



COMMENT

on

Anti-Terrorism Proclamation, 2009,
of Ethiopia

March 2010

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About the ARTICLE 19 Law Programme

The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme operates the Media Law Analysis Unit which publishes a number of legal analyses each year, commenting on legislative proposals as well as existing laws that affect the right to freedom of expression. The Unit was established in 1998 as a means of supporting positive law reform efforts worldwide, and our legal analyses frequently lead to substantial improvements in proposed or existing domestic legislation. All of our analyses are available online at <http://www.article19.org/publications/law/legal-analyses.html>.

If you would like to discuss this Memorandum further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.

KEY RECOMMENDATIONS**Recommendations on Definition of Terrorism:**

The definition of “terrorism” in the Proclamation should be narrowed to include only acts of serious crime that pose a serious threat to life, safety or property and that are intended to advance an ideological, religious or political cause and influence the government by inflicting terror on the public.

Recommendations on Protection of Journalists’ Sources and Information

Specific provisions should be included to ensure the right of journalists and media organisations to protect their sources of information. This includes limiting obligations to provide information, restrictions on searching and seizing of information, and limits on surveillance to identify sources and information.

Recommendations on “Encouragement” of Terrorism

The terms “encourage” “indirectly encourage” and “other inducement” in the Proclamation should be abandoned in favour of internationally accepted terminology, such as “incite”.

1. Introduction

This Comment contains ARTICLE 19's analysis of the Proclamation No. 652/2009, A Proclamation on Anti-Terrorism, published in the Federal Negarit Gazeta of the Federal Republic of Ethiopia on 28 August 2009 ("Proclamation") against international standards on freedom of expression.¹ ARTICLE 19 is an international, non-governmental human rights organisation which works with partner organisations around the world to protect and promote the right to freedom of expression and freedom of information. We believe that freedom of expression and access to information is not a luxury but a fundamental human right. The full enjoyment of this right is central to achieving the full enjoyment of individual freedoms and to the healthy functioning of democracy; and it is a potent force to pre-empt repression, war and conflict. We have previously provided legal analyses in the area of media law to government and civil society organisations in over 30 countries.² Regarding Ethiopia, we have analysed a number of laws and draft freedom of expression related laws, included the draft Proclamation on Press Freedom of 2003 and 2004³ and submitted observations to the Ethiopian Government on freedom of expression in the country.⁴ In 2003, we also publish a report on the legal framework for freedom of expression in Ethiopia, intended to inform debate about the adoption of a press law.⁵ ARTICLE 19 has an office in Nairobi supporting nine countries in the region.

We have reviewed the 2009 Anti-Terrorism Proclamation and find that a number of the sections of the Proclamation undermine international protections on freedom of expression. Of particular concern is the broad definition of terrorism, which would appear to apply to many legitimate acts of expression; the undermining of protection of journalists sources including by surveillance and an excessive duty to cooperate and provide information; and vaguely defined provisions on "encouraging" terrorism that would criminalise the legitimate exercise of freedom of expression and have a real chilling effect on debate on matters of public interest.

2. Anti-Terrorism and Free Expression

The protection of freedom of expression in the context of combating terrorism has been a matter of significant debate for a number of years, especially since the events of 11 September 2001.

It is well understood that freedom of expression may be restricted in order to protect public order and national security and recognised that the State has a duty to protect its people from terrorist threats. However, we are concerned in the use of anti-terror laws to stifle legitimate political and social protest.⁶ Anti-terrorist laws trigger executive powers that are very

¹ Proclamation on Anti-Terrorism No 652/2009, Federal Negarit Gazeta, 28 August 2009, p. 4827. Copy of the Proclamation is attached to this Comment, see Appendix 1.

² These analyses can be found on the ARTICLE 19 website, at <http://www.article19.org/publications/law/legal-analyses.html>.

³ For 2003 analysis, see <http://www.article19.org/pdfs/analysis/ethiopia-media-law.pdf>, <http://www.article19.org/pdfs/analysis/ethiopia-updated-media-law.pdf>, and for 2004 analysis: <http://www.article19.org/pdfs/analysis/ethiopia-note-may-2004-draft-press-law.pdf>.

⁴ See <http://www.article19.org/pdfs/publications/ethiopia-foe-submission.pdf>.

⁵ <http://www.article19.org/pdfs/publications/ethiopia-legal-framework-for-foe.pdf>.

