suppression of Terrorism Crimes in preventing and combating terrorism in Ethiopia. The study contributes to clarifying and explaining the relation between the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation and human rights. The study also seeks to analyze the proclamation and examining the compatibility of proclamation with international and regional human rights standards. There is not adequate literature on the Ethiopian Prevention and Suppression of Terrorism Crimes. This paper seeks to fill this gap on the topic. Furthermore, the study may contribute to and serve as a source of awareness for the Ethiopian community about the impact of the Prevention and Suppression of Terrorism Crimes law on human rights.

1.8 The Scope of the Study

The researcher's area of study is on human rights perspectives of the Prevention and Suppression of Terrorism Crimes laws in Ethiopia. In effect, the research focuses on the assessment of the

nexus between Ethiopian Prevention and Suppression of Terrorism Crimes Law and Ethiopia's obligation under international and regional law, and the FDRE Constitution and implication of human rights in light of Ethiopian Prevention and Suppression of Terrorism Crimes Law. The study then discusses some specific human rights concerns raised by the implication of this Ethiopian Prevention and Suppression of Terrorism Crimes laws.

1.9 Limitation of the Study

Besides time and financial limitations tentatively researcher expects the following as a limitation to this study:

1. As the study is purely doctrinal legal research which emphasis on analyzing the legal concepts, provisions and principles rather than looking at practicality of the laws and principles on the ground.
2. To find enough literature written in this subject matter. The issue of studying on the proclamation of the Prevention and Suppression of Terrorism Crimes laws under Ethiopian legal system is wide concept which needs to analyze in many dimensions. Additionally the shortage of resources previously done on the topic and similar issues in Ethiopian perspective.

1.10 Overview of chapters

The study is organized into four chapters. Chapter one introduces the study, reviews the works of literature, discusses the research questions and methodology, the significance of the study and scope of the study. Chapter two will embark on conceptual clarification and international standards regulating anti-terrorism law and human rights; the nexus between Prevention and Suppression of Terrorism Crimes law and human rights violations. The third chapter deals with Ethiopian Prevention and Suppression of Terrorism Crimes laws and its impacts on human rights. The impacts of this law on human rights would be evaluated against existing legal and institutional. Analyzes the Prevention and Suppression of Terrorism Crimes Proclamation of Ethiopia to assess whether and how it has been used to and enforcement of civil and political rights. Deal with the improvements, challenges and prospects of new Proclamation No. 1176/2020 with regarding to the promotion and protection of human rights. The last chapter ends with recommendations of ways to neutralize the threat counter-terrorism frameworks and the Prevention and Suppression of Terrorism Crimes Proclamation of Ethiopia on human rights by exploring standards in international and African human rights and counter-terrorism frameworks.

CHAPTER TWO

CONCEPTUAL FRAMEWORKS AND INTERNATIONAL HUMAN RIGHTS STANDARDS REGULATING TERRORISM ACTS

2.1 Introduction

This chapter deals with the concept of terrorism in relative detail and on its relationship with human rights. A brief historical account is also made to highlight the chronology of events displaying the antecedents of modern-day-terrorism. Hence, having made definitional discussions and distinguishing terrorism from allegedly similar concepts, this research selects to see the implication of Ethiopian prevention and suppression of terrorism crimes law on human rights protection.

2.2 Historical Perspective of Terrorism

The word terror is derived from the Latin verb *terrere* meaning to cause to tremble, and *deterre* which means to frighten from.⁴² The etymological root of the word terror lies in the essence of any discourse about terrorism. No one challenges to deny that the desire to create a state of fear within a given community lies in the heart of terrorism-proper, even in the context of the international community's failure to have a universally accepted definition of terrorism. Terrorism has been changed its character over the courses of history; and it will continue changing. Though we can trace the beginnings of the use of terror to such ancient times, the idea of terrorism as a conscious political tactic traces its origin back to the late eighteenth century wherein modern age of revolutions, notably that of France, began to create a systematic link between the use of terror and the then political philosophies. At that time, terrorism was applied to the intimidating practices of the French government in power whereas today's terrorism has undergone major evolution so that, by now, it seems to be mainly applied to actions by individuals, or groups of individuals.⁴³ Despite the appearance of terrorist violence at various

⁴² Mary Buckley and Rick Fawn, *Global Responses to Terrorism: 9/11, Afghanistan and Beyond* (Routledge Taylor & Francis Group, 2003) 27.

⁴³ Harry Henderson, *Global Terrorism, Revised Ed.* (Facts on File Inc., 2004)10.

times in the distant past, modern terrorism is widely believed to have begun during the last third of the 19th century. Since that era, terrorist activity appears to have come in a succession of ‘movements’.⁴⁴

After World War II terrorism techniques substantially changed and began to employ hijackings of civil aviation air craft which was made a common occurrence and consequently push towards a need to adopt an International Convention against the Taking of Hostages, which came into being only at 1979.⁴⁵ The justified need to achieve self-determination rights from colonial conquest is by and large a common denominator of most ‘terrorist’ missions in this period.

One of the main terrorist organisations which were formed during modern terrorism era is Al Qaeda.⁴⁶ The terrorist organization is well known for strongly objecting the policies of the United States of America in the Middle East in general and its support for Israeli and presence of troops in Saudi Arabia in particular. Al Qaeda is responsible for numerous terrible terrorist attacks throughout the world against the United States of America.⁴⁷

The most horrific terrorist attack committed by Al Qaeda against the United States of America was the September 11, 2001 attack on the twin towers of the World Trade Centre in New York and Pentagon.⁴⁸ This terrorist attack is responsible for the deaths of more than three thousand people and it has been demonstrated as “the worst single terrorist event in history”.⁴⁹

The use of civil aviation aircraft to destroy the World Trade Center towers in New York and part of the Pentagon building in Virginia on September 11 is perceived as highlighting deficiencies in international anti-terrorism law and enforcement: the lack of international police and intelligence coordination; the absence of a comprehensive definition of terrorism; and insufficient international criminal law infrastructure.⁵⁰ September 11, illustrating that terrorism crosses

⁴⁴ David C. Rapoport, *The four waves of modern terrorism* in A. K. Cronin and J. M. Ludes (eds.), *Attacking Terrorism: Elements of a Grand Strategy*, (Washington, DC: Georgetown University 2004).

⁴⁵ Reuven Young, ‘Defining Terrorism: The Evolution of Terrorism as a Legal Concept in International Law and Its Influence on Definitions on Domestic Legislation’ (Winter 2006) *Boston College International and Comparative Law Review* 29, 3

⁴⁶ Leonard Weinberg & William L Eubank, *Roots of Terrorism: What is Terrorism* (Chelsea House Publisher 2006), 88

⁴⁷ Ibid

⁴⁸ Bruce Hoffman, *Inside Terrorism* (New York: Colombia University Press 1998), 18.

⁴⁹ Weinberg & Eubank (n 46).

⁵⁰ Asli Bâli, ‘Stretching the Limits of International Law: The Challenge of Terrorism’ (2002) *ILSA Journal of International and comparative Law*: 8: ISS. 2,

national and ethnic boundaries,⁵¹ changed the prevailing attitude to terrorism and certainly the attitude of the most influential states. The spread and greater availability of weapons of mass destruction, modern society's dependence on computer systems, and the emergence of cyber-terrorism increases the likelihood of a large scale high-impact terrorist attack. The attacks' scale and principal victim shook world opinion. As a result, the Security Council issued an interventionist resolution, the U.N. General Assembly took up the terrorism debate with increased strength, and, generally speaking, states and non-state entities reaffirmed the relevance of international law and cooperation in preventing and punishing terrorism.⁵²

While human rights theory expects states to protect all persons within their jurisdiction, such state efforts are expected to be in conformity with international human rights standards, identified by the ICCPR. The devastating consequences of terrorism testify to its direct impact on human rights.⁵³

In Africa, terrorism has been practiced by both state and non-state actors through the years.⁵⁴ History tells that terrorist acts have prevailed throughout the continent.⁵⁵ The historical background of terrorism in Africa goes as far back as the colonization period and the struggle for independence.⁵⁶ During this period, terrorist acts were used by national liberation movements to end colonization.⁵⁷ After the end of the colonial period in Africa, terrorism was still practiced in civil wars.⁵⁸ Terrorism in Africa is growing exponentially due to the continent being home to both a facilitating and target-rich environment for terrorists that are seeking global influence.

⁵¹Nicholas Rostow, 'Before and After: The Changed U.N. Response to Terrorism Since September 11th' (2002) 35 *Cornell Int'l L.J.* 475, 47

⁵²Susan W. Brenner & Marc D. Goodman, 'In Defense of Cyber terrorism: An Argument for Anticipating Cyber-Attacks' (2002) *J.L. Tech. & Pol'y* 1

⁵³Peter Sekyere and Bossman Asare, 'An Examination of Ethiopia's Anti-Terrorism Proclamation on Fundamental Human Rights' (2016) *European Scientific Journal* edition 12 No.1

⁵⁴James J.F. Forest and Jennifer Giroux, 'Terrorism and Political Violence in Africa: Contemporary Trends in a Shifting Terrain' (2011) *Perspectives on Terrorism* 8

⁵⁵Sam Makinda, 'The history and the root causes of terrorism in Africa' (2006) *African security Review* 18

⁵⁶ *Ibid*

⁵⁷ Lyle Eugene Pienaar, *International Terrorism in Africa 1990-2004: Extent and Counter-Measures* (Master of Security Studies thesis University of Pretoria 2007) 38.

⁵⁸ Forest and Giroux (n 54) 8 - 9.

Terrorism is a major problem in Africa. The continent has attacked several times by terrorism in recent years. Especially, the Horn of Africa has for a long time been an area of high security concern not only for Africa but for the rest of the world, particularly the United States.⁵⁹

In response to the various terrorist activities in Africa, both the OAU and the AU have taken numerous counter terrorism measures.⁶⁰ One of such measures taken by the OAU was the adoption of resolution AGH/RES 213(XXVIII) in 1992 which urged member states to cooperate with each other to fight all forms of extremism in general and religious and political extremism in particular.⁶¹ In Africa it should be noted that the transformation of the OAU to the AU in July 2002 has played an important part in organizing state parties to combat terrorism together.⁶² In 2002 the AU appointed an Anti- Terrorism Officer who works as a representative of the AU Commission on Counter Terrorism Matters.⁶³

Coming to Ethiopia, Ethiopia has had its own generous share of terrorist attacks. The armed groups have committed a number of bombings and other attacks in Ethiopia or on Ethiopia's diplomatic missions. Two attacks were recorded in 2008. In May 2008, an explosion on a minibus in Addis Ababa killed three people. The attack was on the eve of national day celebrations. In October 2008, the Ethiopia trade mission in Somalia was one of the targets of a multiple suicide bombing that claimed about 20 lives.⁶⁴ Many more attacks have been recorded. Recently Ethiopia's political reform process continued in 2019 under Prime Minister Abiy Ahmed. A Legal and Justice Affairs Advisory Council under the attorney general amended the most criticized the 652/2009 ATP in 2020 in line with the broader opening of political space in the country.⁶⁵ The researcher envisage all these good opportunities may be serve as a spring board to rethinking to paving obstacles and to wide avenue human right without adversely affecting security of the community

⁵⁹ Khadiagala, Gilbert and other, 'Terrorism in the Horn of Africa' (2004) Washington: United States Institute of Peace

⁶⁰ Ewi & Aning (n 17) 34.

⁶¹ Organization for Africa Union (OAU) 28th Ordinary Session of the Assembly of Head of States and Government held in 1992

Available at: http://www.africa-union.org/root/au/AUC/Departments/PSC/Counter_Terrorism.htm[accessed on 22 August, 2020].

⁶² Ewi & Aning (n 17) 41.

⁶³ Ibid 38.

⁶⁴ An Analysis of Ethiopia's Draft Anti-Terrorism Law, (2009)

⁶⁵ 'Country Reports on Terrorism compliance with Title 22 of the United States Code, Section 2656f (the "Act")' (2019) which requires the Department of State to provide to Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria of the Act, Bureau Of Counterterrorism

2.3. Definitions: Terrorism and Counterterrorism

2.3.1 Terrorism

The word terrorism has been widely used all over the world by media, academics and by common peoples. However, most attempts to define it at international and regional levels have been unable to agree on specific definition of terrorism. The inability by states, academics, policy makers and researchers to establish a unified definition of terrorism is due to the existence of the different perspectives and interests from each side. They have employed a different criterion to define terrorism and such criterion has been a reflection of specific interests and thoughts.⁶⁶

The New Encyclopedia Britannica defines terrorism as: the systematic use of terror (such as bombings, killings and kidnappings) as a means of forcing some political objective. When used by a government, it may signal efforts to stifle dissent; use by insurrectionists or guerrillas, it may be part of an overall effort to effect desired political change.

The difficulty in defining “terrorism” is in agreeing on a basis for determining when the use of violence (directed at whom, by whom, for what ends) is legitimate; therefore, the modern definition of terrorism is inherently controversial. An internationally accepted definition of terrorism is difficult. Besides consistent attempts to fight terrorism at an international level, it might serve as a standard to control state abuse of anti-terrorism laws, which might be a cause for human rights violations.⁶⁷ State and non-state groups use violence for the achievement of political ends.

Defining ‘terrorism’ has been an issue that has confused both policymakers and academics. For some, there is little point in expending any further time on what they see as a lost exercise, yet for others the lack of progress on an agreed definition leaves a sense of unfulfilled obligation. From a policymaking perspective, the logic is that if one is to generate international cooperation against terrorism, then there surely needs to be international agreement as to what it is that one is countering. From an academic perspective, one might think that an understanding as to ‘what terrorism is’ and what its parameters are fundamental to all terrorism related research.⁶⁸

⁶⁶Aljazy, M. Ibrahim, ‘Countering Terrorism and Protecting Human Rights: An Islamic and Arab League Dimensions’ (2010) *European Journal of Social Science*, 5 (1), 64-75.

⁶⁷Harry Henderson, *Global Terrorism, Revised Ed.*, Facts on File Inc. (2004), 10.

⁶⁸Anthony Richards, ‘Defining Terrorism’ in Andrew Silke (ed) *Routledge Handbook of Terrorism and Counterterrorism* (2018).

The UN Member States still have yet to come up with the acceptable notion of definition of terrorism, and this fact has been a major obstacle to meaningful international countermeasures. Questions such as who is terrorist; a person, organizations, groups or states cannot be answered exactly. One of the reasons is that the criteria vary from one country to another, not even in national legal codes is there a single definition of what ‘terrorist’ is. Politically, the situation is even more confusing, for someone may be a freedom fighter whereas a terrorist for others, which illustrates the variation in the use of the terminology.⁶⁹

Legal measures targeting terrorism operate on both the domestic and international planes. To engage the United Nations, as a political and legal matter, terrorism must have a significant international dimension.⁷⁰ Although a significant proportion of terrorism is intrastate, terrorism is frequently international in character: by crossing borders (as in Kashmir), by the nationality of participant and/or victim (as in September 11), or by target even with geographically intra-state. Acts may also be considered international in character when they attempt to influence foreign governments and when they implicate the interests of more than one state.⁷¹

International efforts to curb terrorist acts first found expression in the League of Nations’ Convention for the Prevention and Punishment of Terrorism. This followed a resolution stating “that the rules of international law concerning the repression of terrorist activity are not at present sufficiently precise to guarantee efficiently international co-operation”⁷² The first U.N. General Assembly resolution concerning terrorism was passed in 1972.⁷³ From this time onwards, the United Nations, principally the General Assembly, attempted to offer leadership towards eliminating international terrorism.⁷⁴

In 1994, the General Assembly’s Declaration on Measures to Eliminate International Terrorism, set out in its resolution 49/60, stated that terrorism includes “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” and that such acts “are in any circumstances unjustifiable, whatever the

⁶⁹REDRESS, ‘Terrorism, Counter –Terrorism and Torture: International Law in the Fight against Terrorism’ (July 2004).

⁷⁰Young (n 45) 3.

