AMNESTY INTERNATIONAL

PUBLIC STATEMENT

AI Index: AFR 25/5669/2017

ETHIOPIA: DRACONIAN STATE OF EMERGENCY MEASURES

EXECUTIVE SUMMARY

Halfway into the six-month state of emergency the Ethiopian government declared on 9 October 2016, this is a commentary on the State of Emergency Declaration and the Directive for the Implementation of the Declaration. The commentary analyses the State of Emergency Declaration against established human rights norms provided for in the International Covenant for Civil and Political Rights and the African Charter on Human and Peoples' Rights. These norms include: notification to the United Nations Secretary General; legality; non-derogable rights; necessity; and proportionality. The commentary finds that some of the measures and restrictions in the State of Emergency Declaration and its implementation directive fail to comply with international and regional human rights norms.

Specifically, the Ethiopian government failed to notify the UN Secretary General of the fact that Ethiopia has declared a state of emergency, the exigencies that required the state of emergency and the measures and restrictions imposed under the state of emergency declaration. The State of Emergency Declaration also violated all elements of the principle of legality since the Ethiopian government failed to avail the official text of the State of Emergency Declaration in an accessible form, the measures and restrictions it imposes lack clarity and precision and its punishment measures are applicable retroactively.

In addition, the measures and restrictions in the State of Emergency Declaration violate, directly or indirectly, non-derogable rights such as freedom from torture and other ill-treatment and freedom from non-retroactive application of criminal laws. The geographic expanse of the state of emergency, covering as it does the whole country, violates the requirement that restrictions under a state of emergency shall be necessary and proportionate to the exigencies that required the state of emergency.

Finally, the commentary proposes actionable recommendations for the Government of Ethiopia to address the inconsistencies of the State of Emergency Declaration with international and regional human rights treaties. These include: revision of the state of emergency to comply with Ethiopia's international and regional human rights obligations regarding notification, legality, necessity and

proportionality. The commentary additionally calls for the establishment of an independent and impartial body to oversee, monitor and publicly report on implementation of the State of Emergency Declaration.

1. BACKGROUND

There have been almost continuous protests in parts of Ethiopia since November 2015. The protests, which began in Oromia Region in November 2015, were initially in response to government plans to extend the capital, Addis Ababa, into Oromia. The government announced the cancellation of the Addis Ababa 'Master Plan' in January 2016, but by then the protesters' demands had evolved to include release of prisoners of conscience, administrative autonomy of the Region,[1] and political and economic justice. Protests in Amhara Region began in August 2016 against arbitrary detention and demanding the self-determination of the ethnic Amhara community in neighbouring Tigray Region.

Tensions in Oromia and Amhara Regions escalated following a stampede during the Irrecha festival[2] on 2 October 2016 that resulted in the death of at least 55 people. The cause of the stampede and the number of casualties are contested. The government blames 'anti-peace' protestors for triggering the stampede, while Oromo activists claim that government security forces triggered it when they fired tear gas canisters and shot live ammunition into the crowd.

Subsequently, fresh protests broke out in a number of locations in Oromia Region during the 'week of rage' declared by Oromo activists. Some protests became violent as protesters attacked foreign and local businesses, farms and vehicles, especially those near Addis Ababa. The Ethiopian government also alleges that the protestors attacked and killed security forces in some districts of Oromia Region. There were also peaceful protests in parts of Amhara region following the Irrecha stampede.

The Ethiopian government declared a state of emergency on 9 October 2016 in response to the protests.[3] The State of Emergency Declaration outlines broad restrictions on a range of human rights, including non-derogable rights such as the prohibition on the retroactive application of criminal law; and the prohibition of torture and other ill-treatment, as well as fundamental requirements of fair trial.[4] Government security forces arrested tens of thousands of people in Amhara Region, Oromia

[1] Oromia, Amhara, Tigray and Southern Nations, Nationalities and Peoples (SNNPR) are some of the Regional States within the federal system of the country. The protesters argue that the ruling party in control of the Federal and Regional States has blurred the constitutional line between the Federal and Regional States through its centralised decision-making, with negative impacts on the regional autonomy of Regional States. The effect of this absence of regional autonomy is particularly evident in Oromia and Amhara Regional States, which constitute 65 percent of the country's population.

[2] Irrecha is an annual thanksgiving celebration of the Oromo community marked by a pilgrimage to Lake Harsedi in Bishoftu city, 45 kilometres south-east of Addis Ababa.