⁶ As noted by UN Secretary General Kofi Annan in 2003, "we are seeing an increasing use of what I call the 'T-word' – terrorism – to demonize political opponents, to throttle freedom of speech and the press, and to

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restrictive on human rights, often with reduced judicial oversight. We believe therefore that, as a matter of principle, they should be used only in circumstances when the exercise of these powers is truly “necessary”. The laws should be narrowly drafted and be proportionate to the legitimate aim pursued – protecting national security. 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.⁷

The UN Human Rights Commission also issued resolutions reminding nations to “refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways which are contrary to their obligations under international law”.⁸ This has also been similarly recognized by the African Union.⁹

3. Definition of Terrorism

As a preliminary matter, the definition of terrorism set out in the Proclamation is both overly broad and vague. Under international human rights law, criminal offences and any executive measures that interfere with rights such as free assembly, expression and privacy must be clearly and narrowly defined by law, serve a legitimate aim and be “necessary” in a democratic society. We believe that the definition of “terrorism” in the Proclamation fails this test, and we urge serious reconsideration of the definition.

Article 3 of the Proclamation defines “terrorist acts” as those that:

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

Under Article 3(6) of the Proclamation, a terrorist act would include anything that causes “serious interference or disruption of any public service”. It applies to many types of legitimate, non-violent protest and dissent. This can include public transport or communications “systems established to give public service”.

We note that the definition used in the Proclamation has already been found to violate international human rights law by the UN Human Rights Committee. The Human Rights

delegitimize legitimate political grievances.” Kofi Annan, Statement to the 20 January Security Council ministerial meeting on terrorism, 20 January 2003; Also see Speaking of terror: A survey of the effects of counter-terrorism legislation on freedom of the media in Europe, Council of Europe, November 2008; http://www.ministerialconference.is/media/images/banisar_enweb.pdf

⁷ Resolution 1456 (2003), §6.. See also General Assembly resolution 60/288 of 20 September 2006 on “Global Counter-Terrorism Strategy”.

⁸ See e.g. Commission on Human Rights resolution 2003/42; Commission on Human Rights Resolution: 2004/42; The right to freedom of opinion and expression, Human Rights Resolution 2005/38.

⁹ See African Commission on Human and Peoples’ Rights, Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism, meeting at its 37th Ordinary Session held in from 21st November to 5th December 2005.

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Committee has been strongly critical of states that have adopted similar language to that found in Article 3.¹⁰ For example, in 2005, the Committee found that the definition of terrorism in the Canadian Anti-Terrorism Act 2001, which is quite similar to the Proclamation, was overly broad. The Committee recommended in its Concluding Observations that:

[t]he State party should adopt a more precise definition of terrorist offences, so as to ensure that individuals will not be targeted on political, religious or ideological grounds, in connection with measures of prevention, investigation and detention.”¹¹

More recently, the Committee found the similar language in the Australian Anti-Terrorism Act (No. 2) 2005 violated international human rights norms and recommended its amendment:

The State party should ensure that its counter-terrorism legislation and practices are in full conformity with the Covenant. In particular, it should address the vagueness of the definition of terrorist act in the Criminal Code Act 1995, in order to ensure that its application is limited to offences that are indisputably terrorist offences.¹²

Other international bodies have also made similar recommendations. The Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights, along with her counterparts at the UN, Organisation for American States and the Organisation for Economic Co-operation and Development, has called for countries to adopt definitions of terrorism which ensure that they do not criminalize speech which does not directly incite violent activities:

The definition of terrorism, at least as it applies in the context of restrictions on freedom of expression, should be restricted to violent crimes that are designed to advance an ideological, religious, political or organised criminal cause and to influence public authorities by inflicting terror on the public.¹³

Recommendation:

- The definition of “terrorism” in the Proclamation should be narrowed to include only acts of serious crime that pose a serious threat to life, safety or property and that are intended to advance an ideological, religious or political cause and influence the government by inflicting terror on the public.

¹⁰ See e.g., Concluding observations of the Human Rights Committee, Iceland, 25 April 2005, UN Doc. CCPR/CO/83/ISL, par. 10; Concluding observations of the Human Rights Committee, Peru, 1997, UN Doc. A/51/40; Conclusions and recommendations of the Committee against Torture, Bahrain, 21 June 2005, UN Doc. CAT/C/CR/34/BHR, par. 6(i).

¹¹ Concluding observations of the Human Rights Committee, Canada, UN Doc. CCPR/C/CAN/CO/5, 2 November 2005.

¹² Concluding observations of the Human Rights Committee, Australia, CCPR/C/AUS/CO/5/CRP/1, 2 April 2009.

¹³ The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, 9 December 2008. Available at www.osce.org/documents/rfm/2008/12/35705_en.pdf

4. Protection of sources and information

The Proclamation sets out a series of powers for government bodies and duties for private individuals including the media to facilitate the collection of information about terrorist offenses. These sections collectively raise serious issues about the right of journalists' to protect their confidential sources and the role of the media in acting as an independent investigator in society.

- Article 12, "Failure to Disclose Terrorist Acts", requires all persons, including the media, to provide information or evidence relating a terrorist act:

Whosoever, having information or evidence that may assist to prevent terrorist act before its commission, or having information or evidence capable to arrest or prosecute or punish a suspect who has committed or prepared to commit an act of terrorism, fails to immediately inform or give information or evidence to the police without reasonable cause, or gives false information, is punishable with rigorous imprisonment from 3 to 10 years.