⁷¹Ibid

⁷² Convention for the Prevention and Punishment of Terrorism, Nov. 16, 1937, League of Nations Doc. C.546M.383 (1937), *reprinted in* 7 International Legislation 862 (Manley O. Hudson ed., 1941) [hereinafter 1937 Terrorism Convention]

⁷³ UNGA Res. 3034 (XXVII) UNGAOR 27th Sess. (Dec. 18, 1972) UN Doc A/RES/3034(XXVII)

⁷⁴UNGA Res. 42/159 17 (Dec. 7, 1987) UN Doc A/RES/42/159

considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them.”⁷⁵

Following the increased Security Council management of the United Nations’ anti-terrorism strategy after September 11, the General Assembly continued to adopt resolutions calling on states to eliminate international terrorism.⁷⁶ The Sixth Legal Committee did not incorporate the obligations arising from Resolution 1373 into its recent draft Comprehensive Terrorism Convention.⁷⁷

The General Assembly’s composition makes it unsurprising that even in the wake of September 11 it failed to achieve clarity of vision sufficient to produce anything new and constructive.⁷⁸

UN Security Council Resolution 1566 (2004) gives a definition: criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act.

A UN Panel, on March 17, 2005, described terrorism: as any act "intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.”⁷⁹

The immediate victims of violence are generally targets of opportunity or self-representative or symbolic targets, targets population. Threat and violence based on communication processes between terrorist organization imperiled victims and targets are used to manipulate the audiences, turning it into a terror, a target of demands or a target, depending on whether coercion or propaganda is prime thought.⁸⁰

By now, the issue of self-determination is not as sounding as it used to be decades before in the realms of the United Nations. Yet, states are not able to reach at an all binding definition. While every state, at least in words, condemns terrorism and there are considerable amounts of United

⁷⁵ Fact sheet No.32.(n 7)

⁷⁶ UNGA Res. 56/88 16 (Jan 24, 2002) UN Doc A/RES/56/88

⁷⁷ Young (n 45)

⁷⁸ Peter J. van Krieken, ‘Terrorism and the International Legal Order with Special Reference to the UN, the EU and Cross-Border Aspects’ (2002)

⁷⁹ Hearing and Briefing before the Subcommittee on International Terrorism and Nonproliferation of the Committee on International Relations House of Representatives one Hundred Ninth Congress First Session March 17, 2005

⁸⁰ Sudha Setty, ‘What is a Name? How Nations Define Terrorism Ten Years after 9/11’ (2011) U.Pa.J Int’l L 33, 1

Nations General Assembly and Security Council resolutions condemning the same, it is a paradox that there is no single internationally binding definition of terrorism. This would without doubt affect the efficiency of the fight against terrorism. This makes one to question time and again as to what is the miracle that prevents the international community to adopt one and pursue its global counterterrorism strategy with relative suitability.

Viewing terrorism as a method rather than as inherent to any particular type of cause helps us to consider the phenomenon more objectively. Thus, if an act of violence satisfies ones criteria as to what constitutes an act of terrorism, *then terrorism it is and remains*, regardless of whom the perpetrator or what the cause is.⁸¹

The first element is that a definition of terrorism has to refer to acts committed against members of the general population, or segments of it, with the intention of causing death or serious bodily injury, or the taking of hostages.⁸² It is important to stress on the *mens rea* requirement and the need for the injuries specified to be serious ones. Secondly, the act must be committed for the purpose of provoking a state of terror, intimidating a population, or compelling a government or international organization to do or abstain from doing any act. And finally, it has to be corresponding to all elements of a serious crime as defined by the law.⁸³ It is in no way defensible to consider minor offences fall in the domain of terrorism. The Special Rapporteur's concern is that an excessively extended definition of terrorism is a signal for a forthcoming violation against the human rights of terrorist suspects, and the public at large.

The texts of the comprehensive convention on terrorism being prepared in the protection of the UN since 2002 read as follows:

Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

- a) Death or serious bodily injury to any person; or*
- b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or*

⁸¹ Silke (n 4) 17

⁸² UNCHR 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Mission to Spain' (16 Dec.2008)

⁸³ Ibid

*c) Damage to property, places, facilities, or systems referred to in paragraph 1(b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.*⁸⁴

In conclusion, there are standards that a definition of terrorism, mainly in a domestic set up, has to fulfill. In summary unlawfully and intentionally causes of death or serious bodily injury or causes serious damage to public or private property that result in major economic loss when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel can take as functional definition. Accordingly, the standards that a definition of terrorism must fulfill identified as: the act must be unlawful and intentional, it must causes serious danger to life, body and property, it's purpose must to intimidate a population, or to compel. These standards are meant to put a limitation on state arbitrary definition of terrorism that is likely to include acts that are not truly a terrorist in character. The fact that these standards are reproduced in several conventions and model legislations is a further proof of the fact that the above-mentioned standards are applicable in a relatively consistent way. These model definitions that are, relatively speaking, an acceptable definition of terrorism are useful for us to make comparisons with the definition gave to terrorism in the Ethiopian prevention and suppression of terrorism crime law in the later parts of this paper.

But going through literatures, it can safely be concluded that there is no universal agreement on the concept of terrorism.⁸⁵ The UN Member States still have no agreed-upon definition of terrorism and this fact has been a major obstacle to meaningful international counter terrorism measures. These situations are even more crucial in developing countries where the democratic institutions are at infant stage.

2.3.2 Counterterrorism

The war on terror that emerged in the wake of the 9/11 terrorist attacks and later transformed into the war against the Islamic State group (IS) has faced challenges and created problems across a wide range of policy domains: international humanitarian law and the laws of war; criminal justice and the rule of law; international diplomacy; and others. The wide ranges of issues where

⁸⁴UNGA, 'Report of the Ad Hoc Committee established by General Assembly Resolution 51/210' (17 December 1996) 6TH (2002) UN Doc Supp. No 37 (A/57/37)

⁸⁵C. A. J. Coady, 'Terrorism and Innocence' (2004) the Journal of Ethics 8, No. 1, 38

threats to democratic freedoms and values have arisen, such as torture and extraordinary rendition. The way in which its impact has moved so far and wide highlights how complex and multifaceted CT has become in today's world.⁸⁶

Harry Henderson defined counterterrorism as the attempt to prevent terrorism or at least reduce its frequency and severity.⁸⁷ A successful counterterrorism strategy calls for the need to adopt concerted mechanisms both at the national and international level.

The international duty of states to protect human rights violations obliges them to take the necessary steps to prevent terrorism and punish its perpetrators. It is based on this broad premise that the legitimacy of effective counterterrorism measures rests. CT is most often linked with 'hard power' intelligence, law, policing, and military power, but it increasingly makes use of 'soft power' political, social, and economic control – as well as broader policy areas dealing with the environment, development, critical infrastructure, migration, and humanitarian intervention.

The UN underscored the justified relevance of counterterrorism measures. It is stated that *'international and regional human rights law makes clear that states have both a right and a duty to protect individuals under their jurisdiction from terrorist attacks. This stems from the general duty of states to protect individuals under their jurisdiction against interference in the enjoyment of human rights. More specifically, this duty is recognized as part of states' obligations to ensure respect for the right to life and the right to security.'*⁸⁸ If a state fails to take adequate measures to protect human rights from terrorist attacks, it bears responsibility for the violation. Hence, an effective counterterrorism is part of a state's human rights duties.⁸⁹ As a manifestation of state duty for human rights protection, counterterrorism measures shall always be loyal to human rights protection. Failure in this regard is nothing but self-refuting with the promised goal of counterterrorism measures. It is now widely recognized that CT policy can no longer continue classified in one or two policy areas, but must be coordinated across a wide array of policy

⁸⁶Ronald Crelinsten, 'Conceptualizing Counter terrorism' in Andrew Silke (ed) *Routledge Handbook of Terrorism and Counterterrorism* (2018)

⁸⁷ Henderson (n 67) 10

⁸⁸ Fact Sheet No.32 (n 7) 30-56

⁸⁹ Jonathan Cooper, *Countering Terrorism, Protecting Human Rights: A Manual* (Office for Democratic Institutions and Human Rights, OSCE/ODIHR, 2007), 15.

domains.⁹⁰ This has come to be called the “comprehensive”, “whole-of-government”, or “whole-of-nation” approach.

A comprehensive approach involves multiple levels of government and society: sub national, national, international, transnational; state and non-state actors. Here, too, unclear boundaries between “inside” and “outside”, domestic and foreign, and public and private, complicate matters further.⁹¹

The term counter-terrorism has been complicated due to the difference on the practical implementation and the meaning given on paper as well as due to the problem inherited from controversial definition of terrorism. That means, it has not been clearly defined and there are many confusions between empirical conditions on the ground and in definability put at principle level.⁹²

Scholars writing on the problem of ‘terrorism’ have identified two distinct models of Counter-terrorism. These are the military (war approach) and legislative (criminal justice approach).⁹³

The military approach advocates consider terrorism as a mortal threat to the state which can only be addressed by military force. The war model treats terrorism as if it were an act of war or insurgency. Because wars are usually fought between states, countering terrorism within a war model implies that the terrorist group represents the equivalent of a state. Although the central element of the war model is the use of maximal force designed to overpower the enemy, the conduct of war does not occur in a legal vacuum. The laws of war lay down rules for how wars should be fought and how non-combatants should be treated.⁹⁴

For this model counter-terrorism is described as an action of revolutionary warfare taking of response based on military and preferring the use of harmful actions, practice of illegal punishment and troop recruitment. This approach is primarily war model based in a direct military measure individually or multilaterally and often has extensive violation of fundamental rights and freedoms.⁹⁵ Therefore, military counter-terrorism advocates believe that the correct

⁹⁰Teun Van Dongen, ‘Mapping Counterterrorism: A Categorization of Policies and the Promise of Empirically Based, Systematic Comparisons’ (2010) *Critical Studies on Terrorism*, 3(2), 227–241

⁹¹Silke (n 4)

⁹²Setty (n 80)

⁹³Silke (n 4)

⁹⁴Ibid

⁹⁵Summy Ralph and Senthil Ram(ed), *Non-violence: an Alternative for Defeating Global Terrorism* (New York: Science Publishers, Inc 2008).

response to the terrorist threat was a military track down and killing a hardcore of extremists using military forces.⁹⁶

Secondly, criminal or legislative approach principles with regard to countering-terrorism could be applied in relation to developed international law and basic requirements of the Security Council resolution. Some states already may have developed legislation in relation to the resolution and such developed legislations will be enough to satisfy the significant obligations.

A criminal justice approach treats terrorism as crime. If one considers the most common terrorist tactics, such as kidnapping, assassination, bombing, and armed attacks, the end result is usually the infliction of injury or loss of life on persons, or the destruction of property, all of which are universally proscribed in the criminal law of all nations.

Treating terrorism as ordinary crime, not as a special offence requiring special procedures or punishments, performs a legitimization function. By criminalizing the acts that terrorists commit, emphasis is placed on their criminal nature and not on their political or ideological motive.⁹⁷

The criminal justice model relies on a complex bureaucracy with strict rules of governance and many interacting institutions, with their own traditions, culture, and language. While the criminal justice model can achieve some important goals in terms of deterrence, retribution, education, incapacitation, and rehabilitation, these benefits are largely dependent upon how the system is used, how fair it is seen to be used by others, and how committed individuals are to terrorist violence either as a means to other goals or as an end in itself.⁹⁸

The other states may need solely to add to or modify developed legislation and could use part of the principles of the resolution. Still other states may need extensive legislative measure, in which case the principles, in general or in part, could be enacted to enforce Security Council resolution 1373. Lastly, there may be also some states that want simply to take ideas from the resolution, the Explanatory Guide and Expert Group Report to adopt internal or domestic policy and legislation.⁹⁹

As far as terrorism has a sever effect on a variety of fundamental human rights and freedoms, the government of states are obliged to take and implement effective counter-terrorism measures.

⁹⁶ Hughes Geraint, 'The Military's Role in Counter-Terrorism: Examples and Implications for Liberal Democracies' (2011) The Letort paper

⁹⁷ Silke (n 4)

⁹⁸ Ibid

⁹⁹ Human Rights watch 'In the Name of Security, Counter –Terrorism law Worldwide since September 11' (2012c) Printed in the United States of America

Both effective counterterrorism actions and the protection of human rights are complementary and equally reinforcing objectives which must be done simultaneously as one of states' obligation to protect the people. However, the current practice is otherwise. Like the serious impacts of terrorism on protection and implementation of human rights, counterterrorism enacted by states had also impaired human rights.¹⁰⁰ This is discussed in detail under section 2.4 below.

All this makes a counterterrorism measure more difficult. It cannot be merely reactive or coercive. Otherwise it risks creating a bunker mentality, activating anger and reaction that facilitates terrorist staffing, and missing the next new development. It must therefore be proactive, looking ahead and trying to out-think the terrorist. It must also be persuasive, convincing terrorists to abandon their destructive paths, and supporters and followers to seek non-violent ways to achieve their goals. CT must think in the long term, even as it acts in the short term to respond to attacks and outwit terrorist planning, financing, and targeting. It must go beyond legal and military approaches to include political, social, cultural, and economic initiatives aimed at undermining the viral spread of radicalizing and violence-glorifying ideas that fuel the use of terrorism in social and political life.¹⁰¹

2.4 The Nexus between Anti-Terrorism Law and Human Rights Violations

Terrorism has dual impacts on human rights which is paradoxical in nature. Mrs. Kalliopi.k. Kuofa clearly explains these points as cited in FIDH report;

Thus, it is clear that there is a close link between terrorism and the enjoyment of human rights and freedom. This link is seen directly when groups or individuals, deprive them of their freedom, destroy their property or use threats and intimidations to sow fears. The link can be seen indirectly when states response to terrorism leads to the adoption of policies and practices that exceed the bounds of what is permissible under international law and results in human rights violations, such as extrajudicial executions, torture, unfair trails and other acts of unlawful repressions, that violates the human rights not only of the terrorists but also of innocent civilians.¹⁰²

¹⁰⁰ Fact sheet No.32 (n 7)
available at <http://www.ohchr.org/documents/publications/factsheet32En.pdf>,

¹⁰¹ Silke (n 4)

¹⁰² International Federation of Human Rights (FIDH), 'counter –Terrorism versus Human Rights: the key to Compatibility' (2005) Analysis Report No. 429/2

This shows that just as terrorism impacts on human rights and functioning of society, so too can measures adopted by states to counter-terrorism. With increase of terrorist attacks, what is more alarming is that in those states that are least democratic inclined a new effect of terrorism on human rights can be felt, when governments use the need to combat terrorism as an excuse to incriminate political opponents and to silence those who might put them in an uncomfortable position like human rights defenders.¹⁰³

There has been a proliferation of security and counter-terrorism legislations and policies throughout the world since the adoption of Security Council resolution of 1373 (2001) and America's declaration of 'war on terrorism', much of which has an impact on the enjoyment of human rights. Most countries when meeting their obligations to counter-terrorism by rushing through legislative and practical measures have created negative consequences for civil liberties and fundamental human rights.¹⁰⁴

The criminal behavior can only be reflected as an offence if it has been defined as such by law at earlier date. The definition must be sufficiently precise to avoid any arbitrary application.¹⁰⁵

However, as many scholars argue¹⁰⁶, the definition of terrorism involved in Anti-Terrorism measures taken since September 11, 2001 is short of this legality. In the aftermath of September 11 governments have used vague and over broad definition of terrorism. Such definition run the risk of full peaceful expressive activities into the definition of terrorism and can be the basis for repressive regimes attacking political opponents or other pre-textual uses of Anti-Terrorism campaign. Such Anti-Terrorism Laws violate the principle of legality and provide a basis for governments to label political opponents or human rights defenders as 'terrorists'. In addition, it can subject them to exceptional security measures that would not be tolerated in other contexts.¹⁰⁷

Moreover, the adoptions of vaguely defined Anti-Terrorism Law in the third world countries provide governments with the tools they need to justify anti-democratic practices. In many countries, as has been documented extensively by human rights groups (FIDH, 2005, HRW,

¹⁰³ REDRESS (n 69)

¹⁰⁴ Human Rights Watch, 'In the Name of Security, Counter –Terrorism law Worldwide since September 11' (2012c) Printed in the United States of America

¹⁰⁵ UNCHR (n 82)

¹⁰⁶ Hoffman (n 14), Setty (80)

¹⁰⁷ Hoffman (n 14)

2012c), ¹⁰⁸the new laws have been used to silence critics and punish political opponents. Expanded law enforcement power capabilities have allowed incumbents to apply the label to any groups or individuals that permitted officials to keep taps on the communications and activities of civil society organizations. The reduction of procedural requirements has led police to detain first and ask questions later.¹⁰⁹

Guilt by association has had a frightening effect on the fundamental rights of freedom of expression, freedom of association and freedom of movement as well as on the basic democratic rights to protest and to simply assert one's rights.¹¹⁰

One area of concern in counter terrorism policy practice is lack of transparency and judicial oversight for measures that significantly infringe on human rights like the prohibition of torture and other cruel, inhumane treatment and punishment, due process and privacy. This issue is aggravated due to the fact that many counter terrorism measures are masked in secrecy, creating difficulties for human rights protection. Although, torture is strictly prohibited in the convention against torture and ICCPR, yet many states are still engaging in torture of individual accused of terrorism.¹¹¹ For example, the United States violates human rights in the 'war on terrorism' through arbitrary detention and torture of Guantanamo Bay detainees. Many states have collaborated with the United States and facilitated detentions, torture and ill treatments of terrorist acts detainees.¹¹²

Many states employment intelligence and surveillance measures contrary to international human rights law, justifying by fight against terrorism. Some have established intelligence agency that have "legally acquired the power to arrest and detain people who are expected to have information about terrorist activities". These agencies are not subject to judicial oversight and this may increase the risk of arbitrary detention and other human rights violations.¹¹³

Another concern in states current counter terrorism measures are procedures infringing on the right to privacy. Article 17 of the ICCPR specifically prohibits arbitrary arrest or unlawful

¹⁰⁸FIDH (n 102); Human Rights watch (n 104)

¹⁰⁹ Hoffman (n 14)

¹¹⁰ International Civil Liberties Monitoring Groups (ICLMG), 'Anti-Terrorism and the Security Agenda: Impacts on Rights, Freedoms and Democracy' (2004) Reports and Recommendations for Policy Directions of a Public Forum organized by the ICLMG, Ottawa

¹¹¹ Human Rights Watch (n 104)

¹¹²W. Jason Fisher, 'Targeted Killing, Norms and International Law' (2007) *Journal of Transnational Law Association* 45 (711).