[3] The House of Peoples' Representatives, the Lower Chamber of Federal Parliament, endorsed the State of Emergency Declaration on 20 October 2016.

[4] The International Covenant on Civil and Political Rights (ICCPR) explicitly lists rights which state parties cannot derogate from, even during public emergency. These rights are called non-derogable rights. The African Charter on Human and Peoples Rights (ACHPR) does not have a provision for derogation of rights in states of emergency. Any

Region and the Southern Nations, Nationalities and Peoples' Region (SNNPR),[5] including many political activists, Human Rights Council monitors,[6] protestors and journalists.

The State of Emergency Declaration established a Command Post with the powers to determine the specific measures, restrictions and areas for implementation of the state of emergency. The Prime Minister chairs the Command Post and the Minister of Defence serves as its Secretary. Other members include the Federal Police Commissioner and Regional Special Force Police Commanders.[7]

Under the State of Emergency Declaration, the Command Post can impose the following measures:

- Prohibit any overt or covert incitement to violence or ethnic conflict, in whatever form of expression;
- Stop or suspend any mass media and communications;
- Prohibit assemblies, organisations and demonstrations;
- Arrest anyone suspected of using violence in the areas the Command Post identifies. Those arrested will be 'rehabilitated' and released or, if necessary, punished as per the relevant law;
- Search any person or place and seize items where necessary;
- Impose curfews;
- Block any road or public place or evacuate and move people from certain places;
- Evacuate people vulnerable to threats and keep them in safe places for a limited period of time;
- Use proportionate force necessary for the implementation of the state of emergency;
- Suspend substantive and procedural laws of the country.[8]

Information about these provisions and other aspects of the state of emergency has been communicated to the public through reports in the media, including interviews in the media by government authorities, but the full text of the State of Emergency Declaration had not been published by the end of 2016.

Pursuant to the declaration of the state of emergency, the Command Post issued a Directive on 15

---

state party to both the ICCPR and the ACHPR needs to ensure that any measures taken which derogate from the ICCPR nonetheless comply with its obligations under the ACHPR. This commentary uses the framework provided by the ICCPR as further elaborated by the UN Human Rights Committee in its General Comment Number 29.

[5] Voice of America (VOA), Ethiopia Releases Thousands Arrested since Start of State of Emergency: http://www.voanews.com/a/ethiopia-releases-thousands-arrested-since-start-state-emergency/3647156.html (accessed on 10 January 2017).

[6] The Human Rights Council is the oldest and the only remaining domestic human rights organisation that survived the impact of the Charites and Societies Proclamation Number 621/2009.

[7] Fana BC, The Command Post Aims to Restore Peace and Order in the Country-Ministry of Defence (translation from Amharic news ኮማንድ ፖስቱ የሀገሪቱን ሰላም እና መረጋጋት በአጭር ጊዜ ለመመለስ ይሰራል - የመከላከያ ሚኒስትር): http://www.fanabc.com/index.php/news/item/19388 (accessed on 28 November 2016).

[8] This listing is based on information provided by government authorities in media interviews.

October 2016,[9] which lists the actions prohibited throughout the country and in specific parts of the country, state of emergency measures, and businesses' obligation to keep records of home and vehicle leases and communicate these records to the police.

The Directive also provides the security forces[10] with powers to enforce the state of emergency. These powers include:

- Arrest without warrant;[11]
- Authority to detain those arrested in locations designated by the Command Post until the end of the state of emergency;[12]
- Search and seizure without a warrant;[13]
- Surveillance and control of any messages through radio, television, articles, pictures, photographs, theatre and movies.[14]

This commentary analyses the measures and restrictions under the State of Emergency Declaration and assesses the extent to which they are compatible with Ethiopia's international and regional human rights obligations.

2. INTERNATIONAL LAW AND STATES OF EMERGENCY

The ICCPR provides, in Article 4, that in time of an officially proclaimed public emergency which threatens the life of the nation, states may take measures derogating from certain obligations under the Convention. Those derogations shall be limited to the extent strictly required by the exigencies of the situation, be consistent with their other obligations under international law and not be discriminatory. However, Article 4 of the ICCPR also explicitly lists certain rights which may not be derogated from at all.

The UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with their obligations under that treaty, has clarified that not only the decision to derogate in itself, but each specific measure taken under the derogation, must be demonstrably required by the exigencies of the situation. States availing themselves of this derogation

[9] The Command Post revised the Directive on 8 November 2016. The revised Directive has lifted the restriction on the movement of foreign diplomats out of Addis Ababa and the restriction on unauthorized possession of uniforms of the army and police.