- Article 14, "Gathering Information", gives broad powers to the National Intelligence and Security Service to conduct electronic surveillance of telecommunications including Internet communications.
- Articles 17 and 18, "Covert Searches", gives police broad powers to conduct covert searches without any explicit protections for confidential information held by the media, lawyers, religious officials or other persons who are internationally recognized as have a legal obligation to protect confidential information.
- Article 22 "Duty to Give Information", provides broad powers to force disclosure of information:

The police may request from any government institution, official, bank or a private organization or an individual to be given information or evidence which he reasonably believes could assist to prevent or investigate terrorism cases. Any one so requested shall have the duty to give the information or evidence.

We note that the protection of journalists' sources is essential to ensure the free flow of information to journalists and the public. It has been specifically recognized most major international inter-governmental bodies, including the United Nations, African Union, Council of Europe, Organisation of American States, and the Organization for Security and Co-operation in Europe.¹⁴ This includes the right for journalists' and media organisations to not disclose the identities of their confidential sources; to not provide information gathered in the course of journalism; to not be forced to testify; and to not be subject to surveillance and searches to undermine these rights. The rights can only be overridden in extraordinary circumstances. Under current Ethiopian law, there appears to be little recognition of protection of journalists' sources.

¹⁴ See e.g., *Silencing Sources: An International Survey of Protections and Threats to Journalists' Sources* (Privacy International, November 2007). <http://www.privacyinternational.org/sources>; *Legal Protections on the Right to Information, State Secrets and Protection of Sources in OSCE Participating States* (PI and OSCE, May 2007). <http://www.privacyinternational.org/foi/OSCE-access-analysis.pdf>

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Further, the Declaration of Principles on Freedom of Expression in Africa issued by the African Commission on Human and People's Rights provides detailed guidelines for member states of the AU on protection of sources to follow to be compliant with Article 9 of the African Charter of Human Rights. Section XV on "*Protection of Sources and other journalistic material*" states:

Media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except in accordance with the following principles:

- the identity of the source is necessary for the investigation or prosecution of a serious crime, or the defence of a person accused of a criminal offence;
- the information or similar information leading to the same result cannot be obtained elsewhere;
- the public interest in disclosure outweighs the harm to freedom of expression;
- and disclosure has been ordered by a court, after a full hearing.¹⁵

The protection of sources has been incorporated into the national law of nearly 20 African states. In Mozambique, it is protected in both the Constitution and the Press Act. Article 74 (3) of the Mozambique Constitution states "freedom of the press shall include ... Protection of professional independence and confidentiality." Article 30 (1) of the Mozambique Press Law states "Journalist shall enjoy the right to professional secrecy concerning the origins of the information they publish or transmit, and their silence may not lead to any form of punishment."

It is recognised that the prevention of terrorism does not justify the elimination of this crucial right for a free press. While the prevention of terrorism is an obvious public interest which in some cases can result in the disclosure of information, it must be also balanced against the public's right to be informed. This is especially important in the case where the definition of terrorism is vaguely defined, such as under the Proclamation. The mere claim by officials that information may be of use in combating terrorism does not eliminate this right. The UN Special Rapporteur on Human Rights and Counter-Terrorism has found that:

[T]he legitimate interest in the disclosure of confidential materials of journalists outweighs the public interest in the non-disclosure only where an overriding need for disclosure is proved, the circumstances are of a sufficiently vital and serious nature and the necessity of the disclosure is identified as responding to a pressing social need.¹⁶

Other laws with powers to force disclosure have been found to be in violation of international obligations. In 2007, the UN Rapporteur raised specific concerns about the South African Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 which requires persons include the media to provide information to the authorities.¹⁷

¹⁵ African Union, Declaration of Principles on Free Expression. Adopted by The African Commission on Human and Peoples' Rights, meeting at its 32nd Ordinary Session, in Banjul, The Gambia, from 17th to 23rd October 2002.

¹⁶ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Mr. Martin Scheinin), Doc. A/HRC/13/37, 28 December 2009.

¹⁷ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Mr. Martin Scheinin) - Mission to South Africa, Doc. A/HRC/6/17/Add.2, 7 November 2007.