¹¹³ FIDH (n 102)

interference with privacy, subject to a few exceptions. However, action taken by states in response to terrorist acts of post September 11 violates this right due to the use of extensive surveillance.¹¹⁴ For example, actions taken by United States under the patriot act have raised concerns due to extensive surveillance techniques employed to combat terrorism. Many of the provisions of the patriot act are under scrutiny for failing to provide judicial oversight for intelligence and surveillance procedures that may violate the right to privacy. The criteria for search were broad that police had authority to stop and search almost anyone, including members of the press and peaceful organizations.¹¹⁵

The right to life is non-derogable rights under international law. During states of emergency it is non-derogable in threatening the life of the nations under international and regional laws. No one can be deprived of his/her right to life except in accordance to the law of the land for capital punishment in states which do not eliminate it. In practice, however, states often adopt policies and methods to confront terrorism that in effect, avoid and undermine this non-derogable right.¹¹⁶

Terrorism has far-reaching negative consequences on the economy of the targeted state. For example, in the case of 9/11 without doubt the most iconic ‘single terrorist event’ of the present century it seems clear that Al-Qaeda soon recognized the economic dimension of the attacks against the World Trade Center as an action aimed exactly at the financial core of the U.S. economy, being well-aware not only of the psychological impact that it would cause to the world but especially the economic effects that it would imply for the U.S. economy.¹¹⁷ Especially for underdeveloped countries like Ethiopia, where foreign direct investment is very crucial to the poverty reduction campaign within the bounds of the intractable poverty circle, the fact that terrorism discourages trade and investment has fundamental negative implications on the enjoyment of economic and social rights. Terrorism takes its share of the responsibility in this regard.

To conclude the post September 11 Anti-Terrorism Laws in many states, represent a broad and vaguely defined expansion of government powers to investigate, detain and prosecute individuals

¹¹⁴Ibid

¹¹⁵ Cassady Pitt, ‘US Patriot Act and Racial Profiling; are there Consequences of Discrimination?’ (2013) *Michigan Sociological Review* 25, 53-69

¹¹⁶UNCHR (n 82)

¹¹⁷ Mikel Buesa and Thomas Baumert, *The Economic Impact of Terrorism* in Andrew Silke (ed) *Routledge Handbook of Terrorism and Counterterrorism* (2018).

at the expense of due process, judicial oversight and public transparency.¹¹⁸ Thus, the current counter terrorism policies and practices have a corrosive impact on the rule of law, good governance and human rights especially. The focus of this section is on the later concepts: the impacts of Prevention and Suppression of Terrorism Crimes Legislations on human rights.

3. 5. The Global and Regional Human Rights Standards Regulating Terrorism

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents punishes international commission of a murder, kidnapping or other attack upon the person or liberty of internationally protected persons; form a violent attack upon the official premises the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty.¹¹⁹

The Convention on Suppression of Terrorist Bombing punishes the person who commits an offence within the meaning of this Convention. Accused unlawfully and intentionally delivers, places, discharges or denotes an explosive and other fatal device, in, into or against a place of public use, a State or Government facilities, a public transportation system or an infrastructure facility with the intention to cause death and with the intend to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss.¹²⁰

Draft International Convention for the Suppression of Acts of Nuclear Terrorism also Any person commits an offence within the meaning of this Convention, if that person unlawfully and intentionally possesses radioactive material or makes or possesses a device with the intention to cause death or serious bodily injury or with the intention to cause significant damage to property or the environment.¹²¹

The intention is to cause death, serious bodily injury or to cause substantial damage to property or environment or to force a natural or legal person, an international organization; or State to do or refrain from doing an act. Any person also commits offence, if he threatens under a

¹¹⁸Human Rights Watch (n 104)

¹¹⁹ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons Including Diplomatic Agents (adopted by the General Assembly of the United Nations 1973) Article 2 Para 1

¹²⁰ Convention for the Suppression of Terrorist Bombing (adopted by the General Assembly of the United Nations On 15th, December 1997) Article 2

¹²¹Draft Convention for the Suppression of Acts of Nuclear Terrorism (adopted by the General Assembly of the United Nations. On 2nd, October 1998) Available at www.nti.org/e_research/official_docs/inventory/pdfs/nucterr.pdf accessed on 23 September 2021.

circumstance, which indicates the credibility of the threat, to commit the said offence amounts to an offence under this commission.¹²²

In similar fashion other international legal instruments like International Convention for the Suppression of the Financing of terrorism,¹²³ African Conventions on Terrorism,¹²⁴ OAU Convention on the Prevention and Combating of Terrorism¹²⁵ enshrined definition and unlawfulness of the act of terrorism

To conclude this chapter, it mainly focuses on conceptual matters as to terrorism visa-vis Anti-terrorism Laws and Human Right. Terrorism is a controversial concept which has no precise meanings both in political and legal connotations, save its wider use. Saving the functional definition the researcher propose above, absence of clear legal definition for the term terrorism has spillover effect to counter terrorism. Because in legal languages when the term lacks precise meanings, it opens the way for practitioners to include things which have not be actually included. Thus, these conditions lead many scholars to narrate; terrorism has currently triple impacts on human rights. The first is when terrorists violate human rights. The second impact is when states violate human rights while trying to investigate terrorists. The third aspect is the new impacts born out of the increasing attacks of terrorism. When the terrorists attack increases, it increases the discretionary powers of government to enact Anti-Terrorism Laws.

¹²² Ibid, Article 2

¹²³ Ibid.

¹²⁴ Anneli Botha, 'Challenges in Understanding Terrorism in Africa: A Human Right Perspective' (2008) (7:2) Africa Security Review, 3

¹²⁵ See Article 1 of the OAU

CHAPTER THREE

IMPLICATION OF ETHIOPIA'S PROCLAMATION FOR THE PREVENTION AND SUPPRESSION OF TERRORISM CRIMES ON HUMAN RIGHTS

3.1 Introduction

An act of terrorism is a serious threat to peace and security of Ethiopia and International Community causing serious damage to human and property. In this chapter the researcher analyze the possible impacts the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation has had on civil and political rights using existing by discussing its connections and its gap with International Human Rights Conventions adopted by Ethiopia and FDRE Constitution based on the rights violate by the proclamation.

As part of discharging its international responsibility, Ethiopia enacted the Ethiopian Prevention and Suppression of Terrorism Crimes law which criminalizes, inter alia, terrorist acts and incitement of terrorism. The proclamation also includes procedures for proscription of terrorist organizations. These and other substantive and procedural provisions of the proclamation has drawn skepticism and criticisms from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

3.2 The Terrorism Threat in Ethiopia

Terrorism has been widely condemned and everyone states are urged to require action to stop and counter terrorism.¹²⁶ Terrorism violates fundamental human rights like the proper to life, the proper to development, freedom from fear and expression among many others. Therefore, on the idea of the several attacks Ethiopia has suffered, a legislation to counter terrorism may be a step

¹²⁶ United Nations General Assembly, 'Global Counter-Terrorism Strategy' (2014)

within the right direction, particularly as a state on the Horn of Africa because it is notorious for its safety concerns.¹²⁷

In 2004, the African Human Security Initiative made a survey of the threat of terrorism in eight African states and classified them into three categories namely: high threat assessment, intermediate threat assessment and low threat assessment.¹²⁸ It categorizes Ethiopia alongside Nigeria and South Africa with an intermediate threat assessment to terrorism.¹²⁹

The Horn of Africa has for a long time been an area of high security concern not only for Africa but for the rest of the world, particularly the United States. The Horn of Africa has for an extended time been a neighborhood of high security concern not just for Africa except for the remainder of the planet, particularly the US.¹³⁰ Hence these countries have increasingly become a secure haven for terrorist groups like Al Qaeda and Al Shabaab. Regarding the Ethiopian situation, “Mehari argued that for nearly a decade before 9/11, Ethiopia suffered successive terrorist acts and should, within the future, still be a target”.¹³¹ He argued that something has got to be done to form Ethiopia and therefore the horn at large free from the terrorism threat that Ethiopia is strongly interested.¹³² There are potential terrorist threats to Ethiopia. Firstly, in recent years, Ethiopia may be a victim of terrorist attacks; armed groups have committed variety of bombings and other attacks in Ethiopia or on Ethiopia's diplomatic missions. A May 2008 explosion on a minibus in Ethiopia's capital Addis Ababa that a touch known group called the Islamic Guerrillas take the responsibility, killed three people on the eve of national celebrations.¹³³ In October 2008 the Ethiopian trade mission in Hargeisa, Somaliland, was one among the targets of multiple suicide bombings that killed a minimum of 20 people; the attacks were blamed on al-Shabaab, a Somali armed group with alleged links to al Qaeda.¹³⁴ Secondly, the very fact that Ethiopia is found within the Horn of Africa and its land borders are unusually

¹²⁷ Sekyere and Asare (n 53)

¹²⁸ Goredema and Botha (n 22)

¹²⁹ Ibid. Algeria, Kenya and Uganda were referred to as countries where there is a high threat assessment whereas Ghana and Senegal were countries with low threat assessment to terrorism

¹³⁰ Khadiagala and others (n 59)

¹³¹ Hiruy Wubie, ‘The Impact of Terrorism and Counterterrorism on Human Rights Protection: The United Nations’ Response and Ethiopian Experience’ (2010) Addis Ababa University School of Graduate Studies Faculty of Law, LL.M Thesis, 75

¹³² Ibid

¹³³ Anita Powell, ‘Somali Islamist group claims responsibility for deadly bomb attack in Ethiopia’ Associated Press May 29, 2008, <http://www.iht.com/articles/ap/2008/05/29/africa/AF-GEN-Ethiopia-Somalia>

¹³⁴ Mohammed Ibrahim and Jeffrey Gettleman, ‘Suicide Bomb Attacks Hit Somalia’ The New York Times New York October 29, 2008, <http://www.nytimes.com/2008/10/30/world/africa/30somalia.html?n=Top/Refe>

very poor, even by African standards might be cited as a prominent factor that contributes to the matter of terrorism in Ethiopia. Terrorism threats originating from the unstable Somalia also are worth being noted here.¹³⁵The Somali-based Al Itihad Al Islamiaya, which claims to possess a goal to make an Islamic Somali state incorporating Ethiopia’s Somali population and region,¹³⁶took the responsibility for a significant of bomb attacks in Ethiopia.¹³⁷These are just examples. Finally, Ethiopia was among one among the member states who took delegated chance to support on the fast-wheeling ‘war on terror’ movement within the world; signed the convention terrorism; and have a requirement to enforce the choice of united nation. Ethiopia take measure to guard and suppress terrorism crime finally adopts its Anti-terrorism Proclamation on July 2009. However, the 2009 ATP proclamation was criticized by participation of the citizens within the draft processed; limited fundamental rights and freedom of the people and therefore the government use the law as a weapon to attacks its political dissents.¹³⁸In recent time the criticized proclamation was amended by the 2020 terrorism proclamation. In fact, there are indicators of great threats of terrorism, which could be effective sources of severe terrorism cases if they're not duly controlled.¹³⁹

3.3 Introducing the 2020 Ethiopian Prevention and Suppression of Terrorism Crimes

Proclamation:

Known by its full nomenclature as the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation no. 1176/2020, the proclamation was adopted on the 25th day of March 2020.

There are many points of criticism to the proclamation. This paper will limit its discussion to the issues of definition or scope rendering support and incitement to terrorism; the power of police: especially its implications for due Processes; prolonged detention; limiting freedom of expression and restricting freedom of association and proscription of ‘Terrorist Organization’ with the question of judicial review and due process adopted by the proclamation and its effect as

¹³⁵Robert I. Rotberg (ed.), *Battling Terrorism in the Horn of Africa*, The World Peace Foundation (2005), 94.

¹³⁶Ibid, 101

¹³⁷Al-Qaeda’s Threat to Ethiopia, The James Town Foundation, www.jamestown.org accessed on November 2019

¹³⁸የ ሽብር ወንጀልን (n 28) ለ መከላከል እና ለ መቆጣጠር በተዘጋጀ ረቂቅ አዋጅ ላይ የተዘጋጀ አጭር መግቢራሪያ (2019)

¹³⁹Hiruy (n 131)

well as compatibility in with the constitution, regional and international obligations. This paper will achieve the above goal by discussing certain issues in the proclamation as follows.

3.4 The Impacts of the Ethiopian Prevention and Suppression of Terrorism Crimes law on Human Rights Protection

In this section, we would examine the positive and negative consequences that originate from the Proclamation and affect human rights protection for better. This paper identified both positive and negative impacts of the Proclamation on human rights protection issues. The objective to balance individual liberty and public security maintain peace and security of the country to prevent and control the crime necessitate to adopt legal framework that enable to take strong precautionary and preparatory acts centered the nature of the crime as well as ensure perpetrators received penalty proportional to their acts and gives lesson are stated as the objectives of the Proclamation.¹⁴⁰

The overall impact of the Proclamation on human rights protection is, therefore, a cumulative effect of the opportunities it provide and the challenges it pose. Because the proclamation amend the Anti- Terrorism Proclamation No. 652/2009, the Proclamation enacted to prevent and suppress terrorism, has substantive and enforcement loopholes which produced a negative effect on the rights and freedoms of citizens, with a law that enables adequately to protect rights and freedoms of individuals and prevalence of accountability of law enforcement bodies.

3.4.1 The Improvements of the Proclamation from the Perspective of Human Rights Protection

As a result of the work of a national commission tasked with reviewing and suggesting reforms to a number of national laws including the Proclamation has been advanced to address the country's counter-terrorism law. The General Attorney took the responsibility of preparing the draft and conducts a survey. It has been suggested that the proclamation No. 652/2009 was defective in content and had a negative impact on the rights and freedom of its citizens; and that a clear and enforceable new law should be drafted to resolve the shortcomings. The process of

¹⁴⁰ Ameha Mekonen, A document that explains for the council Ethiopian Prevention and Suppression of Terrorism Crimes proclamation, an unpublished document (Original document in Amharic, Translation mine), 2

revision of the proclamation is transparent and participatory by inviting the widest engagement of stakeholders as far as possible.¹⁴¹

Although the new 2020 Proclamation starts in a very similar manner to the old by stating that it is enacted for the purpose of giving effect the government to protect the public's peace and security from acts of terrorism. The Proclamation requires carrying out strong preventive and oversight measures, and establishing a healthy legal framework that imposes penalties on perpetrators preserved under different human right instruments. By doing so the Proclamation outlines completely new approach to protect citizens from terrorism threat.