[10] The Directive states 'ህግ አስከባሪዎች', which literally means 'law enforcement officials.' However, in practice, the government widely used the military and local militia members before and during the state of emergency. Hence, the phrase 'law enforcement officials' does not capture all actors involved in implementation of the state of emergency.

[11] Command Post, Directive for the Implementation of the State of Emergency, Article 28(1).

[12] Command Post, Directive for the Implementation of the State of Emergency, Article 28(2).

[13] Command Post, Directive for the Implementation of the State of Emergency, Article 28(4).

[14] Command Post, Directive for the Implementation of the State of Emergency, Article 28(5).

provision must notify the UN Secretary General and other states parties to the ICCPR of the provisions of the convention from which they have derogated and the reasons for the same.

2.1 Notification

During a public emergency, States Parties to the ICCPR have an obligation to notify other States Parties of the provisions they are derogating from, through the UN Secretary General. The notification must state the provisions of the ICCPR from which they have derogated and the reasons for so doing.[15]

Notification is crucial not only for other states parties, but also to enable the UN Human Rights Committee to monitor the human rights situation in the country during the emergency period. The UN Human Rights Committee has stressed the requirement of notification is important *"…in assessing whether the measures taken by the State party were strictly required by the exigencies of the situation"*.[16]

As of 11 January 2017, the Ethiopian government had not sent notification of the declaration of the state of emergency and the derogations as required.[17]

2.2 Legality

The principle of legality requires that laws shall be available and accessible to the public. The exact content of the State of Emergency Declaration was still not officially available to the public by the end of 2016, in violation of this principle. The failure to make the text publicly available also fails to meet requirements of national law, specifically that all legal proclamations to be published in Ethiopia's Gazette.

Both the State of Emergency Declaration and its implementation directive also fail to comply with another element of the principle of legality, the requirement that provisions with legal consequences be clear and precise. Clarity and precision is important so that people know actions allowed or prohibited. When laws are clear and precise, people can also foresee the consequences of breaking the law. However, the State of Emergency Declaration and its implementation directive use imprecise terms such as 'national security' and 'sovereignty' to, for example, prohibit communications with international non-governmental organizations and foreign government bodies.

Finally, the state of emergency measures violate the principle of non-retroactive application of criminal laws, a non-derogable right, as they authorises the detention of people for their involvement and role in coordinating protests against the Ethiopian government since the end of 2015.

2.3 Non-derogable rights

Article 4(2) of the ICCPR prohibits derogation from some provisions of the ICCPR, even during public emergency. These are: Article 6 (right to life and freedom from arbitrary deprivation of life); Article 7 (freedom from torture and other forms of ill-treatment); Article 8(1 and 2) (freedom from slavery and servitude); Article 11 (freedom from imprisonment due to failure to fulfil contractual liability); Article 15 (freedom from non-retroactive application of criminal law); Article 16 (right to recognition before

[15] ICCPR, Article 4(3).

[16] UN Human Rights Committee, General Comment Number 29, Paragraph 17.

[17] https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5 (accessed on 11 January 2017).

the law); and Article 18 (freedom of thought, conscience and religion).

The UN Human Rights Committee, in its General Comment Number 29, identified additional non–derogable provisions, including: Article 2(1) (non-discrimination); Article 3 (the right to an effective remedy); Article 14 (right to fair trial); and the right to take proceedings before a court to challenge the lawfulness of detention (Article 9(4) on *habeas corpus*).[18]

Some measures provided for under the State of Emergency Declaration are in breach of some of the ICCPR's non-derogable rights.

2.3.1 Torture and other ill-treatment

The right to freedom from torture and other ill-treatment is one of the non-derogable rights explicitly listed in Article 4(2) of the ICCPR.[19]

The implementation directive provides powers to the Command Post to implement 'rehabilitation measures' against people who participated in violence and unrest in the past year. While the exact meaning and duration of these 'rehabilitation measures' is unclear, Amnesty International is concerned that they amount to torture and other ill-treatment. Amnesty International has already documented the use of torture and other forms of ill-treatment during mass detentions of protesters in Ethiopia, which the Ethiopian government call as 'rehabilitation measures.'[20] For example, several people released from detention under the state of emergency at Awash Arba Awash Sebat and Tolay military training centres told Amnesty International that the police repeatedly beat them with sticks and forced them to do strenuous physical exercises. Another person released from Tolay detention centre for more than a month, told Amnesty International that the police beat and kicked detainees including himself. Amnesty International has also confirmed that the police tortured and ill-treated detainees at Awash Arba and Awash Sebat military training centres. The detainees had no recourse in the absence of judicial oversight of conditions of detention as per the state of emergency declaration.