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The Special Rapporteur on Freedom of Expression and Access to Information of African Commission on Human and Peoples' Rights, along with her counterparts at the UN, OAS and OSCE have also found that anti-terrorism laws do not eliminate the state's obligation to follow legal procedures when attempting to access source information:

Normal rules on the protection of confidentiality of journalists' sources of information – including that this should be overridden only by court order on the basis that access to the source is necessary to protect an overriding public interest or private right that cannot be protected by other means – should apply in the context of anti-terrorist actions as at other times.¹⁸

The Council of Europe's Council of Ministers addressed the issue to ensure that the basic protections of sources were not undermined by anti-terrorism efforts:

Calls on public authorities in member states: [...] to respect, in accordance with Article 10 of the European Convention on Human Rights and with Recommendation No. R (2000) 7, the right of journalists not to disclose their sources of information; the fight against terrorism does not allow the authorities to circumvent this right by going beyond what is permitted by these texts.¹⁹

The Council of Europe Ministers have also directly addressed the seizing of evidence. In September 2007, they issued "Guidelines on protecting freedom of expression and information in times of crisis" which state that:

With a view, inter alia, to ensuring their safety, media professionals should not be required by law-enforcement agencies to hand over information or material (for example, notes, photographs, audio and video recordings) gathered in the context of covering crisis situations nor should such material be liable to seizure for use in legal proceedings.²⁰

It should also be recognized that in other anti-terrorism legislation in the region, journalistic materials receive special protection. Under the Ugandan Anti-Terrorism Act, information collected in the process of journalism is considered "excluded materials" which require special procedures by a magistrate before it can be accessed.²¹ While this legislation is not fully compliant with human rights requirements, it shows that protections can be enacted.

Recommendation:

- Specific provisions should be adopted in the legislation to ensure the right of journalists and media organisations to protect their sources of information. This includes limiting obligations to provide information, restrictions on searching and seizing of information, and limits on surveillance to identify sources and

¹⁸ The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, 9 December 2008. Available at www.osce.org/documents/rfm/2008/12/35705_en.pdf

¹⁹ Council of Europe, Declaration on freedom of expression and information in the media in the context of the fight against terrorism, 2 March 2005.

²⁰ Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis. Adopted by the Committee of Ministers on 26 September 2007 at the 1005th meeting of the Ministers' Deputies.

²¹ Anti-terrorism Act, 2002, 3rd Schedule.

information

5. Criminalizing “Encouraging” Speech

Article 6 of the Proclamation, entitled “Encouragement of Terrorism” sets out broad prohibitions on speech directly or indirectly “encouraging” or “inducing” terrorist acts. There is no definition of encouragement. The introduction of these penalties is likely to result in the criminalization of perfectly lawful statements and the chilling of much political speech and debate. Article 6 states:

Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this Proclamation is punishable with rigorous imprisonment from 10 to 20 years.

It is very clear that these prohibitions violate the right to freedom of expression. The offences of “direct or indirect encouragement or other inducement” are extraordinarily broad and vague offences that fail the limitations for restrictions on rights required under international human rights law. While “encouragement” and “inducement” are vague terms, “indirect encouragement or other inducement” is so vague as to be without meaning. They create a subjective standard based on what “some...members of the public” may understand which can be applied (or misapplied) to nearly any statement made in the media as being supporting of terrorism.

It is not legal 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 conduct. It is fundamental to the guarantee of freedom of expression that any restriction for the purpose of preventing terrorism is closely linked to preventing imminent violence. Restrictions of this sort have historically been abused and courts have sought to promote an appropriate balance between the need to ensure security and the fundamental right to freedom of expression by requiring a close nexus between the speech sought to be sanctioned and the risk of harm to security.

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 endorsed 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. Principle 6 provides:

[E]xpression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.²²

²² Johannesburg Principles on National Security, Freedom of Expression and Access to Information, adopted October 1995. See, for example, UN Doc E/CN.4/1996/39, 22 March 1996, para. 154. Also available at

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Provisions in other national laws similar to those found in Article 6 have been found by international bodies to be in violation of the International Covenant on Civil and Political Rights. The UN Human Rights Committee in 2008 called for the revision of the UK Terrorism Act 2006:

The Committee notes with concern that the offence of “encouragement of terrorism” has been defined in section 1 of the Terrorism Act 2006 in broad and vague terms. In particular, a person can commit the offence even when he or she did not intend members of the public to be directly or indirectly encouraged by his or her statement to commit acts of terrorism, but where his or her statement was understood by some members of the public as encouragement to commit such acts. The State party should consider amending that part of section 1 of the Terrorism Act 2006 dealing with “encouragement of terrorism” so that its application does not lead to a disproportionate interference with freedom of expression.²³

The Council of Europe’s Council of Ministers in their 2007 guidelines on protecting freedom of expression and information in times of crisis recommended:

Member states should not use vague terms when imposing restrictions of freedom of expression and information in times of crisis. Incitement to violence and public disorder should be adequately and clearly defined.²⁴

It should also be clear in international human law that the mere description of an event, or quoting a person, is protected speech. The CoE Ministers declared in 2009 that:

People have a right to be informed of terrorist attacks and of the authorities’ action to combat terrorism. However, there are cases where it is inappropriate for the media to disseminate – or disseminate immediately – particular information in order to prevent terrorist acts or to protect the safety of victims or in the interests of an ongoing investigation or to protect the administration of justice. This calls for the observance of professional standards and responsibilities. However, the mere fact of reporting on terrorism cannot be equated to supporting terrorism. It is also legitimate to engage in open dialogue and public debate about the causes of terrorism or about political issues surrounding it.²⁵

Recommendation:

- The terms “encourage” “indirectly encourage” and “other inducement” in the Proclamation should be abandoned in favour of internationally accepted terminology, such as “incite”.