The Proclamation has positive roles to play for the advancement of human rights protection. This paper identified positive sides in this regard: State Duty to Protect the Rights of Citizens; preventive and investigative terrorism; coordinated institutional operations; protection of witnesses; proscription of terrorist organization; giving guaranty for obstruction of public service; and Compensation to Victims of Terrorism.

The existence of terrorism has far-reaching direct and indirect harmful consequences on human rights protection. In response to this challenge states have a right and a duty to prevent and control terrorism. This is not a new duty but a manifestation of the duty imposed on states in the various international human rights covenants to prevent the violations of human rights irrespective of the sources thereto. The determination to protect human rights from violations emanating from terrorism was the prominent reason why the Proclamation was enacted.

With this background in view, it would be a mistake if the government fails to take positive measures that can minimize the risk of human rights violations emanating from terrorist acts or threats thereto. In line with this, the Proclamation is intended to provide the government with the necessary legislative and administrative framework geared towards preventing and controlling terrorism.¹⁴² The Proclamation creates state capacity to deal with terrorism cases with increased efficiency. It prohibits incitement to terrorism in Article 10 of the proclamation. A vaguely-worded provision to punish acts "encouraging terrorism" has been changed in favor of more specific language targeting "incitement." Incitement to terrorism is a strategy commonly used by terrorist organizations to additional support for their cause and call for violent action. Proscribing incitement to terrorism is integral to the protection of national security and public order. It has to

¹⁴¹ Ibid.

¹⁴² The Proclamation (n 30), Preamble, para. 2

be borne in mind that incitement to terrorism mainly through the media has been the eve of our world's most terrible violence. The proclamation clearly specifies as to the forms of publications and statements are prohibited like statement, writing, using image or by any other conduct to cause the commission of any of the acts¹⁴³

The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed the view that the Council of Europe's Convention on the Prevention of Terrorism Art.5 (1) represents a best practice in defining the proscription of incitement to terrorism.¹⁴⁴ Article 10(2) of Proclamation fulfills the best practice that enshrined under convention. Article 5 of the Convention defines what amounts to a "public provocation to commit a terrorist offence" with reference to three elements. First there must be an act of communication. Secondly, there must be a subjective intention on the part of the person to incite terrorism. Finally, there must be an additional objective danger that the person's conduct will incite terrorism.¹⁴⁵

These elements are included in the proclamation under article 10(1) (2), first there must be an act of communication via "statement, writing, using image or by any other". Secondly, there must be a particular intention on the part of the person to incite terrorism "intentionally incites another person... in clear manner incites." Finally, there must be an additional objective that the person's conduct will incite terrorism "by any other conduct to cause the commission" so to identify a person as terrorist.

The preventive¹⁴⁶ and special investigative techniques employment and duty to Provide Information¹⁴⁷ provided in the Proclamation have a positive role to play in enhancing the capacity of the government to prevent terrorist acts ahead of their commission.

In relation to this, the coordinated institutional operations of the concerned stake holders (federal police (including the regional), NISS, Federal Attorney General, National Anti-Terrorism Coordinating Committee) that the Proclamation envisages¹⁴⁸ is also very important in increasing the efficacy of the country's counterterrorism measures and thereby contribute positively for

¹⁴³ see Article 10(2)

¹⁴⁴ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/HRC/4/26/Add.3

¹⁴⁵ Fact sheet 32 (n 7)

¹⁴⁶ The Proclamation (n 31), Arts. 32-35

¹⁴⁷ Ibid Arts. 42-43

¹⁴⁸ Ibid Arts. 36-41

human rights protection that would have been resulted from poorly managed security concerns. Power of NISS to detain the suspect for unlimited period is the defect of the amended 652/2009 proclamation. However, the 2020 proclamation in Article 37(2) indicate that “the National Intelligence and Security Service or its officer shall not detain a person suspected of terrorism crime”. The proclamation limits the power of detain the suspect.

The provision of the Proclamation on Article 16 protection of witnesses also assists in the process of prosecuting perpetrators. Most of the time terrorist crimes are perpetrated in group. Therefore, in the absence of protection systems for witnesses, it may be a moral wish to find someone ready to testify against a suspected terrorist.

Even though the proclamation has a problem as to proscription process of the terrorist groups, it's aspires to control and outlaw terrorist organizations is a prominent means to combat terrorism. Thus, the proclamation stands to ensure the prevalence of human rights. Jonathan Cooper contends that “*one way of combating terrorism is to outlaw organizations that promote or foster it. By controlling these organizations, whether by confiscating their finances and other resources, or curbing their publicity, it may be possible to minimize and control the threat of terrorism.*”¹⁴⁹ The Proclamation plays a vital role to prevent terrorism by outlawing terrorist organizations and freezing their property.¹⁵⁰

The proclamation set out some conducts as non-terrorist act, even if the obstruction of public service happened. Because, obstruction of public service caused by a strike and the obstruction is related to the institution or profession of the strikers or exercising rights recognized by law such as demonstration, assembly and similar rights shall not be deemed to be a terrorist act. The proclamation guarantees workers' right to strike even if they "obstruct public services," an offense the law otherwise classifies as terrorism.¹⁵¹

International human rights law provides a legal obligation to provide victims of human rights violations with an effective remedy.¹⁵² It has been established that terrorism is a serious violation of human rights and the state has a duty to protect the victims from the long lasting effects of the

¹⁴⁹Jonathan Cooper, *Countering Terrorism, Protecting Human Rights: A Manual*, Office for Democratic Institutions and Human Rights (OSCE/ODIHR, 2007)216.

¹⁵⁰ The proclamation (n 30) Arts. 22

¹⁵¹ Ibid Arts. 4

¹⁵² International Covenant on Civil and Political Rights, art. 2(3) (a); Universal Declaration of Human Rights, art. 8; American Convention on Human Rights, art. 25; European Convention on Human Rights, art. 13.

violations of rights. The Human Rights Committee has confirmed that the right to an effective remedy, of which the duty to investigate is an integral part, is non-derogable and inherent within the entirety of the International Covenant on Civil and Political Rights.¹⁵³ The General Assembly has urged States, while countering terrorism, to ensure that any person who alleges that their human rights or fundamental freedoms have been violated has access to a fair procedure for search for full, effective and enforceable remedy within a reasonable time, and that victims receive adequate, effective and prompt reparation, which should include, as appropriate, restitution, compensation, rehabilitation and guarantees for non-recurrence, including ensuring accountability for those responsible for such violation.¹⁵⁴ Therefore, compensation in kind or monetary terms has to be implemented to pursue for an effective remedy.

In addition, where it comes to the attention of a State that, in taking counter-terrorism measures, its officials may have committed serious human rights violations, including to the right to life or the right not to be subjected to torture or inhuman and degrading treatment, the State has an obligation to conduct a prompt, independent and effective investigation open to public inspection.¹⁵⁵ The Proclamation has a model article on the issue of compensation for victims of human rights violations arising from terrorism. The Proclamation establishes a terrorism crimes victim's fund.¹⁵⁶ According to the proclamation the objective of the fund shall be to provide support for: Prevention of terrorism crimes; Covering medical expenses of victims of terrorist acts; Rehabilitation of victims of terrorist acts as may be appropriate; and rehabilitating persons in whom terrorist ideas are inculcated. The Proclamation enacts that proceeds of terrorism or property of a terrorist organization or a terrorist confiscated property and fine imposed by a court of law in criminal proceedings in connection with this Proclamation shall be credited to the fund.¹⁵⁷ This is a positive measure to remedy human rights violations and consequently for human rights protection in general.

The establishment of the fund is different from the compensation system of the criminal code of Ethiopia because the code compensation system is depending on the capacity of the perpetrator.

¹⁵³ United Nations Human Rights Office of the High Commissioner 'General Comment No. 29' Art.4 'States of Emergency' (2001) para. 14.

¹⁵⁴ General Assembly resolution 70/148, para. 6(r); also A/HRC/16/51, para. 22

¹⁵⁵ *El-Masri v. The Former Yugoslav Republic of Macedonia*, application No. 39630/09, judgment, 12 December 2012; and A/HRC/22/52, paras. 28–30. For an example of the application of these principles to human rights violations in the context of counter-terrorism measures

¹⁵⁶ The Proclamation (n 30), Arts.44

¹⁵⁷ *Ibid*

However, the proclamation is a prudent solution to guard the interests of victims whose perpetrators have no sufficient fund to make good the damage suffered. This makes the Proclamation of vital importance in ensuring the remedies for the victims of violations of human rights arising from terrorism cases. The proclamation incorporates government accountability for violation of rights. If the government threatens the rights and freedoms of individuals, it will also be a law that creates accountability for those who are victims of terrorism and that play a positive role for the democratic process.

3.4.2 The Challenges and Gaps in the Proclamation from the Perspective of Human Rights Protection

Since the terrorist attacks on 11 September 2001, the Ethiopian Government has introduced two new counter-terrorism laws including the proclamation 2020. These laws have created criminal offences, a power for police and security agencies, and a power for the House of Peoples' Representatives to proscribe (ban) terrorist organizations.

Ethiopia is a party to the International Covenant on Civil and Political Rights (ICCPR)¹⁵⁸ and therefore the African Charter on Human and Peoples' Rights (African Charter).¹⁵⁹ International human rights instruments ratified by Ethiopia form a part of the law of the land.¹⁶⁰ Indeed, the Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution)¹⁶¹ provides that its human rights provisions should be interpreted in conformity with international human rights covenants adopted by Ethiopia.¹⁶² The human rights compatibility assessments within the research are going to be done by analyzing the relevant provisions of the ICCPR and associated jurisprudence.

According to him this law helps the gov't to research terrorists before great human rights violation and destruction occur; and therefore the proclamation has some pro-human rights developments. Additionally, Ameha Mekonnen anti-Terrorism working Group Chairperson said the new proclamation is compatible with international human rights conventions and agreements.

¹⁵⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

¹⁵⁹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter)

¹⁶⁰ Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1/1995, Federal Negarit Gazeta, 1st Year No 1 (Ethiopian Constitution)

¹⁶¹ Ibid Art 9(4)

¹⁶² Ibid Art 13(2)

For him, the revised law discourages terrorism and enhances respect for human rights, compliance with domestic and international laws and decrees.¹⁶³

Despite, aforementioned positive suggestions given by different officials as to the conformity of the Proclamation with human right values, it subject to negative comments from some stakeholders. Consistent with Fisseha Tekle, an Amnesty international human rights researchers mention that there was also "potential for abuse".

In this chapter of the paper, the researcher critically analyze the Ethiopia's, recently amended, proclamation from the purpose of view of human rights protection. Since addressing all human rights concerns under this section is too bulky, the researcher focused on selected civil and political rights sensitive within the era of counter-terrorism. In fact a deeper analysis of the matter of terrorism and an empirical study of the difficulty is additionally not within the domain of this paper.

The researcher notes that the Proclamation No.1176/2020 needs further development as to the following points;

A. Definition of Terrorism and Terrorist Acts in the Ethiopian Prevention and Suppression of Terrorism Crimes Law

Resolution 2178/2014 calls for States to implement the resolution in compliance with international human rights law. Any national definitions of terrorism must therefore be precise and in accordance with the principle of legality. The overall Assembly has urged States to make sure that their laws criminalizing acts of terrorism are accessible, formulated with precision, non-discriminatory, non-retroactive and in accordance with law of nations , including human rights law.¹⁶⁴The Counter-Terrorism Committee has recommended that States ensure that terrorist acts are defined in national legislation in a manner that is proportionate, precise and consistent with the international counter-terrorism instruments.

Security Council resolution 1566 (2004) characterizes terrorism as “criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the aim to impress a state of terror within the general public or during a group of persons or particular persons, threaten a population or force a government or a world

¹⁶³Ethiopia: Political Party Leaders, Experts Discuss Draft Anti-Terrorism Law' Ethiopian News Agency (Addis Ababa, 28 February 2019)

¹⁶⁴ UNGA Res 70/148 (2015) GA/11745, para. 6(o)

organization to try to do or to abstain from doing any act, which constitute offences within the scope of and as defined within the international conventions and protocols concerning terrorism” (para. 3). Article 2 of the International Convention for the Suppression of the Financing of Terrorism and article 2 of the draft Comprehensive Convention on terrorism also contain definitions of terrorism. Although international humanitarian law doesn't provide a definition of terrorism, it specifically prohibits “measures” of terrorism¹⁶⁵ and prohibits “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”.¹⁶⁶

The Special Rapporteur on counter-terrorism and human rights has suggested the following definition of terrorism, which may provide guidance to States:¹⁶⁷ In short it set out intentional action endangers the life, body and liberty as well as acts to provoking a state of terror of the general population and Compelling a Government or international organization property as terrorist act.

The actus reus element

The first property she identifies is the difference in actus reus of those attacks that are acts of terrorism as compared to common crimes.¹⁶⁸ In this regard, she strongly argues that as opposed to crimes committed by common criminals – which usually require an economic benefit – terrorist attacks are aimed at influence governments to do or abstain from doing certain activities.¹⁶⁹ In other words, terrorist attacks are characterized by a certain political agenda. For instance, the terrorist group Boko Haram which has been operational for nearly two decades in Nigeria has the agenda of elimination the country of western teaching and philosophy at its heart.¹⁷⁰ As showcased in the above examples, terrorist groups as opposed to other criminal organizations have a political motivation that is at the center their creation, operation and attacks.

However, one must ask at this stage whether this definition applies to political organizations in a dictatorship fighting for the freedom and rights of the people. For instance, in the case at point

¹⁶⁵ Geneva Convention relative to Civilian Persons in Time of War (1949) (Fourth Geneva Convention), art. 33

¹⁶⁶ Additional Protocol I to the 1949 Geneva Conventions, art. 51; and Additional Protocol II, art. 13

¹⁶⁷ UNHRC ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin’ (2010) UN Doc A/HRC/16/51, para. 28.

¹⁶⁸ Mariona Llobet Angli, ‘What does ‘terrorism’ mean?’ in Aniceto Masferrer and Clive Walker (ed.), Counter-Terrorism, Human Rights and the Rule of Law: Crossing the Boundaries in Defence of the State (Edward Elgar Publishing Limited 2013) at 20.

¹⁶⁹ Ibid

¹⁷⁰ Alexander Thurston, ‘Boko Haram: A History of an African Jihadi Movement’ (2018)(Princeton University Press.

one may argue that the Ethiopian government had labeled a two of political organizations as terrorist groups. Angli attempts to answer this question by first recognizing that in oppressive government – where there are no avenues for change through democratic processes – violent organizations that have a political agenda do not suffice as terrorist.¹⁷¹ She claims that while assessing such organizations, due regard must be given to the manner of their attack and the target of such actions.¹⁷² She also claims that if the organization takes lives of civilians then it can potentially be a terrorist group.¹⁷³ However, when such organizations attack military personnel and security forces, there is no ground to call them terrorists.¹⁷⁴ As logical as this approach may seem however, it is important to note that the approach is highly impractical. In conclusion, for the purpose of this thesis at least terrorist organizations have the character of having political motivation as opposed to one guided by economic gain.

Before commenting on the broad characters of the definition of ‘terrorist acts’ in the Ethiopian Prevention and Suppression of Terrorism Crimes Proclamation, let us just have a look at the provisions of the law in verbatim. Article 3 of the Proclamation¹⁷⁵ defines ‘terrorist acts’ in the following manner:

Whosoever, with the intention of advancing political, religious or ideological causes for terrorizing, or spreading fear among the public or section of the public or coercing or compelling the Government, Foreign Government or International Organization:

a) Causes serious bodily injury to person;

b) endangers the life of a person;

c) Commits hostage taking or kidnapping;

d) Causes damage to property, natural resource or environment; or

e) Seriously obstructs public or social service; is punishable with rigorous imprisonment from ten years to eighteen years.