2.3.2 Non-retroactive application

Under the ICCPR, the right not to be subject to retroactive application of the criminal law is among non-derogable rights.[21] The principle of non-retroactive application implies that criminal responsibility emanates from violation of clear and precise provisions of the law at the time of the commission of

---

[18] UN Human Rights Committee, General Comment Number 29, Paragraphs 13-16.

[19] ICCPR, Articles 4(2) and Article 7. The Convention against Torture (CAT), Article 2(2) has also underlined the non-derogable nature of freedom from torture and other ill-treatment: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

[20] Amnesty International, Because I am Oromo: sweeping repression in the Oromia Region of Ethiopia, October 2014, (AFR 25/006/2014), pages 56-92.

[21] ICCPR, Articles 4(2) and 15. See also Article 11 of the Universal Declaration of Human Rights (UDHR). Non-retroactive application of criminal law is also a basic principle acknowledged in most domestic systems of criminal law.

the crime.

However, the implementation directive for the State of Emergency Declaration violates the right of individuals to be free from non-retroactive application of criminal laws since it prescribes punishment-like, 'rehabilitation' measures for people who participated in strikes and protests during the whole of the past year.[22]

2.3.3 The right to fair trial

Even though the ICCPR's Article 4(2) does not specifically mention it, the UN Human Rights Committee has identified the non-derogable nature of the right to fair trial as follows:

> The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by a State party's decision to derogate from the Covenant.[23]

The State of Emergency Declaration, however, allows the Command Post to suspend implementation of non-specified substantive and procedural laws of the country.[24] Accordingly, remedies for human rights violations as provided for in substantive and procedural laws of the country may not be applicable during the state of emergency. For instance, people in detention under the state of emergency provisions may not be able to pursue the habeas corpus remedy as provided for in the Ethiopian Civil Procedure Code and the judiciary may not be able to oversee the conditions of detention to ensure the rights of those detained are respected, including their right not to be subjected to torture and other ill-treatment.

2.4 Necessity and Proportionality-strictly required by the exigencies of the situation

Any measure taken under a state of emergency must be strictly required by the exigencies of the situation that gave rise to the declaration of the state of emergency. As the UN Human Rights Committee has stated clearly in its General Comment:

---

[22] Directive for the Implementation of State of Emergency Declaration, Article 31(2) states that the Command Post can enforce rehabilitation measures on "any person who have taken part in any disturbance or riot individually or in group in the past one year."

[23] UN Human Rights Committee, General Comment Number 29, Paragraph 16.

[24] Restrictions and measures as per the declaration of State of Emergency disclosed, Getachew Ambaye, the Federal Prosecutor General, http://www.fanabc.com/index.php/news/item/19326 and http://www.ena.gov.et/index.php/politics/item/8007-2016-10-10-01-35-36 (accessed on 28 November 2016). In Amharic, it states that "የፍሬ ነገርና የሥነ ሥርዓት ህጎች ሊታገዱ እንደሚችሉም አክለዋል" which translates into English as "he added that substantive and procedural laws can be suspended." The English versions of the article are available at http://www.fanabc.com/english/index.php/news/item/7091-government-discloses-list-of-measures-for-emergency-rule, and http://www.ena.gov.et/en/index.php/politics/item/2068-government-discloses-list-of-measures-for-emergency-rule. However they fail to capture the same content as the Amharic versions.

> A fundamental requirement for any measures derogating from the Covenant…is that such measures are limited to the extent strictly required by the exigencies of the situation. This requirement relates to the duration, geographical coverage, and material scope of the state of emergency and any measures of derogation resorted to because of the emergency. Derogation from some Covenant obligations in emergency situations is clearly distinct from restrictions or limitations allowed even in normal times under several provisions of the Covenant. Nevertheless, the obligation to limit any derogations to those strictly required by the exigencies of the situation reflects the principle of proportionality which is common to derogation and limitation powers.[25]

The UN Human Rights Committee referred to the principles of necessity and proportionality, set out in Article 4(1) of the ICCPR, which apply to measures derogating from or limiting certain rights under the ICCPR. The principles of necessity and proportionality require that any measures imposed in the context of a state of emergency which derogate from provisions of the ICCPR must be demonstrably necessary for the achievement of their intended purpose, must be proportionate to that purpose and must not jeopardize the rights restricted.

However, the geographic extent and material scope of the measures imposed under the state of emergency exceed what is required by the exigencies of the situation, as discussed below.

2.4.1 Geographic extent

The Ethiopian government has repeatedly affirmed that the violence after the Irrecha stampede prompted the declaration of the state of emergency. The violence following the Irrecha stampede was restricted to the Oromia and Amhara Regions, but most of the following prohibitions as per the implementation directive for the State of Emergency Declaration apply across the country:

- Any communications that can create violence, unrest or conflict among people through internet, writings, television, radio, social media or any other channel;
- Communication with groups designated as terrorist groups, possession and distribution of publications of terrorist groups, possession of the emblems of terrorist groups or promoting their emblems;
- Listening/watching, providing access to, and reporting the broadcasts of ESAT, OMN[26] and other media outlets of terrorist groups;
- Failure to provide public services, closure of shops, absenteeism from work without sufficient reason;
- Threatening and intimidating employees of government and private institutions from attending their work;
- Inciting violence and unrest that are against sport ethics on sports grounds;
- Obstruction and of disruption of religious, cultural and public ceremonies or reciting slogans with political content unrelated to the ceremony;
- Any communication or relation with foreign governments or foreign NGOs that can jeopardize the sovereignty, security and constitutional order;
- Any press statements by political parties that can endanger the sovereignty, security, and

[25] UN Human Rights Committee, General Comment Number 29, Paragraph 4.

[26] Both ESAT and OMN are satellite television stations operated outside the country by members of the Ethiopian Diaspora. The government alleges that both of them are mouthpieces of groups which the Ethiopian Parliament has designated as terrorist groups as per the Anti-Terrorism Proclamation 652/2009.

constitutional order.

As the violence occurred primarily in some districts of Oromia and Amhara Regions,[27] it is unclear why the measures imposed under the state of emergency declaration are applicable in all parts of the country. It is unclear how the exigencies of the situation require the imposition of such measures across the whole country. The geographic coverage of the state of emergency is disproportionate to the exigencies of the situation.

2.4.2 Material scope of derogations: restrictions on human rights information-sharing and freedom of expression

The State of Emergency Declaration provides for measures derogating from provisions of the ICCPR, which the Ethiopian government claims to be necessary to curtail the violence that occurred in some districts and regions of the country following the Irrecha stampede. However, it is unclear how the restrictions on communications, including with foreign states and foreign NGOs, contributes towards controlling that violence. During the 2016 protests, political parties and individual activists have been key sources of information, for the media and human rights organizations, on human rights violations committed by government security forces. People in different parts of Oromia and Amhara Regions reported human rights violations to the media and human rights organizations through social media and other internet-based services, in real time. Political parties in support of the protesters also reported such human rights violations.

Hence, the new prohibitions have inhibited access to information regarding the human rights situation for both the Ethiopian and other publics and human rights organisations, at least in the first three months of the state of emergency period.

3. RECOMMENDATIONS

The review of measures allowed under the State of Emergency Declaration illustrates that many of these measures fail to meet the requirements of legality, notification, necessity and proportionality set out in the ICCPR. Moreover, they fail to meet the requirements of precision and clarity.

Amnesty International, therefore, urges the Ethiopian government to ensure the State of Emergency Declaration is fully compliant with Ethiopia's international and obligations. Specifically, Amnesty International calls upon the Ethiopian government to:

- Notify the UN Secretary General and state parties to the ICCPR about the state of emergency, measures derogating from provisions of the ICCPR and the reasons why they are necessary;
- Revise the State of Emergency Declaration to ensure all its measures comply with the requirements of notification, legality, necessity and proportionality;
- Ensure the State of Emergency Declaration does not violate non-derogable rights, such as non-retroactive application of criminal law, freedom from torture and other ill treatment and the right to fair trial, including judicial review of detention.

---

[27] http://www.fanabc.com/english/index.php/news/item/7189-participants-in-recent-violence-will-face-justice-attorney-general (accessed on 11 December 2016).

- Establish an independent and impartial organ to oversee and monitor implementation of the state of emergency measures and publicly publish its findings periodically.