6. Conclusion

<http://www.article19.org/pdfs/standards/joburgprinciples.pdf>

²³ Concluding Observations of the Human Rights Committee, United Kingdom, UN Doc. CCPR/C/GBR/CO/6, 21 July 2008.

²⁴ Committee of Ministers, Guidelines of the Committee of Ministers on protecting freedom of expression and information in times of crisis, §19.

²⁵ Council of Europe, Resolution MCM(2009)011 Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information, 29 May 2009.

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The Proclamation seriously undermines freedom of expression rights in a manner that is unlikely to improve security. It gives broad and vaguely defined powers to authorities to criminalize speech that is not directly inciting terrorism and undermines the media's fundamental right to protection of sources. In doing so, it violates Ethiopia's obligations under international law. It should be amended to fully recognise free expression rights under international and regional human rights law.

APPENDIX 1: Proclamation No. 652/2009, Anti-Terrorism Proclamation

Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia

15th Year, No. 57

ADDIS ABABA, 28th August, 2009

PROCLAMATION NO. 652/2009

A PROCLAMATION ON ANTI-TERRORISM

WHEREAS, the right of the people to live in peace, freedom and security has to be protected, at all times, from the threat of terrorism;

WHEREAS, terrorism is a danger to the peace, security and development of the country and a serious threat to the peace and security of the world at large;

WHEREAS, it has become necessary to legislate adequate legal provisions since the laws presently in force in the country are not sufficient to prevent and control terrorism;

WHEREAS, it has become necessary to incorporate new legal mechanisms and procedures to prevent, control and foil terrorism, to gather and compile sufficient information and evidences in order to bring to justice suspected individuals and organizations for acts of terrorism by setting up enhanced investigation and prosecution systems;

WHEREAS, in order to adequately fight terrorism, it is necessary to cooperate with governments and peoples of our region, continent and other parts of the world that have anti-terrorism objectives and particularly, to enforce agreements that have been entered into under the United Nations and the African Union;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby

proclaimed as follows:

PART ONE
GENERAL

1. Short Title

This Proclamation may be cited as the “Anti-Terrorism Proclamation No.652/2009”.

2. Definitions

In this Proclamation, unless the context otherwise requires:

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1/ "property" means any asset whether corporeal or incorporeal or movable or immovable, and includes deeds and instruments evidencing title to or interest in such asset such as bank accounts;

2/ "proceeds of terrorism" means any property, including cash, derived or obtained from property traceable to a terrorist act, irrespective of a person in whose name such proceeds are standing or in whose possession or control they are found;

3/ "terrorist property" means proceeds of terrorism, properties of a terrorist organization or property which has been or is being or will be used to commit a terrorist act;

4/ "terrorist organization" means:

- a) a group, association or organization which is composed of not less than two members with the objective of committing acts of terrorism or plans, prepares, executes or cause the execution of acts of terrorism or assists or incites others in any way to commit acts of terrorism; or
- b) an organization so proscribed as terrorist in accordance with this Proclamation;

5/ "hostage taking or kidnapping" means seizing or detaining and threatening to kill, to injure or to continue to detain a person in order to compel the government to do something as a condition for the release of the hostage;

6/ "incitement" means to induce another person by persuasion, promises, money, gifts, threats or otherwise to commit an act of terrorism even if the incited offence is not attempted;

7/ "public services" means electronic, information communication, transport, finance, public utility, infrastructure or other similar institutions or systems established to give public service;

8/ "digital evidence" means information of probative value stored or transmitted in digital form that is any data, which is recorded or preserved on any medium in or by a computer system or other similar device, that can be read or perceived by a person or a computer system or other similar device, and includes a display, printout or other output of such data;

9/ "government" means the federal or a state government or a government body or a foreign government or an international organization;

10/ "court" means Federal High Court or Federal Supreme Court, as the case may be;

11/ "police" means Federal Police or Regional State Police to whom the power of the Federal Police is delegated;

12/ "person" means a physical or juridical person;

13/ any expression in the masculine gender includes the feminine.

PART TWO TERRORISM AND RELATED CRIMES

3. Terrorist Acts

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

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

is punishable with rigorous imprisonment from 15 years to life or with death.

4. Planning, Preparation, Conspiracy, Incitement and Attempt of Terrorist Act

Whosoever plans, prepares, conspires, incites or attempts to commit any of the terrorist acts stipulated under sub-articles (1) to (6) of Article 3 of this Proclamation is punishable in accordance with the penalty provided for under the same Article.