The broader a definition of terrorism is the more likely that counterterrorism measures might be amenable to abuse and the consequent human rights violations. This is the reason why the United Nations’ Special Rapporteur on Human Rights and Counterterrorism holds that the concept of

¹⁷¹ Angli (n 168) at 31 - 34

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ibid 22-24

¹⁷⁵ The Proclamation (n 30), Art. 3

terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or kidnapping and the taking of hostages, and not property crimes.¹⁷⁶ From the stand point of human rights, the most threatening aspects of this provision is it's the inclusion of property crimes committed without any intent to cause death or serious injuries.

Special Rapporteur on the promotion and protection of the proper to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the proper to privacy; the Special Rapporteur on freedom of faith or belief and therefore the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism in their 2019 report on the draft of the proclamation argued that: “an emphasis on damage to property harm steers the domestic legal standard away from the core emphasis found in agreed international treaties on terrorism and UN Security Council Resolution 1566 on the targeting of civilians.¹⁷⁷ They urge the government to maintain a definition of terrorism consistent with the core legal meanings adopted by States and commends the definition of terrorism developed by this mandate for government consideration.¹⁷⁸

The definition of ‘public service’ is exceptionally wide-ranging including but not limited to infrastructure, electronics, information, communication, information telecommunications. Damage to, disruption or destruction of critical infrastructure can result in far-reaching impact on a wide range of human rights, from the right to life and security of person to the proper to health and to a healthy environment, the proper to education, also as water, sanitation and other aspects of the proper to an adequate standard of living. The state duty to human rights implies the obligation to take the necessary and adequate measures to prevent, combat and punish activities that endanger these rights, such as threats to national security or violent crime, including terrorism.¹⁷⁹ The government to narrow this definition to a specific and narrow class consistent with the severity of the offence of terrorism to avoid forms of protest or action involving

¹⁷⁶ A/HRC/16/51, para. 28 (n 167).

¹⁷⁷ Resolution 1566(2004), Adopted by the Security Council at its 5053rd meeting, on 8 October 2004

¹⁷⁸ A/HRC/16/51(n 167)

¹⁷⁹ *The protection of critical infrastructures against terrorist attacks: Compendium of good practices (2018)*.

engagement with public services being captured inappropriately as terrorism. This would provide a degree of legal certainty currently absent with respect to this offence in the legislation.¹⁸⁰

This definition clearly contradicts with Article 15 ICCPR which provides the requirements of *nullum crimen sine lege* (all elements of a crime must be defined by the law), *nulla poena sine lege* (all punishments must be defined by the law), accessibility (the law must be publicly available), precision (the line between permitted and prohibited conduct must be clear), and foresee ability (the law must enable an individual to anticipate the consequences of his or her conduct). This definition may lead someone wrong interpretation and this may highly endanger a fundamental/ human rights of suspect.¹⁸¹ To be précis, the proclamation lacks development to uphold Ethiopia's obligation to ensure human right under international human rights laws.

B. The Prohibition of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment

Ethiopia is party to international and regional treaties that impose legal obligations regarding the treatment of detainees and the conduct of law enforcement personnel. These conventions include the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) ICCPR, and ACHPR. These treaties prohibit arbitrary arrest and detention and the use of torture and other ill-treatments. They uphold the rights of detainees to be held in humane conditions and the right to due process and fair trial, including the right not to be obliged to confess to guilty or testify against them.¹⁸²

The prohibition against torture may be a peremptory norm, or *jus cogens*, of customary law of nations.¹⁸³ As such, it enjoys higher rank in the international law hierarchy than treaty law and “ordinary” customary international law rules and is among the strongest prohibitions in customary international law.¹⁸⁴ All states, including Ethiopia, are required to adopt national measures to prevent or expeditiously put an end to any act of torture. This includes the exclusion

¹⁸⁰ The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right to privacy; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Commentary on Ethiopia's draft Prevention and Suppression of Terrorism Crimes law (OL ETH 3/2019), 5

¹⁸¹ Choramo(n 40) 500

¹⁸² Ethiopian Human Rights Commission (EHRC), ‘Human Rights Protection Monitoring in Ethiopia Prisons’ (2012) Primary Report

¹⁸³ Lewis Gordon, ‘Ethiopia Anti-Terrorism Law: A Tool To Stifle Dissent’ (2015) The Oakland Institute

¹⁸⁴ Ibid

in judicial proceedings of evidence obtained by torture, which may itself have acquired the status of peremptory norm.¹⁸⁵ In any event, as set out below, evidence obtained by torture is inadmissible pursuant to Ethiopia's obligations under the ICCPR and the African Charter.

Admitting a confession obtained by torture would violate the ICCPR because, under Article 7 of the ICCPR, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Under Article 14 of the ICCPR, "everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law." The exclusion of evidence obtained by torture and other ill-treatment is explicitly recognized under the ICCPR jurisprudence as an inherent part of the absolute prohibition on torture and as a necessary part of the guarantees that ensure the fairness of judicial proceedings.

The General Comment No.32 also provides that where evidence is used to show torture or other treatment prohibited by Article 7 provision occurred, "the burden is on the State to prove that statements made by the accused have been given of their own free will."¹⁸⁶ In *Zhuk v. Belarus*, the defendant alleged his confession had been obtained by ill-treatment. The Committee found that due weight had to be given to the defendant's allegations because the state refused to present evidence to the contrary, and, as a result, the state violated Articles 7 and 14(3) (g).¹⁸⁷

Ethiopia is a party to the ICCPR, and the provisions of the ICCPR have the force of domestic law in Ethiopia. It follows that Ethiopian courts are subject to the procedural requirements set out in the General Comment. Accordingly, Ethiopian courts may not use confessions obtained through torture and ill-treatment as evidence in judicial proceedings. In addition, Ethiopian courts are required to place the burden of proof on the State to show that statements have not been elicited by prohibited means. Additionally, Admitting a confession obtained by torture would violate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Article 15 of the UNCAT contains a clear exclusionary rule prohibiting the use of all evidence obtained through torture in any proceedings. It provides, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be raised as evidence in any proceedings, except against a person

¹⁸⁵ Ibid

¹⁸⁶ Ibid at par. 41

¹⁸⁷ Svetlana Zhuk v. Belarus, 'Communication No. 1910/2009' (2013) UN Doc CCPR/ C/109/D/1910/2009

accused of torture as evidence that the statement was made.” In the General Comment on Article 2 of the UNCAT, the Committee against Torture states that the protections of Article 15 are non-derogable and “must be observed [by signatories] in all circumstances.”¹⁸⁸

Ethiopia is a party to the UNCAT. As such, it must exclude from any judicial proceeding all evidence obtained by torture. But, the proclamation doesn’t clearly exclude the evidence obtained by torture. Furthermore, under the precedent established by the Committee against Torture, the allegations that defendants’ confessions have been obtained through torture must be addressed by the state. Failure to address such allegations, when a defendant has shown that any self-incriminating statements were in all probability a result of torture, will constitute a violation of Article 15. Like the ICCPR, the African Charter prohibits the use of torture: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

The FDRE Constitution under Article 18 proclaimed that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment. According to the proclamation under Article 42 the police may use the investigation techniques if it suspects an act of terrorism that has a serious impact. In such instance special techniques may be employed in plus to the regular Criminal investigation Procedures to gather evidence effectively. The proclamation 1176/2020 doesn’t include clearly the exclusion of evidence obtained by torture. Therefore, it is hard to say the proclamation up hold standards that enshrined under international laws and jurisprudence.

C. The Power of Police: Implications for Due Processes

The right to a fair trial and due process, as protected under Article 14 of the ICCPR, is a fundamental principle providing an individual the right to a just trial in public, by an impartial or independent tribunal, founded by law, within a reasonable amount of time.

‘Due process’ is the legal requirement that the State must respect all of the legal rights that are owed to a person.¹⁸⁹ In the paper, ‘due process’ is treated as meaning the process that is due to be

¹⁸⁸Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ‘Committee against Torture, General Comment No. 2’ (January 24, 2008) at par. 6

¹⁸⁹United Nations Counter-Terrorism Implementation Task Force, Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism (2014)

respected in the context of the specific setting whether concerning the detention, trial or exclusion of a person and required to ensure fairness, reasonableness, absence of arbitrariness and the necessity and proportionality of any limitation imposed on rights of the individual in question.¹⁹⁰ The other issues related with procedural justice is the courts responsibilities to impartially hear and rule on allegations of torture and ill-treatment including claims of coerced confessions.¹⁹¹

The right to a fair trial and due process, as enshrined under Article 14 of the ICCPR, is a fundamental principle providing an individual the right to a just trial in public, by an impartial or independent tribunal, founded by law, within a reasonable amount of time. Article 14 of ICCPR Para 2 explains that fair trial guarantees include the right to presumption of innocence¹⁹²; an individual's right to defend themselves or to hire a lawyer, or have the requisite facilities and time to prepare the defense¹⁹³; the right not to be forced to give incriminating evidence against oneself; and lastly, the right to appeal to a higher court.¹⁹⁴

The FDRE Constitution under Article 20 stated that:

(2) accused persons have the right to be informed with sufficient particulars of the charge brought against them and to be given the charge in writing....(3) during proceedings accused persons have the right to be presumed innocent until proved guilty according to law and not to be compelled to testify against themselves.....(4) accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defense and to obtain the attendance of an examination of witnesses on their behalf before the court.

Despite, such constitutional provision, the Proclamation allows police to conduct investigation due process under Article 31, 36, 42...etc. These provisions of the proclamation enable the police to conduct surprise search and other employ other techniques which are not in conformity with due process concern of human right.

¹⁹⁰ Ibid

¹⁹¹ Hailu 33

¹⁹² ICCPR (n 158) Article 14 Para 2

¹⁹³ Ibid, Para 3(b)

¹⁹⁴ Ibid, Para 3 (g)

I. Power of arrest and search

The power of arrest stated in Article 36 (1) of the proclamation read as “the Federal Police shall have the Power to investigate crimes provided for in this Proclamation.” However, it is silent the power of arrest the suspect in the English version. In Amharic version the proclamation read as “የ ኢትዮጵያ ፌዴራል ፖሊስ ከሚከተሉት ተንቀሳቅሶ ይሞረ ምራል፣ ተጠርጣሪዎችን ይይዛል”.

The Amharic version empowers police the power of arrest without indication of the court warrant is necessary or not.

This enables the police to arrest and interrogate suspects to obtain evidence on a past or on-going criminal activity. The power of arrest under this section covers general suspicion and is not linked to any specific offence. The arrest is caused as a first step, to aid investigations. In essence the law establishes a right of arrest without a warrant, permitting questioning, without suspicion on any specific offence, thereby encouraging open arrests and long periods of detention unconnected with particular incidents. Use of this provision may extend to oppressive practices by the police and may be open to violation. People fearing arrest may also be unwilling to volunteer information to the police. This is contrary to the spirit of the proclamation and is also unhelpful to police investigations. The proclamation tries to minimize this violation by giving the power to ‘Federal Attorney General’ in Art 38/1/c/ ‘Follow up the treatment of detainee suspected of committing crime is in compliance with the law’.

Article 31 of the proclamation provides that a "surprise search" by police can be authorized by the Commissioner General of the Federal Police Commission or a person delegated by him without judicial oversight. This gives the police almost unlimited power to conduct body searches, and search or seize property based on to prevent terrorism offences. The provision contains no warrant requirement or any requirement of urgent circumstances that would make a warrantless search or seizure justified. This provision opens the opportunity for police to search the house, vehicles and correspondents of a person whom they believe critical to government.

II. Investigation

The Ethiopian proclamation makes elaborate provisions for terrorist investigations. The proclamation permits police powers to investigate obtain information for purposes of investigation into the commission, preparation or instigation of acts of terrorism or any other act that constitutes an offence under the proclamation.

Furthermore, Article 42/2/ of the proclamation proclaims Special Investigation Techniques Employment

Special investigation technique stipulated under Sub article 1 of this Article may only be employed on the authorization of the court where the court believes the necessity of the use of special investigation techniques.

According to the proclamation about gathering evidence the police employed the interception and surveillance in where the court believes the necessity of the interception of communications. The UN Special Rapporteur indicates that a reasonable suspicion of involvement in terrorism and prior judicial authorization may constitute a valid reason to interfere in privacy.¹⁹⁵ However, the Proclamation is not to specify the standard of suspicion in this regard. It is thus not clear whether courts should consider a reasonable standard of suspicion as the acceptable ground to seek a warrant for covert interception of communications, or whether something short of this would suffice. In the absence of express language regarding the standard of suspicion required, unreasonable suspicions arguably could be used by police as justifications to interfere to gathering evidence. Additionally, Article 42 for urgent conditions police may gather evidences through special investigation techniques without the authorization of the court. The officer making the application to the court, however, must demonstrate that the material being sought has a serious damage to the country and public, where in the regular Criminal Procedure Code investigation technique is not effective to gather evidence.

The use of surveillance and intercepted communications in terrorism-related criminal proceedings will particularly be analyzed based on relevant Ethiopian laws and international human rights instruments ratified by Ethiopia. The African Charter does not specifically recognize the right to privacy. The Ethiopian Constitution recognizes the right to privacy. Therefore, due to the depth of the jurisprudence under the ICCPR, most of the analysis in the article draws from the ICCPR. Reference to the African Charter and the Ethiopian Constitution will be made whenever necessary.

Privacy is one among the fundamental human rights which underpins human dignity and other values. It is protected in the UDHR, ICCPR and in many other major international and regional

¹⁹⁵ Joseph A Cannataci, United Nations Special Rapporteur, ‘Report of the Special Rapporteur on the Right to Privacy’ (2016) UN Doc A/HRC/31/64 10

human rights. The notion of privacy may be defined differently based on one's interpretation of what amounts to an 'individual's scope of autonomy'.¹⁹⁶ It refers to an individual's 'desire for independence of personal activity, a form of autonomy'.¹⁹⁷ Cannataci, the UN Special Rapporteur on the Right to Privacy, noted that despite the absence of a universally-agreed definition, the concept of privacy is related to individual autonomy and self-determination.¹⁹⁸ He recommends that our conceptualization of privacy be 'framed in the context of a discussion of the protection and promotion of the fundamental right to dignity and the free, unhindered development of one's personality'. Privacy mainly involves what should be left only to the individual concerned. However, the conceptual understanding of the right to privacy is further covered in this era of digital communications where the right to privacy can only protect secrecy instead of not being observed at all.¹⁹⁹

There were limited jurisprudence on the subject of the African Commission and the Ethiopian Constitution. The following commentary therefore will concentrate on the ICCPR.

Article 17 of the ICCPR provides as follows:

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

In its General Comment on the right to privacy, the HRC stated that the ICCPR protects individuals from unlawful and arbitrary interferences with their privacy interests from state authorities or other persons.²⁰⁰ The right to privacy, thus, is not absolute and is subject to the concept that any interference must not be 'unlawful' or 'arbitrary'.

In the case of *Pinkney v Canada*,²⁰¹ the applicant, a detainee at a regional correction center, claimed that his communication had been subjected to arbitrary and unlawful interference by

¹⁹⁶Sara Joseph & Melissa Castan, 'The International Covenant on Civil and Political Rights: Cases, materials and commentary' (2013) 533-534

¹⁹⁷ Paul Rosenzweig 'Privacy and counter-terrorism: The pervasiveness of data' (2010) Case Western Reserve Journal of International Law 625

¹⁹⁸ Cannataci (n 195) 13

¹⁹⁹ Rosenzweig (n 197) 646

²⁰⁰ Human Rights Committee 'General Comment 16 Art. 17 the right to respect of privacy, family and correspondence, and protection of honor and reputation (1988) para 1

²⁰¹ *Larry James Pinkney v Canada*, UNHR Committee Communication 27/1978 (1984) UN Doc CCPR/C/OP/1 95. 59 Ibid.