5. Rendering Support to Terrorism

1/ Whosoever, knowingly or having reason to know that his deed has the effect of supporting the commission of a terrorist act or a terrorist organization:

- a) provides, prepares or gives forged or falsified document;
- b) provides a skill, expertise or moral support or gives advice;
- c) provides, collects or makes available any property in any manner;
- d) provides or makes available monetary, financial or other related services;
- e) provides or makes available any explosive, dynamite, inflammable substances, firearms or other lethal weapons or poisonous substances; or
- f) provides any training or instruction or directive;

is punishable with rigorous imprisonment from 10 to 15 years.

2/ Whosoever harbors or helps to escape or conceals someone whom he knows to have committed terrorist act mentioned under this Proclamation is punishable with rigorous imprisonment from 10 years to life.

6. Encouragement of Terrorism

Whosoever publishes or causes the publication of a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect

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encouragement or other inducement to them to the commission or preparation or instigation of an act of terrorism stipulated under Article 3 of this proclamation is punishable with rigorous imprisonment from 10 to 20 years.

7. Participation in a Terrorist Organization

1/ Whoever recruits another person or takes training or becomes a member or participates in any capacity for the purpose of a terrorist organization or committing a terrorist act, on the basis of his level of participation, is punishable with rigorous imprisonment from 5 to 10 years.

2/ Whoever serves as a leader or decision maker in a terrorist organization is punishable with rigorous imprisonment from 20 years to life.

8. Possessing or Using Property for Terrorist Act

Whosoever possesses or uses property knowing or intending it to be used to committing or facilitating a terrorist act is punishable, subject to the property being forfeited, with rigorous imprisonment from 5 to 20 years.

9. Possessing and Dealing with Proceeds of Terrorist Act

Whosoever knowingly or having reason to know that a property is a proceed of terrorist act acquires or possesses or owns or deals or converts or conceals or disguises the property is punishable, subject to the property being forfeited, with rigorous imprisonment from 5 to 15 years.

10. Inducing or Threatening Witness and Destroying Evidence

Whosoever:

1/ induces or threatens a person who is or can be a witness for an act of terrorism or uses violence against the witness or a person who has close relationship with the witness to prevent the witness from testifying; or

2/ destroys or hides evidence; is punishable with rigorous imprisonment from 5 to 20 years.

11. False Threat of Terrorist Act

Whosoever while knowing or believing that the information is false, intentionally communicates or makes available by any means that a terrorist act has been or is being or will be committed, is punishable with rigorous imprisonment from 3 to 10 years.

12. Failure to Disclose Terrorist Acts

Whosoever, having information or evidence that may assist to prevent terrorist act before its commission, or having information or evidence capable to arrest or prosecute or punish a suspect who has committed or prepared to commit an act of terrorism, fails to immediately inform or give information or evidence to the police without reasonable cause, or gives false information, is punishable with rigorous imprisonment from 3 to 10 years.

**PART THREE
PREVENTIVE AND INVESTIGATIVE MEASURES**

13. Protecting Individuals Exposed to Terrorist Attacks

1/ A police officer, having reasonable grounds to believe that a terrorist act has been or is being or will be committed in a particular place, or that people around such place are exposed or may be exposed to terrorist attacks, may:

- a) order people around the place to enter into a premise or prevent their entry into a premise or order them to evacuate a premise or keep them in a secluded area;
- b) destroy, take away or remove the thing which is or may be a source of the danger;
- c) order individuals to follow any procedures which protects them from poisoning;
- d) put under control the contaminated building or land; or
- e) take any measure that enable to prevent or reduce the danger or contamination;

by issuing oral or written order and, if necessary, by using compelling measure.

2/ An order given under sub-article (1) of this Article, may be lifted or extended by way of police announcement.

3/ Any individual exposed to danger of terrorism shall have the duty to execute and cooperate in the execution of the order given by the police. Furthermore, an owner or person in charge of any building or premise, or place shall have the duty to enforce the order given under this Article.

4/ The government, when finds it necessary, may, by issuing a directive, make any manufacturing or service rendering institution to have contingency plan in order to save people from danger in case of emergency.

14. Gathering Information

1/ To prevent and control a terrorist act, the National Intelligence and Security Service may, up on getting court warrant:

- a) intercept or conduct surveillance on the telephone, fax, radio, internet, electronic, postal and similar communications of a person suspected of terrorism;
- b) enter into any premise in secret to enforce the interception; or
- c) install or remove instruments enabling the interception.

2/ Information obtained through interception shall be kept in secret.

3/ Any communication service provider shall cooperate when requested by the National Intelligence and Security Service to conduct the interception.

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4/ The National Intelligence and Security Services or the Police may gather information by surveillance in order to prevent and control acts of terrorism.

15. Information about a Lessee

1/ Whosoever leases a house, place, room, vehicle or any similar facility shall have the duty to register in detail the identity of the lessee and notify the same to the nearest police station within 24 hours.

2/ Any person, who lets a foreigner live in his house, shall have a duty to notify the nearest police within 24 hours, about the identity of the foreigner and submit a copy of his passport.

16. Sudden Search

Where a police officer has reasonable suspicion that a terrorist act may be committed and deems it necessary to make a sudden search in order to prevent the act, with the permission of the Director General of the Federal Police or a person delegated by him, may stop vehicle and pedestrian in an area and conduct sudden search at any time, and seize relevant evidences.

17. Covert Search

A police may request the court in writing or, in urgent cases, by telephone for covert search warrant where he has reasonable grounds to believe that:

1/ a terrorist act has been or is likely to be committed; or

2/ a resident or possessor of a house to be searched has made preparations or plans to commit a terrorist act; and

3/ covert search is essential to prevent or to take action against a terrorist act or suspected terrorist activity.

18. Warrant Given to Conduct Covert Search

1/ The court on the basis of the information presented to it by the applicant, may give covert search warrant by having into consideration:

- a) the nature or gravity of the terrorist act or the suspected terrorist act; and
- b) the extent to which the measures to be taken in accordance with the warrant would assist to prevent the act of terrorism or arrest the suspect.

2/ A warrant issued in accordance with this Article shall specify:

- a) the address of any premise to which the warrant relates, and the names of the occupiers, if known;
- b) the maximum duration being 30 days, the period during which the warrant is valid and the date on which the warrant is issued; and
- c) if necessary, the type or description of evidences to be searched for and seized.

19. Powers of Arrest

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1/ The police may arrest without court warrant any person whom he reasonably suspects to have committed or is committing a terrorist act as provided under this Proclamation.

2/ The arrested person shall have the right to be brought before a court within 48 hours of his arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court.

20. Detention and Remand Order

1/ The court, before which an arrested person is presented in accordance with Article 19 of this Proclamation, may give an order to remand the suspect for investigation or trial.

2/ If the investigation is not completed, the investigating police officer may request the court for sufficient period to complete the investigation.

3/ Each period given to remand the suspect for investigation shall be a minimum of 28 days; provided however, that the total time shall not exceed a period of four months.

4/ Public prosecutor may appeal on bail cases.

5/ If a terrorism charge is filed in accordance with this Proclamation, the court shall order the suspect to be remanded for trial until the court hears and gives decision on the case.

21. Duty to Giving Samples

The police may order a person suspected of acts of terrorism to give samples of his hand writing, hair, voice, finger print, photograph, blood, saliva and other body fluids, for investigation. Moreover, he may order the suspect to undergo medical test. If the suspect is not willing for the test, the police may use necessary and reasonable force to take samples.

22. Duty to Give Information

The police may request from any government institution, official, bank or a private organization or an individual to be given information or evidence which he reasonably believes could assist to prevent or investigate terrorism cases. Any one so requested shall have the duty to give the information or evidence.

PART FOUR EVIDENTIARY AND PROCEDURAL RULES

23. Admissible Evidences

Without prejudice to the admissibility of evidences to be presented in accordance with the Criminal Procedure Code and other relevant legislations, the following shall be admissible in court for terrorism cases:

1/ intelligence report prepared in relation to terrorism, even if the report does not disclose the source or the method it was gathered;

2/ hearsay or indirect evidences;

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3/ digital or electronic evidences;

4/ evidences gathered through interception or surveillance or information obtained through interception conducted by foreign law enforcement bodies; and

5/ confession of a suspect of terrorism in writing, voice recording, video cassette or recorded in any mechanical or electronic device.

24. Inapplicability of Statue of Limitation for Terrorism Cases

Criminal liability of persons who commit terrorism crimes as stipulated under this Proclamation shall not be barred by statue of limitations.

PART FIVE

MEASURES TO CONTROL TERRORIST ORGANIZATIONS AND PROPERTY

25. Procedure of Proscribing Terrorist Organization

1/ The House of Peoples' Representatives shall have the power, upon submission by the government, to proscribe and de-proscribe an organization as terrorist organization.

2/ Any organization shall be proscribed as terrorist organization if it directly or indirectly:

- a) commits acts of terrorism;
- b) prepares to commit acts of terrorism;
- c) supports or encourages terrorism; or
- d) is otherwise involved in terrorism.

3/ Where any organization is proscribed as terrorist in accordance with sub-article (1) and (2) of this Article, its legal personality shall cease.

4/ The body that administers the terrorism victims fund to be established in accordance with this Proclamation shall assign a liquidator to the organization the legal personality of which has ceased pursuant to sub-article (3) of this Article, and enforce the process of the liquidation.

26. Freezing and Seizure of Terrorist Property

1/ Where the police, while conducting investigation, has reasonable ground to suspect that any property including bank account has been or may be used to commit terrorist act as stipulated under this Proclamation, he may seize the property in accordance with court authorization.