⁶⁰ Joseph & Castan (n 196) 537

state authorities. The then relevant legislation provided that ‘every letter to or from a prisoner shall ... be read by the warden or by a responsible officer deputed by him for the purpose’.²⁰² The HRC stated that this provision failed to provide satisfactory legal safeguards against arbitrary application of the warden’s power to censor mail. The HRC noted that subsequent legislation, which contained specific provisions regulating censorship of prisoners’ communications, was compatible with article 17 of the ICCPR.²⁰³ Therefore, domestic legislation authorizing interception in private communications should have specific provisions to prevent an unrestricted application. In addition to being lawful, an interference with private communications must not be ‘arbitrary’ which in turn requires that the legislation must not be unjust, unpredictable or unreasonable.²⁰⁴

A lawful interference may potentially enable a ‘highly oppressive invasion’ of the right to privacy.²⁰⁵ The HRC commented that an interference with private communications may be regarded as arbitrary even when it is envisaged by law. The requirement of non-arbitrariness means that an interference with privacy, even when authorized by law, must always be applied in a way that is reasonable in the particular circumstances of a given case.²⁰⁶

The reasonableness of particular interferences with the right to privacy is determined on a case-by-case basis. The ICCPR does not list the permissible grounds that validate restrictions on the right to privacy. The HRC stated that an interference with privacy interests may be allowed only if it ‘is essential in the interests of society as understood under the Covenant’.²⁰⁷ Joseph and Castan argue that permissible grounds for restriction under article 17 should probably be ‘proportionate measures designed to achieve a valid end’.²⁰⁸

Other organizations have adopted standards for the collection and processing of personal data. The Council of Europe’s Guidelines on human rights and the fight against terrorism, for example, state: “Within the context of the fight against terrorism, the collection and the

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Fact Sheet No. 32 (n 7)

²⁰⁵ Joseph & Castan (n 196) 537

²⁰⁶ General Comment 16 (n 200) para 4

²⁰⁷ General Comment 16 (n 200) para 7

²⁰⁸ Joseph & Castan (n 196) 538

processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing, in particular:

- (i) Are governed by appropriate provisions of domestic law;
- (ii) Are proportionate to the aim for which the collection and the processing were foreseen;
- (iii) May be subject to supervision by an external independent authority.”²⁰⁹

Article 26 of the FDRE Constitution describes the right to privacy as follow:

(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 purpose 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 freedom of others.

In contrast, article 26 of the Ethiopian Constitution enumerated a list of compelling circumstances which may be regarded as permissible grounds to restrict the exercise of the right to privacy. These grounds are safeguarding national security or public peace; the prevention of crimes or the protection of health; public morality; and the rights and freedoms of others.

In addition to refraining from unlawful and arbitrary interferences in privacy, state parties to the ICCPR have a positive obligation to take measures to protect privacy. Article 17(2) of the ICCPR requires that there should be a legal framework which prohibits unlawful and arbitrary interferences in privacy by third parties.²¹⁰ Although human rights instruments require that interferences with privacy be legal and reasonable, the practice in different jurisdictions indicates that governments on many occasions employ unnecessarily invasive measures against the right to privacy in the name of countering terrorism.²¹¹

Surveillance may take two forms in the context of counterterrorism, namely, mass surveillance or targeted surveillance. Targeted surveillance refers to the process whereby law enforcement agencies survey an individual or a group with a view to monitoring and documenting their activities.²¹² Such surveillance generally is regarded as legitimate as long as a person is

²⁰⁹ Fact sheet 32 (n 7)

²¹⁰ General Comment 16 (n 200) para 9

²¹¹ Stefan Sottiaux, *Terrorism and the limitation of rights: The ECHR and the US Constitution* (2008) 294, 308.

²¹² Ben Emmerson, United Nations’ Special Rapporteur, ‘Report of the Special Reporter on the Promotion and Protection of Human Rights while Countering- Terrorism’ UN Doc A/69/397 (2014) 5

reasonably suspected of involvement in terrorism.²¹³ However, targeted surveillance should be implemented with limit and be applied only when necessary. Targeted surveillance against terrorist suspects is particularly identified as an effective intelligence and law enforcement tactic while countering terrorism.²¹⁴

As opposed to cases of mass surveillance, which are not addressed in the Ethiopian Prevention and Suppression of Terrorism Crimes proclamation or elsewhere in Ethiopian law, the Proclamation places limits upon the exercise of targeted surveillance against terrorist suspects in Ethiopia. Specifically, the Proclamation empowers the police to intercept the communications of, or conduct surveillance on, anyone suspected of terrorism.²¹⁵ The police have conducting surveillance or installing camera, audio or video recording devices.²¹⁶ The Proclamation requires that the police consider two factors before using the special investigation techniques. The first is if an act of terrorisms has a serious damage to the country and public, second, where in the regular Criminal Procedure Code investigation technique is not effective to gather evidence regarding investigation of terrorism crime.²¹⁷ In Ethiopia, a court warrant is required for the police to conduct interception and surveillance against a terrorist suspect where the court believes the necessity of the use of special investigation techniques.²¹⁸

The UN Special Rapporteur on Privacy indicates that a reasonable suspicion of involvement in terrorism and prior judicial authorization may constitute a valid reason to interfere in privacy.²¹⁹ However, the Proclamation on Article 42/2/ fails to specifies the standard of suspicion in this regard. In the absence of express language regarding the standard of suspicion required, unreasonable suspicions arguably could be used as justifications to interfere in privacy under Ethiopian law. Trial courts have a duty to ensure the protection of terrorist suspects' right to privacy.²²⁰ The failure of the Proclamation to specify the standard of suspicion makes it subject

²¹³ Ibid 12

²¹⁴ Ibid

²¹⁵ Proclamation No 1176/2020 (n 30) Art 42/1/

²¹⁶ Ibid

²¹⁷ Ibid

²¹⁸ Ibid Art 42/2/

²¹⁹ Cannataci (n 195) 13

²²⁰ FDRE Constitution (n 160) Art 13(1)

to abuse by the police. In addition to electronic surveillance, the Proclamation provides a legal basis for sudden searches of persons and premises with a view to prevent acts of terrorism.²²¹

“Police may exercise its Power of surprise search to prevent terrorism offences upon permission by the Commissioner General of the Federal Police Commission or a person delegated by him”.

The surprise search provided for above does not require a court warrant and reasonable suspicion. However, the requirement of permission from the Director- General of the Federal Police or a delegate limits potential abuse of this power by ordinary police officers.

Article 17 of the ICCPR requires that interference in privacy may be justified only when it is applied with limit, in accordance with law. The Proclamation regulates the use of counter-terrorism surveillance and interception of communications. While the Proclamation requires prior judicial authorization of counter-terrorism surveillance and interception against terrorist suspects, it fails to specify the standard of suspicion that must be applied. The failure to specify the ‘reasonable suspicion’ standard, which is widely recognized, may potentially result in the abuse of counter-terrorism surveillance in cases of unproven suspicions.

This is the reason the anti-terrorism legislation has required to make strong provisions with respect to surveillance and search and seizure of materials that may aid in investigations. Even though evidence may be available, its production and protection in the traditional criminal courts may be subject to several procedural challenges. Sometimes witnesses may be placed at risk and the judges may not be well trained to undertake a trial of such a technical crime. This leads me to ask the question: Are the usual criminal law courts sufficiently equipped to handle cases of terrorism? To answer this question, we must ask a related but more fundamental question: Is the fight against terrorism a matter of criminal law enforcement or preservation of national security?

Either answer we give, we must recognize the need for a system that balances the interests of public security and individual liberty. This is no longer a luxury but an imperative intended to combat terrorism but still uphold the rule of law.

The Prevention and Suppression of Terrorism Crimes proclamation Article 31, Article 36 and Article 42 gives a chance to the police to violate the basic due process rights by engaging in

²²¹ Ibid Art 31

arbitrary arrest and detention. Those particularly vulnerable to such abuses include activist, journalists, members of political oppositions particularly those, alleged supporters of insurgent groups.

D. Prolonged Detention

If a society is based on the rule of law, then the right of personal freedom has to be its basis. The right to freedom incorporates within it the right not to be arbitrarily arrested or detained by a State without law. Furthermore, it includes that a person should have the right to challenge the legality of their detention, which is protected in the principle of habeas corpus.²²² These rights are protected under Article 9 ICCPR and other international human rights instruments. Thus, States that are a party to the ICCPR and CAT should be aware of their obligations under the Conventions. Each instrument clearly explains how the persons detained are to be treated.²²³ Article 9 (3) of ICCPR stipulates that an individual who has been arrested or detained as a result of a criminal charge should be brought before a judicial officer and has the right to be tried within a reasonable time or to be released under international human rights law. Pre-trial detention should not be the norm but an exception and should be kept as short as possible. It further mentions that preventive detention being carried out in secret may be a violation of the right to not be subjected to cruel, inhumane treatment or torture and Article 9 & 14 of the ICCPR.

The right to liberty has been strongly affected by the legal and administrative measures that have been taken by States when adopting anti-terrorism legislation. States have increased arbitrary arrests, held detainees for prolonged amounts of time incommunicado, while excluding the possibility of intervention by judicial authorities.²²⁴ The HRC has stated that the right of habeas corpus is a non-derogable right since its aim is to protect an intangible right.²²⁵ The Committee further observed that in respect of preventive detention, ICRC or other impartial tribunals should

²²² 'Counter-Terrorism V Human Rights: The Key to Compatibility' (International Federation for Human Rights 2005)

²²³ 'Terrorism and International Law: Challenges and Responses', Meeting of independent experts on Terrorism and International Law: Challenges and Responses. Complementary Nature of Human Rights Law, International Humanitarian Law and Refugee Law; and Seminar on International Humanitarian Law and Terrorism (International Institute of Humanitarian Law 2002), 120

²²⁴ International Federation for Human Rights 2005 (n 102) 25

²²⁵ HRC General comment No. 29 (n153)

be able to review the legality of such detentions and should be allowed by State authorities to access the detention centers.²²⁶

The rights to personal liberty and security of a person are well recognized in FDRE Constitution under Article 16 and 17. Article 16 of the 1995 FDRE Constitution stated that everyone has the right to protection against bodily harm. Article 17 (1) prescribes that “no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures established by law”. The same Article under sub-article (2) provides that “no person may be subjected to arbitrary arrest and no person may be detained without charge or conviction against him”. This requisite repeated in Articles 49 through 63 of the criminal procedure code of Ethiopia, which set out rules for arrest, detention and release on bail.

The proclamation is silent about the remand. In the CPC there is article that deal with remanding an accused to custody. Until Criminal Law Procedure and Evidence Law take to effect the police use the CPC. Within this interval the terrorism suspect is undergoing for arbitrary detention.

So that the police use the criminal procedure code articles 59(3) to remands.

Article 59 of the criminal procedure code describes as follow:

(3). A remand, may be granted in writing. No remand shall be granted for more than fourteen days on each occasion.

The FDRE Constitution Article 19/3/ provides the rights to be brought before a court within 48 hours of arrest, the merit of this right is devalued by a provision that allows the police to detain the person without charges for unlimited period by requesting additional investigation periods of for not more than fourteen days on each occasion. These provision exists, the argument still stands that there have existed multiple mechanisms to deprive an individual of their liberty without charge for unlimited period. This is in violation of international human rights law which guarantees the right of arrested persons to be promptly brought before a judicial authority and charged. This court permission of long pretrial detention is likely to lead to even further abuses. Moreover, the proclamation has been giving a legal cover for police and security to do so and arbitrary detention increased. The police force is detained or taken other arbitrary measures, without charge or bail and without time limits. Using this gap the police begin to arrest first and

²²⁶ United Nations Human Rights Office of the High Commissioner ‘General Comment No. 35, Article 9: Liberty and Security of Person’ (2014) UN DOC CCPR/C/CG/35/

going to find evidence later. . However, the analysis of the proclamation shows that the abovementioned rules are violated by the proclamation because the proclamation silent about the remand. Until the new criminal procedure enacted the police use the criminal procedure code articles 59(3) to remands. These have an impact on the rights. The right to liberty is an expansive right; the proclamation affects it by silent.

E. Rendering Support and Incitement to terrorism

Article 9 of the proclamation addresses the complex issue of support to terrorism. Addressing direct and clear enablement of support to terrorism is necessary.²²⁷ As a result of this provision criminalize varies of activities that cannot be reasonably or fairly described as terrorist in nature or intent of the act. In particular the subsections which clear preparation provide or hands over of documents or information; and providing technical, counseling or professional support are of concern. ‘Indirect’ support to terrorism which may capture a range of legitimate activities that may obstruct in particular the work of political parties and activists.²²⁸

Membership in and support to terrorist organization is criminalized in Ethiopia. The Special Rapporteur warns of expansive interpretations of these provisions and stresses that conduct criminalized as a terrorist offence must be truly a terrorist in nature, require specific intent and thus restricted to activities with a genuine link to the operation of terrorist groups and acts.²²⁹ For instance, giving indirect support to terrorist organizations in an over-broad manner may effectively result in criminalizing family and other personal relationships. The support related to ensuring that a person enjoys “minimum essential levels” of economic and social rights, including the rights to food, health and housing, should not be criminalized as support to terrorism, recalling the position of the General Assembly that counter-terrorism measures should not obstruct humanitarian activities and engagement.²³⁰

For instance, in order to carry out humanitarian activities of the family, this is protected by law. If someone provides food to a family member who is a member of proscribed terrorist organization the law criminalize such acts by involved in indirect supporting a terrorist organization. For this reasons citizens frighten to participate in politics because they care to their

²²⁷The Special Rapporteur notes the reference in United Nations Security Council Resolution 2462 (2019)

²²⁸ The proclamation (n 30) Art. 9.

²²⁹The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2015) A/70/371, paras. 31–44

²³⁰ RES A/72/284 73(b) GA 12035 (2018) para. 79; Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties’ obligations

family member. As a result of this the proclamation affects citizen's rights to participate in political parties.

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism addressed this matter substantively in the report to the Human Rights Council A/HRC/40/52 in 2019, and States have to avoid overly broad material support to terrorism provisions in national legislation given the adverse effects on the functioning and capacity of civil society and civic space.²³¹ Journalists are practicing self-censorship within the domain of what is politically acceptable by fear of prosecution under the proclamation. It affect the work of human rights defenders because one risks being jailed under the accusation in indirect support of terrorist by providing technical, counseling or professional support.

Various legal systems including Ethiopia have laws criminalizing incitement to terrorism. The OAU CPCT included incitement to terrorism and obliges State parties to criminalize incitement to terrorism under their domestic criminal laws.²³² Resolution 1624 (2005) specifically stresses that any measures taken to implement the obligation to criminalize incitement must comply with international human rights law.²³³ Exceeding its limits, freedom of expression might be abused and add fuel to the fire. This has to be legally regulated.²³⁴ However, care should be taken not to violate the essence of the freedom under the banner of fighting terrorism. Many human rights organizations and scholars have reviewed and analyzed the repealed 2009 Ethiopian Anti-Terrorism Proclamation and found that the interpretation in Article 6 of “encouraging terrorism”, threaten the internationally protected and promoted human rights-freedom of expression.²³⁵

Article 10(2) of Ethiopian Prevention and Suppression of Terrorism Crimes proclamation states “incitement” as:

Notwithstanding the provision of Sub-article (1) of this Article, whosoever in clear manner incites by statement, writing, using image or by any other conduct to cause the commission of any of the acts provided for under Article 3 of this Proclamation or publish, produce, communicate, distribute, store, sell, or make available to the public

²³¹ Special Rapporteur commentary (n 180)

²³² Sottiaux (n 211), 81

²³³ Resolution 1624(2005), Adopted by the Security Council at its 5261st meeting, on 14 September 2005, preamble para. 6 operative para 4

²³⁴ ICCPR (n 158), Art. 19 (3)

²³⁵ Hailu (n 33), 66

through any means anything with substance of such kind shall be punishable with rigorous imprisonment from three year to seven years, provided that the crime was attempted or committed.

The Proclamation criminalizes incitement to terrorism in numerous ways under Article 10. First, the issue is the standards for incitement in listed in the ICCPR Art. 20. The standard in ICCPR Article 20(2) requires states to prohibit advocacy of national, racial, or religious hatred which constitutes incitement to violence. The modern indicator of incitement to terrorist acts falls in ICCPR Art.20. The causal link is necessary to avoid an excessive restriction on expression.²³⁶ICCPR Article 20 is an elaboration of permissible (and obligatory) restrictions on expression, which is generally regulated by ICCPR Article 19. One specific concern under the ICCPR Art 19 (3) relates to the scope of the Proclamation Article 10 (2), in the sense that Article 3 of the proclamation is broader than the prohibition in the ICCPR Art. 20. The ICCPR under Article 19 (3) specifies the respect of the rights and the reputation of others, the protection of national security or of public order, or of public health or morals and prohibition of propaganda for war as permissible grounds of limitations. Article 20(2) is another available option under the ICCPR to the proscription of incitement to terrorism. The scope of the proclamation under Art.10 (2) specify to cause the commission of any of the acts provided for under Article 3 of this Proclamation incite in clear manner by statement, writing, using image or by any other conduct; or publish, produce, communicate, distribute, store, sell, or make available to the public through any means anything with substance of such kind. The restriction grounds stated under Article 20, paragraph 2, of that Covenant, which requires States to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, must comply with Article 19 (3).²³⁷

Another concern under the ICCPR Art 19 (3) is that the proclamation Article 10(2) does not distinguish between situations of legitimate storage and dissemination of information to the public²³⁸and mere ‘storage’ of information. Therefore, the terminology under Article 10(2) will affect seriously those who store and disseminate information innocently thereby, unnecessarily affects individual rights to privacy.

²³⁶ Eric Barendt, ‘Incitement to and Glorification of Terrorism’ in Ivan Hare and James Weinstein (eds.), *Extreme Speech and Democracy* (2009) 445, 459.

²³⁷ Human Rights Committee ‘ General comment No. 34 Article 19: Freedoms of opinion and expression’ (2011) UN Doc CCPR/C/GC/34 para 4

²³⁸FIDH (n 102), 6

The researcher focus to portray unnecessary encroachment to individual rights particularly, the right of privacy and family life.²³⁹ Additionally, the Proclamation affects journalists and their sources and it highly forced them to provide only selected information. They have no freedom of store, using and exposing information related to terrorism. The phrase “incitement of terrorism” will criminalize the peaceful exercise of the rights of freedom of expression. It is sound to envisage that the Proclamation adversely affect freedom of expression.

The ICCPR and the Constitution required permissible grounds of limitations. Any limitations on rights by the application of counter-terrorism law must be (a) necessary; (b) impose only minimally on rights (least restrictive alternative); (c) demonstrate proportionality between means and clearly stated objectives; and (d) be consistent with other fundamental rights and non-discriminatory in purpose and practice.²⁴⁰ It also emphasized the media’s crucial role in informing the public about acts of terrorism and demands safeguards against unnecessary restrictions on its operation.²⁴¹ Then, it states that “journalists should not be penalized for carrying out their legitimate activities.”²⁴²

The limitations on FOE passes through the test of proportionality and its manner of balancing between the limiting measure and the aim pursued. Article 10 of the proclamation which criminalizes storage of information is overbroad a kind of catch all strategy. This makes it difficult to establish a direct and immediate connection between the expression and the threat (the purported objective). In this respect, therefore, the law fails to satisfy the test of necessity. Such a provision violates the right to freedom of expression under international law because the definition of “terrorist act,” as discussed earlier, does not conform to international standards.²⁴³

²³⁹ Ibid

²⁴⁰ Ibid

²⁴¹ Ibid

²⁴² Ibid

²⁴³ A/HRC/16/51, para. 28 (n 181); Johannesburg Principles on National Security, Freedom of Expression and Access to Information [1995] para. 154; European Court of Human Rights, *Erdogdu and Ince v Turkey*, Nos. 25067/94 and 25068/94 (1999) (finding that Turkish authorities acted disproportionately and violated freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights, by convicting Erdogdu for the offense of “disseminating propaganda” under the Prevention of Terrorism Law after his monthly review published an interview with a Turkish sociologist)

F. Limiting Freedom of Expression and Restricting Freedom of Association

I. Freedom of Expression and Opinion

The juridical genesis of FOE as a human right goes back to the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations General Assembly in 1948. In similar manner, the International Covenant on Civil and Political Rights (ICCPR) recognizes the freedom to hold opinions and FOE in its Article 19. It can be inferred from Article 19(1) of the ICCPR that the freedom to hold opinions cannot be restricted in any way under any circumstance.²⁴⁴ The provision makes no qualification to the forms of opinions. All sorts of opinions including political, scientific, historic, moral or religious are protected under the provision.²⁴⁵

Paragraph 2 of the Article 19 of the ICCPR declares that “everyone shall have the right to freedom of expression....” The provision defines the scope of FOE, albeit non-exhaustively, to 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 any other media of his choice.” It protects all modes of expression including their means of dissemination.²⁴⁶ As we can conclude from the wordings of the ICCPR the right to diverse, pluralistic media and equitable access to the means of communication as well as the media are key components of the right to FOE.²⁴⁷

The relationship between human rights (particularly FOE) and counter-terrorism activities of governments has been a major area of discussion and confusion. Since the US declared the “war on terror”, parliaments have been enacting new offences in the ‘inchoate mode’ and criminalizing preparatory activities including the ‘encouragement’ and ‘glorification’ of terrorist activities which entail serious restrictions on the FOE and on media freedom.²⁴⁸ With the advent of these new counterterrorism legislations, terrorist speeches, advocating for terrorism, spreading terrorist material on the internet and other similar conducts are widely criminalized.²⁴⁹ This move

²⁴⁴HRC General Comment 34 (n 237)

²⁴⁵ Ibid, para 9

²⁴⁶ General comment 34 (n 237) para. 12

²⁴⁷ Michelin R. Ishay, ‘The History of Human Rights’ (2008) University of California Press, Oakland, 3-4.

²⁴⁸ Francesca Galli, ‘Freedom of thought or ‘thought-crimes’? Counter-terrorism and freedom of expression’ in Aniceto Masferrer & Clive Walker (eds) *Counter-Terrorism, Human Rights and Rule of Law: Crossing Legal Boundaries*, Edward Elgar Publishing Limited, Cheltenham (2013) 106.

²⁴⁹ Sottiaux (n 211).

has attracted scholarly debates on the appropriateness of restricting FOE to ‘prevent’ future commission of an offence of terrorism and the restricting boundaries between the two FOE and prevention of terrorism. Some say that countering terrorism and protecting human rights are not opposing to each other, necessitating compromise.²⁵⁰ They argue that the international human rights system has already acknowledged limitations on these rights, but based on carefully crafted and construed limitation clauses which have their own defined scope.²⁵¹ They further assert national security interests and fundamental rights of individuals has already got a delicate balance under the international human rights system.²⁵²

Due to a growing use of incitement for the spread of the crime of terrorism, international instruments are increasingly calling for criminalization of those acts by domestic legislations. The UNSC Resolution 1373 (2001), issued under Chapter VII of the UN Charter, among other things requires States to criminalize, through domestic laws, acts of participation in the planning, preparation or perpetration or supporting of terrorist acts and to prosecute anybody involved in those criminal acts.²⁵³

Under international law, it is well recognized that human rights, including free expression must be respected in the fight against terrorism and cannot be arbitrarily limited. For example, the UN Security Council Resolution 1456 (2003) states that: States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law.²⁵⁴

International human rights law provides a clear criterion for the limitations on the right of thought, opinion and expression. It acknowledges that the exercise of the right to hold opinions and expressions carries some duties and responsibilities. This sets the basis for the legitimization of restrictions on this right in question. Fundamentally, Article 19 (3) of ICCPR, restrictions should be provided by law and should be necessary. Any restrictions on the right to freedom of expression must be compatible with the requirements of article 19(3). It is up to the State to

²⁵⁰Report of Security Legislation Review Committee of the Commonwealth of Australia (2006), 39

²⁵¹ Ibid

²⁵² Ibid

²⁵³ UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

²⁵⁴ UNSC Res 1456 (2003) UN Dos S/RES/1456(2003)

demonstrate that a particular restriction is compatible with the requirements of the Covenant, CCPR/C/GC/34 Para. 27 and 35.

The African Charter on Human and People's Rights (aka. the Banjul Charter) recognized the right to FOE "in the least elaborate manner and with its characteristically disconnecting claw back."²⁵⁵ Its Article 9 of the Charter provides:

1. *Every individual shall have the right to receive information*
2. *Every individual shall have the right to express and disseminate his opinions within the law.*

Article 9 of the Charter contains the right to receive information and to express one's opinion. However, the provision puts prior legal prescription as an excuse for restriction of the rights. This limitation to the rights has been severely criticized for opening a place for governments to subjugating the exercise of the rights to domestic law, thus weakening the content and scope of the rights.²⁵⁶ However, this concern over the impact of the Article is somewhat mitigated through the introduction of tests of proportionality, necessity, and legitimate aim by the African Commission on Human and Peoples' Rights. The Commission made clear in its decisions that the above limitation clause should not be understood as giving a green light for national laws to set aside the right to express and disseminate one's opinion guaranteed under international instruments.²⁵⁷ Legal limitations on those rights may be proper only if they passed through the tests of proportionality, necessity, and legitimate aim.

The Constitution has recognized FOE and freedom of the press in an elaborated manner.²⁵⁸ Most significantly, the Constitution recognized freedom of thought, opinion and expression under Article 29. In addition to recognizing the right to FOE, the Constitution specified that its chapter three (a chapter within which the right to FOE is included) should be interpreted "in a manner compliant to the principles of the UDHR, International Covenants on Human Rights and international instruments adopted by Ethiopia."²⁵⁹ The right to freedom of expression is

²⁵⁵Molaligne Tsegaye, Implications of the Anti-Terrorism Law of Ethiopia on Freedom of Expression and the Media, LL.M. Thesis, College Of Law And Governance Studies School Of Law, Addis Ababa University, May, 2016, 26

²⁵⁶ Viljoen (n 18) 200-201

²⁵⁷Report of Security Legislation Review Committee of the Commonwealth of Australia (2006) 26

²⁵⁸Gedion Timotiwos, 'Freedom of Expression in Ethiopia: The Jurisprudential Dearth' (2010) Mizan Law Review 4, 204

²⁵⁹ Adem Kassie, 'Human Rights under Ethiopian Constitution: A Descriptive Overview' (2011) Mizan Law Review 5, 48

guaranteed in very similar terms by a UN general assembly resolution, Article 19 of ICCPR and Article 29 of FDRE Constitution.

In contrary with such stipulations, the proclamation criminalizes an individual who threatens to commit any of the acts stipulated in Article 3(1) (a)-(e) is a terrorist. That means a person who threatens to commit damage to property by way of protest may be convicted as a terrorist. Internationally a terrorist act which refers to an act “intended to cause death or serious bodily injury”.²⁶⁰ It has nothing to do with property offences or victimless offences.²⁶¹ However, it is far from the international standard to include threat to commit a crime against property as a terrorist act. The UN Human Rights Committee has found that such kind of broad definition of terrorism violates international human rights standards.²⁶² In addition, it urged that counter-terrorism laws should be formulated with sufficient accuracy so that the citizens are able to regulate their actions accordingly.²⁶³ This definition of terrorism includes acts that do not involve violence or injury to people, such as property crimes. The United Nations special rapporteur on counterterrorism and human rights has stated that the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages, and should not include property crimes. Therefore, it is safe to conclude that the broad definition of terrorism in the Proclamation restricts freedom of expression.

Additionally, the provision introduced by the Prevention and Suppression of Terrorism Crimes Proclamation of Ethiopia in relation to incitement of terrorism is Article 10 which reads:

Notwithstanding the provision of Sub-article (1) of this Article, whosoever in clear manner incites by statement, writing, using image or by any other conduct to cause the commission of any of the acts provided for under Article 3 of this Proclamation or publish, produce, communicate, distribute, store, sell, or make available to the public through any means anything with substance of such kind shall be punishable with

²⁶⁰ Wondwossen D. Kassa, ‘The Scope of Definition of a Terrorist Act under Ethiopian Law: Appraisal of its Compatibility with Regional and International Counterterrorism Instruments’ (2014) Mizan Law Review 8, 386 <http://dx.doi.org/10.4314/mlr.v8i2.4> accessed on 24 August 2020.

²⁶¹ George P. Fletcher, ‘The Indefinable Concept of Terrorism’ (2006) Journal of International Criminal Justice 4, 906

²⁶² Article 19 Law Programme, ‘Global Campaign for Free Expression: Comment on anti-Terrorism Proclamation of Ethiopia’ (2010), 5

²⁶³ Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant’ (2011) CCPR/C/ETH/CO/1, 4

rigorous imprisonment from three year to seven years, provided that the crime was attempted or committed.

Similarly, it is illegal under international human rights law for any form of expression concerning terrorism or any form of violence can be prohibited unless it is clearly intended to directly incite such conducts. It is underlined that any such restriction for the purpose of preventing terrorism is closely linked to prevent imminent violence.²⁶⁴ Under the Johannesburg Principles, a set of principles on freedom of expression and national security developed by a group of experts from around the world and recognized by the UN Special Rapporteur on Freedom of Opinion and Expression, restrictions on freedom of expression in the name of national security may be imposed only where the speech was intended to incite imminent violence and there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.²⁶⁵ The Johannesburg principle under principle No 7 (a (i)) further provides that expressions like advocates non-violent change of government policy or the government itself shall not be considered as a threat to national security or subject to any restrictions. According to the proclamation Art.10 (2) store information for harmless reasons is punishable. However, it doesn't have direct and immediate connection between the information and the occurrence of such violence.

So that, the provision not comply with international human rights law for any form of expression concerning terrorism or any form of violence because the Johannesburg principle under principle 6 can be prohibited unless it is clearly intended to directly and immediate connection to the violence. The offence under Article 10(1) requires that the statement should be addressed to 'intentionally incites' the provision indicate the necessary *mens rea* element necessary for criminal guilt. Under the FDRE Criminal Code, all the legal, mental and material elements need to be fulfilled to say that a crime is committed. Mere 'storage' of information under paragraph 10(2) will constitute a serious criminal offence, and notes that persons may communication, share and store information for innocuous reasons. This section lack greater exactness and narrowness. So that, this regulation affects unnecessarily on individual rights to freedom of expression by criminalizing information like: newspaper put in the store.

²⁶⁴ Hailu (n 33).

²⁶⁵ Johannesburg Principles (n 243)

To conclude that the UNSC Resolutions No.1624/2005 and 1373/2001; and the OAU Convention call up on states to combat terrorism by criminalizing incitement of terrorism. Seeing in the face of it, putting restrictions on FOE is also allowed under the Constitution and the ICCPR. Hence, the mere promulgation of the proclamation containing restrictions on FOE is not a problem for each. The analysis of the 2020 Ethiopian Proclamation No 1176/2020 Prevention and Suppression of Terrorism Crimes Law, when viewed as a whole, represents a broad defined government powers to investigate, detain and prosecute individuals at the expense of due process, judicial oversight. Thus, the rights of accused and arrested persons FDRE Constitution and international covenants provided to Ethiopian citizens like the right to presumption of innocence, fair trial and speedy trial may be threatened by the proclamation. Furthermore, the proclamation has been restricting the freedom of expression and association by using the incitement of terrorism and power of proscription of terrorist organization.

II. Freedom of Association

The right to freedom of association, like the right to freedom of expression, is a platform for the exercise and defense of other rights, such as political participation rights and cultural rights. Human rights defenders often use this right as a legal basis for their action. It is central to a democratic society.²⁶⁶ Article 22 of ICCPR, to which Ethiopia is party, guarantees the freedom of peaceful association. Also, Article 31 of FDRE Constitution guarantees the right to freedom of association stating that, “every person has the right to freedom of association for any cause or purpose”.

Security Council resolution 1373 (2001) measures to be adopted by States included freezing the funds of certain entities (Para. 1 (c)), preventing certain entities within their territories from making any funds available (Para. 1 (d)), refraining from providing any support to certain entities, suppressing recruitment of members of terrorist groups (Para. 2 (a)), preventing the movement of terrorist groups (Para. 2 (g)) – all of these measures affect “associations”.²⁶⁷ While the right to freedom of association may be subject to derogations and limitations under most human rights treaties, clear safeguards must exist to ensure that they are not used to limit the

²⁶⁶ Fact Sheet 32 (n 7)

²⁶⁷ UNCHR ‘Report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani’ (E/CN.4/2006/95)

rights of political opposition parties, trade unions or human rights defenders.²⁶⁸ As such, the duty must be on the State to show that the measures taken fall within the acceptable aims under international human rights law. This implies that States must not claim that the rights limiting measures are taken to preserve national security when they are in fact taken to effectively repress all opposition or to repress its population.

In addition to ensuring that the principles of necessity and proportionality are respected in all cases, specific safeguards are required to ensure that the limitations to the right to freedom of association are interpreted narrowly.²⁶⁹ These include ensuring that the principle of legality is respected in the definition of terrorism, terrorist acts and terrorist groups. A broad definition may lead to the criminalization of groups whose aim is to peacefully protect, inter alia, labor, minority or human rights.

Any decision to proscribe a group or association needs to be taken case by case. General procedural guarantees include ensuring that the assessment is based on factual evidence of the group's activities, which implies that the State may not make the determination before registration has taken place and before the group has started to exercise its activities. The assessment must be made by an independent judicial body, with full notice to the affected group as well as the possibility of appealing the decision.²⁷⁰

All measures which result in a limitation on the right to freedom of association must be subject to judicial oversight. "Civilian courts must have jurisdiction to review the provisions and supervise the application of all counter-terrorist measures without any pressure or interference, particularly from the other branches of government."²⁷¹ This principle is fundamental in the context of counter-terrorism, where classified or confidential information may be used as the basis for a decision to proscribe an organization or to place an organization on a terrorist list. The Special Rapporteur on human rights and counter-terrorism has, likewise, stressed the importance of ensuring that all decisions which limit human rights are overseen by the judiciary, so that they

²⁶⁸ Ibid

²⁶⁹ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/61/267)

²⁷⁰ Fact Sheet 32 (N 7)

²⁷¹ Robert K. Goldman, 'Report of the Independent Expert on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism' E/Cn.4/2005/103

remain lawful, appropriate, proportionate and effective, and so that the Government may ultimately be held accountable for limiting the human rights of individuals.²⁷²

The issue of accountability is not properly included in Article 18 of the proclamation. It empowers HPR, one branch of the government, entitled to observe the situations of suspects of terrorism. Thus, the government may easily obstruct the freedom of association as such setup.

G. Proscription of ‘Terrorist Organization’: The Question of Judicial Review and Due Process

The identification of terrorist organizations is the first step that should be done before taking any measure against terrorism related organizations and individuals connected with terrorists. Proscription of organizations as terrorist organizations is also used by jurisdictions as a mechanism of identification.²⁷³ Proscription is also justified pursuant to Ethiopia’s positive obligations under international and regional instruments to prevent and disrupt terrorism. Additionally, the prevention of terrorism is understood as protecting human rights by other means.²⁷⁴ Keeping in mind the critiques on the specifics, the proscription of terrorist organizations is one of the counterterrorism strategies introduced by the proclamation.

Part III of the Proclamation sets out a broad and highly wide power of proscription. Article 18 of the proclamation states that the House of Peoples’ Representatives (HPR) is empowered to proscribe and revocation of proscribe²⁷⁵ an organization as a terrorist organization upon the submission by the government. The power to proscribe can be expressly exercised in the absence of or without requiring a judicial determination or any criminal, civil or administrative proceedings related to terrorism.²⁷⁶ There is a clear impact on the right of association as set out under the ICCPR article 22. Anyone including the proscribed organization can apply to the Attorney to be de-listed.

Any measures which result in a limitation on the right to freedom of association must be subject to judicial error.²⁷⁷ This principle is fundamental in the framework of counter-terrorism, where classified or confidential information may be used as the basis for a decision to proscribe an

²⁷² UNCHR (n 267)

²⁷³ Stefan Sottiaux (n 211) 159

²⁷⁴ UNSC Res 1624(n 233) para. 1

²⁷⁵ The proclamation (n 30) Article 24/2/

²⁷⁶ Ibid Article 18/3/

²⁷⁷ Goldman (n 271)

organization. The other problem is that the basis for proscription does not exclude secret evidence which may not be tested or challenged openly by the organization affected,²⁷⁸ and may also be inaccessible to the members of the House of Peoples' Representatives. Where the House of Peoples' Representatives is unable to pass a resolution based on the general information, it may assign, including the Speaker of the House, some members directly elected among the members of the House to look into the details of confidential matters.²⁷⁹ The fact that the Proclamation excludes 'detailed' confidential information but permits for 'general information about confidential information' is not an adequate human rights protection for the rights of groups and individuals to associate.²⁸⁰ Article 21 expressly denies organizations the right to access, review and test such confidential information. As Article 22 sets out in detail the legal consequences of proscription, the process of proscription lacks sufficient due process and procedural safeguards to prevent violations of human rights. The fact that the Proclamation has made proscription out of the reach of the judiciary, these consequences have negative impacts on human rights protection. The powers and functions of the House of Peoples' Representatives that a list down in the constitutional provision doesn't include the power to proscribe and revocation of proscribe terrorist organizations. The Constitution mandates the House of Peoples' Representatives primarily to legislate laws in all matters assigned by the Constitution to Federal jurisdiction.²⁸¹ The power to proscribe and revocation of proscribe terrorist organizations could not be considered a legislative one. The decision of the HPR does not give due process and not subject to judicial reviews or oversight. This is a violation of the right to be heard and the right to judicial reviews.²⁸²

The proscription process indicated by the Proclamation violates human rights on its own and also creates an atmosphere that human rights protection is endangered. The absence of judicial involvement in the process of proscription or revocation of proscription certainly violates the citizen's right of access to justice. The FDRE Constitution ordains that *"everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any*

²⁷⁸ The proclamation (n 30) Art. 21/2/

²⁷⁹ Ibid Art. 20

²⁸⁰ Special Rapporteur commentary (n 180)

²⁸¹ The FDRE Constitution, Art. 55(1)

²⁸² Human Rights Watch, 'Regarding serious patterns of torture and other cruel, inhumane and degrading treatment in Ethiopia' (2010)

other competent body with judicial power.”²⁸³ No one could reasonably argue that the House of Peoples’ Representatives has judicial powers whatsoever.²⁸⁴ Neither can it be denied that the proscription process has justiciable elements in it. It is enough to mention the effects of proscription.

The absence of judicial involvement in the proscription may also be seen from the perspective of freedom of association. It is clear that establishing an association with terrorist missions can in no way be justified within the constitutional boundary. Hence, there is no mistake in destroying such kinds of organizations. The Proclamation, however, provides a scheme whereby the legality of an association could be determined without judicial involvement. This denies the association and its members the right to access court administered justice and affects their freedom. Members might be frightened in joining associations as a subsequent proscription by the two-thirds majority in the parliament might make their mere membership a crime.

The other point is the relationship between the basis for the procedure for submission of recommendations and the right of access to information under ICCPR Art 19(2). The use of secret information in procedures not only risks wrong results. It also takes away the right of the individual to control information held by public authorities and the right to have incorrect information corrected.

Part II of the Proclamation sets out a kind of penalties related to membership of a terrorist organization. Under Article 30 the Proclamation creates a category of negligent membership of a terrorist organization (the “should have known” standard). Membership in a terrorist organization to be a highly controversial provision which creates an excessive burden on individuals, particularly where a wide power of proscription which might be applied to a wide variety of organizations would expose individuals to charges of terrorism without their interest to participate in an act of terrorism, in ways that are not consistent with international law obligations, primarily the need for necessity and clarity in legal sanction.²⁸⁵ Therefore, a member could potentially be prosecuted merely because their organization “supports or incite terrorism” or “in otherwise involved in terrorism” even if the support or the incitement or the involvement

²⁸³The FDRE Constitution, Art. 37(1)

²⁸⁴Hiruy, (n 131)

²⁸⁵Special Rapporteur commentary (n 180)

did not result in a terrorist act; and even if the person supporting or incitement terrorism did not intend to cause terrorism.

3.5 Prospects

Given the improvement and advancements in law, the future of Prevention and Suppression of Terrorism Crimes legislation in Ethiopia is brighter compared to the darkest seasons of the repressive legislation that the Organization was under for a decade from 2009 to 2020.

Mindfully understanding is the positive effects that the new legislation will exceptionally recognize for some rights even if the obstruction of public service happened. Like the rights to demonstration and assembly. The recognition of these rights will somehow improve the political situation in the country. Citizens are also encouraged to exercise their political rights in some way.

Additionally, establishment of fund for a terrorism crime victims provide full and effective reparation to victims of terrorism where death or serious injury results from an act of terrorism committed on the territory, including compensation and rehabilitation satisfaction. Providing some form of financial restitution or compensation for the harm suffered by victims not only assists their return to normality and rehabilitation into society, but may also is symbolic, confirming the dignity of victims as they try to return to a sense of normality in their lives.

To sum up the proclamation has had far reaching impacts on political pluralism and promotion and protection of human rights in the country. The analysis of the proclamation tell that the Proclamation threatens political pluralism and the rights of human rights defenders especially journalists and political activists in Ethiopia.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

The histories of terrorism trace back to late 18th century. Though the time different agents use terrorism as a conscious political tactic it became threat to public security. Modern terrorist act is widely believed to possess begun during the last third of the 19th century. Horrific attack committed by Al Qaeda against the USA, on 9/11/2001 envisages tough threat to public peace and security imposed by terrorism. the states are aware to need work on mechanisms to prevent any potential and practical harm impose by terrorism security and intelligence system.

As a results of numerous horrific attack, specifically 9/11 terrorist attack put pressure on international community and legislators in different countries. For instance, resolutions²⁸⁶ 1373 which calls states to eliminate terrorism could be taken as state's effort to tackle the danger of terrorism.

As the case in the other regions, terrorism has been a risk to public wellbeing in Africa. In response to varied terrorist activities in Africa, formerly OAU and currently AU have taken numerous counter terrorism measures. OAU was adopting the resolution AGH/RES 213(XXVIII) in 1992. The resolution urges member states to cooperate with one another to fight all sorts of extremism generally and non-secular and political extremism especially.

Ethiopia too owes a duty to stop and counter terrorism. Accordingly, the country enacts law to prevent terrorist act. The proclamation No. 652/2009 and its amendment proclamation No.1176/2020 has been mention as taken as its effort to control terrorism.

²⁸⁶ UNSC Resolution 1373 (2001)

Despite, lack of universally accepted definition to terrorism, scholars has been work to come up with working definitions. As aforementioned the researcher too works in this study. The need of such universally accepted definition is way beyond academic reasons. It has strong like with prevalence of human right and to prevent imposition of limitation to such rights arbitrarily. Among other things, the absence of international agreement on the definition of terrorism, serve states to get an excuse to their adoption of domestic anti-terrorism laws which violates human right. Furthermore, anti-terrorism Laws have direct and indirect negative impacts on human rights protection. In this regard the amended Proclamation that enacted by Ethiopia enables the country to prevent and punish terrorism. As the government owes to protect the public, counterterrorism efforts may be taken as a manifestation of state adherence of duty or failure. The countries must take the balance between the measures taken to protect the general public from terrorist attack and the extent limitation need to impose on human right of individual.

From this point of view, the Proclamation has positive roles to play for the development of human rights protection. The research identified positive like its stand to enable State duty to guard the rights of citizens, preventive and investigative terrorism, coordinated institutional operations, prohibits incitement, protection of witnesses, proscription of terrorist group to regulate and outlaw terrorist organizations, giving guaranty for obstruction of public service caused by a strike, compensation to victims of terrorism and integration of state accountability for violation of rights.

Coming to its shortcomings, this paper identified variety of real and potential threats to human rights protection originating from the Proclamation. The law provides a broad definition of terrorist acts. The actus reus of terrorism crime is different from crimes committed by common criminals. Terrorist attacks are aimed at influence governments to do or abstain from doing certain activities. To call the organization as terrorist organization, it need to takes lives of civilians with aforementioned purpose. From the stand point of human rights, the foremost threatening aspects of this proclamation is its inclusion of property crimes committed with none intent to cause death or serious injuries as terrorist act (terrorism).

The second drawback of such proclamation is it imposition of unnecessary limitation on freedom of expression. It restricts freedom of expression by far arbitrary way. This negates objectively verifiable standards on the ICCPR Art 20 permissible to restriction on expression and controlled

by Art 19(3) of ICCPR. One particular concern the comparison between the scopes imposed under Art 19 (3) and Art.20 ICCPR visa-vise Art 3 and Art 10 (2) Proclamation. Obviously, the proclamation is set out broader the prohibition than ICCPR. The same is true that proclamation doesn't distinguish between situations of legitimate storage and dissemination of data to the general public and doing such to terror the public. Article 10 of the proclamation which criminalizes storage of data is overbroad and it is sound to conclude that the proclamation violates human right standards. This makes it difficult to determine direct and immediate connection between the expression and therefore the threat (the purported objective). Therefore, the law fails to satisfy the test of necessity. Additionally, the Proclamation affects journalists and it highly forced them to supply only selected information. They have no freedom of store, using and exposing information associated with terrorism. The proclamation makes it a criminal offense to cause the commission of any of the acts provided under Article 3 of the Proclamation. The terminology under such a provision violates the right of freedom of expression by tress pass international human right standards.

Thirdly, the proclamation provides government legal cover to wreck its obligation to protection and promotion of human rights. It empowers police with power of arrest without indication of the court warrant is important or not. Allowance of surprise search and gathering evidence without due process of law clearly violates human rights. Surprise search opens the chance for police to look the house, vehicles and correspondents of an individual for political purpose. Additionally, the proclamation permits, the police use special investigation techniques to gathering evidence if where the regular Criminal Procedure Code investigation technique isn't effective. The police employed the interception and surveillance in where the court believes the need of the interception of communications without a legitimate reason to interfere in privacy.

Fourthly, the proclamation is silent about the remand. Therefore, the police use the CPC to fill the gap and thereby, it gets a lee way to arbitrary detention in the name of suspect of terrorist act. The police have legal cover to detain the person without charges for unlimited period by requesting additional investigation periods of for less than fourteen days on each occasion. The police is detained or taken other arbitrary measures, for free of charge or bail and without deadlines. Using this gap the police begin to arrest first and getting to find evidence later.

The fifth prominent problem is that the law mandates the Parliament to proscribe and revocation of proscribe terrorist organizations. There's no judicial involvement at any stage of proscription or revocation of proscription. The mandate is given by the proclamation not by constitution. Additionally, the absence of judicial involvement within the proscription violates citizen's right to access court administered justice.

4.2 Recommendations

Based on the thoughtful synthesis of researcher as to how the balance should be taken between government duty to ensure the security of the population, particularly from the act of terrorism and observance of human right values in executing such duty, I proposed the following recommendations:-

1. Legal

The definition of terrorist acts under the proclamation must be amended and must introduce proportionate and precise definition in line with international counter-terrorism instruments. To be specific, the proclamation must exclude dangers to property crimes. Certain actions should be omitted from article 3(1) (d) as they do not have a direct nexus with terrorism.

Article 10 of the proclamation is which criminalizes storage of data unless otherwise permitted by another law. This makes it difficult to determine direct and immediate connection between the expression and terrorist threat thereof. The government must timely come up with specific and detailed law handling the matter and thereby, it must amends Article 10 of the proclamation.

Procedure and Evidence Law must enact with specific concern of human right. The police power to unwarranted detained or other arbitrary measures must be limited. The new law must sufficiently cover the issue of bail, court warrant and deadlines for time of detention. There must be a means to check strict necessity of limitation and immediate release of the suspect as soon as the necessity for arrest laps (particularly there must be judicial review). Additionally, the new law must covers the issue of Power of surprise search upon permission by the Commissioner General of the Federal Police Commission (particularly Article 31 of the proclamation) in view of avoiding abuse, unjustified(strict necessary) limitation to human right and delayed and reckless investigation. The proclamation must be introduces the standard of justification as to

necessity of limitation to the human right and to gather evidences through special investigation techniques.

Furthermore, by considering the special nature of terrorism in one hand and the need to ensure human right sacks, the researcher propose the establishment of a special bench for the prosecution of terrorists. A court entirely dedicate for such specific purpose may serve to ensure all concerns of human right and implementation of anti- terrorist proclamation in proper manner.

2. Institutional Reform

The proclamation must amend to deal issue of victims and perpetrator rights, the country should take practical steps to improve executive co-operation in the investigation and prosecution of terrorism. Independently, the proclamation should enable and encourage building internal capacities in the area of intelligence gathering. Model investigation and prosecution materials, showing best practices, should be made available and shared with all persons involved in handling cases related to terrorism. There is, also a need for protocols to govern executive best practices in the area of crisis management, preventive, mitigation and rehabilitative measures. Additionally, the proclamation must serve for the government to upgrade institutional capacity of judicial system and the national intelligence as well as Security Service. Special focus must be given to recruitment of professionals (police, public prosecutors and judges) thus, to perform better.

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