2/ The court shall, in the authorization issued pursuant to sub-article (1) of this Article, pass a temporary freezing order to prevent the transfer of such property to a third part and any other legal transactions involving such property.

3/ A copy of the freezing order shall be given to the concerned administrative office and to the owner or possessor of the property.

4/ If the owner or possessor of the seized or frozen property is aggrieved by the order, he may lodge an appeal.

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5/ When the court finds that the property was seized or frozen contrary to the provisions of sub-article (1) and (2) of this Article, it may order the release of the property or the lifting of the freezing.

27. Forfeiture of Terrorist Property

1/ Proceeds of terrorism or property of a terrorist organization or a terrorist shall be forfeited by the government.

2/ Where a criminal charge is instituted on the matter the public prosecutor may request for an order of forfeiture within the same criminal charge file. If criminal charge is not instituted the application may be presented to the court under a separate file.

3/ Before making forfeiture order under subarticle (1) of this Article, the court shall give every person appearing to have an interest in the property an opportunity to be heard.

4/ The property shall be transferred to the terrorism victims fund established in accordance with this Proclamation.

PART SIX

INSTITUTIONS THAT FOLLOW UP CASES OF TERRORISM

28. Prosecutor and Police Following up Cases of Terrorism

1/ A public prosecutor or police officer who follows up terrorism cases in accordance with the powers conferred up on by law shall:

- a) have more than five years of relevant work experience and the appropriate training and be hard working; and
- b) have obtained testimonials from the relevant senior officials of the Ministry of Justice or the Federal Police as to his professional competency and ethics.

2/ The Ministry of Justice shall organize a separate specialized department which follow up terrorism cases.

3/ The Federal Police shall organize a separate specialized department which follow up terrorism cases.

29. Intelligence Personnel Following up Cases of Terrorism

The National Intelligence and Security Service shall select and assign officers who follow up cases of terrorism. It shall organize a separate specialized department which follow up terrorism cases.

30. National Anti-Terrorism Coordinating Committee

1/ In order to prevent and control terrorist acts a National Anti-Terrorism Coordination Committee comprising the heads of the Ministry of Justice, National Intelligence and Security Service and Federal Police shall be established.

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2/ The Director General of the National Intelligence and Security Service shall lead the Committee.

3/ The Committee shall draw up joint counter terrorism plan and set up joint counter terrorism task force and shall work together in coordinating their efforts.

31. Jurisdiction over Terrorism Crimes

1/ The Federal High Court and the Federal Supreme Court shall have jurisdiction over:

- a) cases presented in accordance with this Proclamation;
- b) other crimes committed together with crimes mentioned under this Proclamation; or
- c) criminal cases presented in accordance with this Proclamation, which the court changes the article of the charge.

2/ The power to determine the status of a prisoner, captured by the Defense Forces during war conducted to defend the sovereignty of the country, as a prisoner of war or not is hereby given to the Primary Military Court.

3/ Articles 13 and 17(1)(b) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia relating to jurisdiction shall also include terrorism offences.

PART SEVEN

MISCELLANEOUS PROVISIONS

32. Protection of Witnesses

1/ Where the court, on its own motion or on an application made by the public prosecutor or by the witness, is satisfied that the life of such witness is in danger, it may take the necessary measure to enable the withholding of the name and identity of the witness. The measures it takes may, in particular, include:

- a) holding of the proceedings at a place to be decided by the court;
- b) avoiding of the mention of the names and addresses of the witnesses in its orders, judgments and in the records of the case;
- c) issuing of any directions for securing that the identities and addresses of the witnesses are not disclosed; and
- d) ordering that all or any of the proceedings pending before the court shall not be published or disseminated in any manner.

2/ Any person who contravenes any decision or order issued under sub-article (1) of this Article shall be punishable with rigorous imprisonment from five to ten years and with fine from Birr 10,000 to Birr 30,000.

33. Assisting Judicial Proceedings

The court may mitigate the punishment, upon a request made by the public prosecutor where the defendant repents about his act of committing any of the crimes mentioned under this Proclamation and cooperates in elaborating in detail the manner of the commission of the crime or discloses the identities of the persons who participated in the commission of the crime.

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34. Establishment of Fund

Upon the issuance of regulation by the Council of Ministers, terrorism victims fund shall be established.

35. Breach of Duty to Cooperate

Whosoever fails or is unwilling to make the requested cooperation, pursuant to Article 13, 14, 15, 21 or 22 of this Proclamation, or intentionally makes any hindrance on the crime prevention or investigation functions of the police is punishable with rigorous imprisonment from three to ten years.

36. Inapplicable Laws

1/ No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, be applicable with respect to matters provided for by this Proclamation.

2/ Without prejudice to the provisions of subarticle (1) of this Article, the provisions of the Criminal Code and Criminal Procedure Code shall be applicable.

37. Power to Issue Regulations

The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.

38. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 28th day of August, 2009

GIRMA WOLDEGIORGIS
PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA
