



An Analysis of Ethiopia's Draft Anti-Terrorism Law

Updated June 30, 2009

Summary

This paper analyses Ethiopia's draft Anti-Terrorism Proclamation (the draft Proclamation) and assesses to what extent the proposed law on its face conforms to international human rights standards. The draft law has been submitted to Parliament by the Council of Ministers and may be passed into law before the end of the current legislative session in July 2009.

A first unofficial draft of the law obtained by Human Rights Watch earlier in the year contained numerous provisions that fundamentally contravened human rights guaranteed by Ethiopia's constitution and international law. Only one of those provisions has been substantively revised, leaving the current draft law dangerously broad and inimical to fundamental human rights. The draft law is premised on an extremely broad and ambiguous definition of terrorist activity that could permit the government to repress a wide range of internationally protected freedoms, and contains provisions that undermine fundamental due process rights.

If implemented as currently drafted, this law could provide the Ethiopian government with a potent instrument to crack down on political dissent, including peaceful political demonstrations and public criticisms of government policy that are deemed supportive of armed opposition activity. It would permit long-term imprisonment and even the death penalty for "crimes" that bear no resemblance, under any credible definition, to terrorism. It would in certain cases deprive defendants of the right to be presumed innocent, and of protections against use of evidence obtained through torture.

The draft Proclamation is even more alarming when placed in the context of concerns over political repression, suppression of free speech and independent civil society, the impunity conferred on security forces, and the potential for consolidation of ruling party power in the run-up to national elections in 2010.

Human Rights Watch takes no position as to whether anti-terrorism legislation is needed to fill gaps in Ethiopia's existing criminal code. But even if that need exists, the draft Proclamation requires more than a substantial revision. Given the ways in which its provisions on their face violate fundamental due process rights of individuals and unlawfully restrict basic freedoms due all Ethiopians, the law's drafters should revise the legislation so that the protection of human rights is recognized as essential for the prosecution of genuine acts of terrorism, not as an obstacle.

Background

In recent years, armed groups have committed a number 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, for which a little known group called the Islamic Guerrillas claimed responsibility, killed three people on the eve of national celebrations.¹ In October 2008 the Ethiopian trade mission in Hargeisa, Somaliland, was one of the targets of multiple suicide bombings that killed at least 20 people; the attacks were blamed on al-Shabaab, a Somali armed group with alleged links to al Qaeda.²

Ethiopia reportedly considered adopting anti-terror legislation in 2006,³ and a law was said to be in preparation in 2008.⁴ In June 2009 Human Rights Watch obtained an English-language translation of the draft as submitted to parliament by the Council of Ministers. This analysis is based on that draft. An earlier version of this analysis was based on an unofficial draft of the Proclamation dated January 2009. To date the draft anti-terrorism legislation does not appear to have been publicly circulated or discussed, including with civil society, although a public debate took place in parliament on June 25, 2009.

¹ 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-Bomb-Attack.php> (accessed March 4, 2009).

² Mohammed Ibrahim and Jeffrey Gettleman, "5 Suicide Bomb Attacks Hit Somalia," *The New York Times*, October 29, 2008, <http://www.nytimes.com/2008/10/30/world/africa/30somalia.html?n=Top/Reference/Times%20Topics/Organizations/S/Shabab,%20Al-> (accessed March 4, 2009).

³ In 2006 the US government's Country Report on Terrorism noted that "draft counterterrorism legislation is currently before [the Ethiopian] Parliament for approval." See US Country Reports on Terrorism, Africa Overview, April 28, 2006, <http://www.state.gov/s/ct/rls/crt/2005/64335.htm> (accessed March 4, 2009).

⁴ "Speech by President Girma Wolde-Giorgis of Ethiopia," October 9, 2006, <http://www.ethioembassy.org.uk/Archive/Speech%20by%20President%20Girma%20at%20the%20Opening%20of%20Ethiopian%20Parliament%20Monday%209th%20October%202006.htm> (accessed March 4, 2009); see also "Ethiopian Parliament to discuss anti-terrorism legislation," Agence France-Presse, http://icpat.org/index.php?option=com_content&task=view&id=144&Itemid=81 (accessed March 4, 2009).

Analysis of the Draft Anti-Terrorism Legislation

The provisions of Ethiopia’s draft Anti-Terrorism Proclamation can be broadly grouped under the following categories:

1. defining terrorism and terrorist acts and imposing penalties (parts I and II);
2. expanding police powers, including powers of arrest and detention (part III);
3. modifying trial procedures and evidentiary rules (part IV);
4. designating terrorist organizations and freezing assets (part V);
5. designating institutional and judicial jurisdiction over terrorism crimes (part VI); and
6. miscellaneous provisions (part VII).

Defining Terrorism

The draft Proclamation provides an extremely broad and ambiguous definition of terrorism that could be used to criminalize non-violent political dissent and various other activities that should not be deemed as terrorism.

The draft Proclamation states that anyone who—with the purpose of “advancing a political, religious or ideological cause” and intending to “influence the government;”⁵ “intimidate the public or section of the public;” [or] “to destabilize or destroy the fundamental political, constitutional, economic or social institutions of the country”—commits: an act that causes death or serious injury; an act that creates risk to the safety or health of the public; kidnapping or hostage taking; serious damage to property; damage to natural resources, the environment, or the historical or cultural heritage; or “endangers, seizes or puts under control, causes interference or disruption of any public service”—is subject to punishment by “rigorous imprisonment from 15 years to life or with death.”⁶

This definition of terrorism includes acts that do not involve violence or injury to people, such as property crimes and disruption of public services.⁷ 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

⁵ An earlier draft of the law, dated January 2009, used the words “coercing or intimidating” in place of “influence.” As of the time of writing it is not clear if the change represents a government attempt to make the definition of terrorism broader still, or whether this is primarily a translation issue.

⁶ Draft Anti-Terrorism Proclamation, art. 3.

⁷ Although there is no single internationally accepted definition of terrorism, the term generally refers to the use of violence against civilians for political ends.

injury, or the taking of hostages, and should not include property crimes. In addition, permitting the death penalty for property crimes would violate the requirement under international law that the death penalty only be imposed for the “most serious crimes.”⁸

The broad and ambiguous definition of terrorist acts under the draft Proclamation could readily be used to criminalize acts of peaceful political dissent that result in “disruption of public services”—as public demonstrations sometimes do. A non-violent march that blocked traffic could qualify as a terrorist act, subjecting protestors to 15 years to life in prison, or possibly even the death penalty. The law might also permit prosecutions on terrorism charges for minor acts of violence committed in the context of political activism: thus a political protestor who damages a police car or breaks the window of a government building could conceivably be prosecuted as a terrorist. Furthermore, an individual need only “threaten to commit” any of the relevant acts, including property crimes and “disruption of public service,” to be prosecuted as a terrorist and punished with a minimum 15 years’ imprisonment, or death.⁹

The overly broad definition of terrorist acts has implications for other parts of the Proclamation. For instance a “terrorist organization” is defined as “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 acts of terrorism or assists or incites others in any way to commit acts of terrorism, [or] b.) an organization proscribed in accordance with this proclamation.”¹⁰ As noted above, the definition of “acts of terrorism” could include acts of political dissent. Therefore a group of two or more individuals who engage in peaceful political protest could be deemed a “terrorist organization,”¹¹ and membership deemed a crime, subject to five to 20 years’ “rigorous imprisonment.”¹²

The draft Proclamation also contains broad and ambiguous language prohibiting material support for terrorism. Those providing “moral support or ... advice” or “provid[ing] or mak[ing] available any property in any manner” to an individual accused of a terrorist act could be deemed a terrorist supporter under the law.¹³ Someone who advised, or even just offered

⁸ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, article 6(2). Ethiopia ratified the ICCPR in 1993. Human Rights Watch opposes the death penalty in all circumstances because of its inherent cruelty and finality.

⁹ Draft Anti-Terrorism Proclamation, art. 3.

¹⁰ *Ibid.*, art. 2.4(a) and (b).

¹¹ *Ibid.*, art. 2.4.

¹² *Ibid.*, art. 7.1.

¹³ Draft Anti-Terrorism Proclamation, arts. 5.1(b) and (c).

water and food to a political protester might find themselves charged with terrorism under this provision.

Possessing or using property knowing or intending that it be used to commit a terrorist act (as defined by the draft statute) is a crime subject to five to 20 years' imprisonment.¹⁴ Possession of property that a person "ha[s] reason to know" are proceeds of terrorism is punishable by five to 15 years' "rigorous imprisonment".¹⁵ Coupled with the broad and ambiguous definition of terrorist acts, these provisions open the door to a wide range of ways in which individuals seeking to express political dissent could find themselves prosecuted for terrorism and imprisoned for five to 20 years. For example, someone who held a sign used in a non-violent political protest that blocked traffic could arguably be found guilty of possession of property used to commit a terrorist act.

Infringement of Freedoms of Speech and Expression

Many national counterterrorism laws contain provisions criminalizing speech that incites or supports terrorism. But important international standards on freedom of speech require that such restrictions be limited to speech that directly incites—or is likely to result in—an imminent crime.¹⁶ The draft Proclamation states that "whosoever writes, edits, prints, publishes, publicizes, disseminates, shows, makes to be heard any promotional statements encouraging, supporting or advancing terrorist acts stipulated under ... this Proclamation, or the objectives of [a] terrorist organization; [...] is punishable with rigorous imprisonment from 10 years to 20 years."¹⁷ Such a provision would violate the right to freedom of expression under international law even if the definition of "terrorist act" were in conformity with international standards.¹⁸

¹⁴ Ibid., art. 8.

¹⁵ Ibid., art. 9.

¹⁶ See Johannesburg Principles on National Security, Freedom, of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996), principle 6 (expression may be punished as a threat to national security only if a government can demonstrate that the expression is intended and likely to incite imminent violence); 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 Umit Erdogdu for the offense of "disseminating propaganda" under the Prevention of Terrorism Law after his monthly review published an interview with a Turkish sociologist].

¹⁷ Draft Anti-Terrorism Proclamation, art. 6.

¹⁸ See UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression, "Joint Declaration on International Mechanisms for Promoting Freedom of Expression," December 21, 2005 (criticizing the use of vague terms such as "promoting" terrorism).

In addition to relying on the overly broad definition of “terrorist acts,” this provision is problematic because the provision criminalizes speech ambiguously “encouraging,” “advancing,” or “in support” of terrorist acts even if there is no direct incitement to violence. Individuals who merely speak in favor of any of the “terrorist acts” could be convicted for encouraging terrorism, and sentenced to 10 to 20 years of “rigorous imprisonment.” For example, students participating in a peaceful demonstration seeking to influence government policy—or even someone merely voicing support for such a demonstration without participating—could be subjected to a 10- to 20-year prison term.

Human Rights Watch is also concerned that the inclusion of the references to writing and editing may be aimed at the nation’s media. If the government were to place longstanding armed opposition groups such as the Oromo Liberation Front (OLF) and the Ogaden National Liberation Front (ONLF) (which have already been banned) on the list of proscribed terrorist organizations, even a mundane newspaper article describing an Oromo student protest could be deemed “encouragement of terrorism.” This scenario is quite likely given that the Ethiopian government has repeatedly sought to characterize the attacks of the ONLF and other insurgent groups as “terrorist” activities. The government already imprisons government critics and opposition figures and accuses them of supporting the OLF, ONLF, and other opposition groups. Ethiopia has sought—so far unsuccessfully—to place the ONLF and other Ethiopian armed opposition movements on the US and UN sanctions lists for supporting terrorism. A journalist interviewing an opposition politician or a supporter of an armed opposition group could be deemed to be “encouraging” terrorism merely by publicizing the views of the interviewee.

Expansion of Police Powers without Due Process Guarantees

The draft Anti-Terrorism Proclamation expands police powers in significant ways. Despite Ethiopian constitutional protections, the police and armed forces have long been implicated in arbitrary arrest, incommunicado detention, and torture and other mistreatment of persons in custody.¹⁹ Thus, the expansion of police powers without a serious effort to improve

¹⁹ See Human Rights Watch report, *Ethiopia - Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region*, ISBN: 1-56432-322-6, June 2008, <http://www.hrw.org/en/reports/2008/06/12/collective-punishment>; *Ethiopia - Suppressing Dissent: Human Rights Abuses and Political Repression in Ethiopia's Oromia Region*, vol. 17, no. 7(A), May 2005, <http://www.hrw.org/en/reports/2005/05/09/suppressing-dissent-o>; and *Ethiopia - Targeting the Anuak: Human Rights Violations and Crimes against Humanity in Ethiopia's Gambella Region*, vol. 17, no. 3(A), March 2005, <http://www.hrw.org/en/reports/2005/03/23/targeting-anuak-o>; and other documents at www.hrw.org. See also Amnesty International, “Human Rights in Federal Democratic Republic of Ethiopia,” <http://www.amnesty.org/en/region/ethiopia>; and the US State Department, 2008 Human Rights Reports: Ethiopia, February 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/af/119001.htm>.

protections for those detained raises serious concerns that the law may facilitate further abuses.

Powers of Arrest, Search, and Seizure

The draft Proclamation distinguishes between a “sudden search” and a “covert search.”²⁰ A covert search requires a court-approved search warrant if an officer “has reasonable grounds to believe that a terrorist act has been or is likely to be committed.”²¹ However a “sudden search” of “body and property” can be authorized by the director general of the Federal Police or his designee, without judicial oversight, if a police officer has “reasonable suspicion that a terrorist act will be committed and deems it necessary to make a sudden search.”²²

This gives the police and other security services almost unlimited power to conduct body searches, and search or seize property based solely on the belief that terrorist activity “will be” or has been committed. The provision contains no warrant requirement or any requirement of exigent circumstances that would make a warrantless search or seizure justified.

The National Intelligence and Security Services is also provided authority to “intercept or conduct surveillance on the telephone, fax, radio, internet, electronic, postal, and similar communications of a person suspected of terrorism,” and to enter any premise to install and intercept communications after obtaining a court warrant.²³

Should a police officer believe a terrorist act “will be” committed in a particular place, he has the power to destroy property or restrict movement, even without any requirement of exigency.²⁴ Those who fail to cooperate with the police are subject to three to 10 years’ imprisonment.²⁵

The police also have the power to order “any government institution, official, bank, or a private organization or an individual” to provide information or evidence “which [the police

²⁰ Draft Anti-Terrorism Proclamation, arts. 16 and 17.

²¹ *Ibid.*, art. 17.1.

²² *Ibid.*, art. 16.

²³ *Ibid.*, art. 14.1.

²⁴ *Ibid.*, art. 13.1.

²⁵ *Ibid.*, art. 35.

officer] reasonably believes could assist to prevent or investigate terrorism cases,” without any warrant.²⁶

Detention without Charge

The draft Proclamation grants the police the power to make arrests without a warrant, so long as the officer “reasonably suspects” that the person is committing or has committed a terrorist act.²⁷ The Ethiopian constitution requires that a person taken into custody must be brought before a court within 48 hours and informed of the reasons for their arrest—a protection that is already systematically violated.²⁸

The draft Proclamation reiterates the constitutional protection to be brought before a court within 48 hours of arrest, but then permits the police to request additional investigation periods of 28 days each from a court before filing charges, up to a maximum of four months.²⁹ Currently, Ethiopian police routinely detain people without charge for months, and sometimes ignore judicial orders for release.³⁰ Providing a statutorily-permitted period of four months whereby individuals may be detained without charge is likely to lead to even further abuses.³¹

International law requires that anyone arrested shall be promptly brought before a judicial authority and criminally charged.³²

Violation of the Right to Bodily Integrity

The draft Proclamation gives the police the power—without a warrant—to order a suspect in their custody to provide samples of blood and other body fluids, handwriting, hair,

²⁶ *Ibid.*, art. 22.

²⁷ *Ibid.*, art. 19.

²⁸ Article 19 of the Ethiopian constitution states, “Persons arrested have the right to be brought before a court within 48 hours of their arrest. Such time shall not include the time reasonably required for the journey from the place of arrest to the court. On appearing before a court, they have the right to be given prompt and specific explanation of the reasons for their arrest due to the alleged crime committed.”

²⁹ Draft Anti-Terrorism Proclamation, art. 20.

³⁰ Article 19 of the Ethiopian constitution provides that “Where the interest of justice requires, the court may order the arrested person to remain in custody or, when requested remand him for a time strictly required to carry out the necessary investigation. In determining the additional time necessary for investigation, the court shall ensure that the responsible law enforcement authorities carry out the investigation respecting the arrested person’s right to a speedy trial.”

³¹ Draft Anti-Terrorism Proclamation, art. 20.

³² ICCPR, art. 9.

fingerprints, and undergo medical tests, and states that “if the suspect is not willing for the test, the police may use force.”³³

Evidentiary Rules and Use of Evidence Obtained by Torture

The draft Proclamation sets new evidentiary standards for terrorism cases under the legislation that are far more permissive than the rules covering ordinary cases. Under these new rules, hearsay or “indirect evidences” can be admitted in court without any limitation.³⁴ Official intelligence reports can also be admitted “even if the report does not disclose the source or the method it was gathered.”³⁵ By making intelligence reports admissible in court even if the sources and methods are not disclosed, the law effectively allows evidence obtained under torture (if defense counsel cannot ascertain the methods by which intelligence was collected, they cannot show that it was collected in an abusive way). The draft Proclamation deems confessions admissible without a restriction on the use of statements made under torture.³⁶

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment explicitly prohibits the use of any statement made as a result of torture as evidence in legal proceedings.³⁷ The Ethiopian constitution also bars the use of statements obtained through coercion.³⁸

Additional Provisions of Concern

The draft Proclamation makes the failure to disclose information or evidence that may assist to “prevent terrorist act before its commission” or may contribute to “arrest, prosecute or punish a suspect” a crime that carries a sentence of three to 10 years’ “rigorous imprisonment.”³⁹ Also, any person who knowingly provides false information about a terrorist act, or “believing that the information is false” (a standard that falls short of actual

³³ Draft Anti-Terrorism Proclamation, art. 21.

³⁴ *Ibid.*, art. 23.2.

³⁵ *Ibid.*, art. 23.1.

³⁶ *Ibid.*, art. 23.5.

³⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (no. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987. Ethiopia ratified the convention in 1994.

³⁸ Article 19 of the Ethiopian constitution states, “Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under coercion shall not be admissible.”

³⁹ Draft Anti-Terrorism Proclamation, art. 12.

knowledge) also faces punishment of three to 10 years' imprisonment.⁴⁰ Such provisions could put citizens in an impossible position: On the one hand they could be charged with a crime for providing information that turns out to be false. On the other hand, they could be convicted of a crime for failing to provide information.

The law also imposes an obligation to notify police within 24 hours if a foreigner is living in one's house, and to provide the police a copy of the foreigner's passport.⁴¹ This violates the right under international law not to be subjected to arbitrary interference with privacy, family, or home.⁴²

Changes from the January 2009 Draft of the Proclamation

There were very few substantive changes from a January 2009 draft of the law and the version that was ultimately submitted to parliament. Those worth noting here are as follows:

- The only major positive change to the current draft is that a provision in the January 2009 draft that allowed for shifting the burden of proof onto suspects who confess has been eliminated altogether. This was one of the worst provisions of the first draft, as it could have led to confessions extracted under torture being used to shift the burden of proof onto criminal defendants.
- The draft Proclamation's definition of "terrorist acts"—one of the most alarming aspects of the first draft of the law—is even broader than it was in the January 2009 draft. The new draft expands the intent element of the crime. The first draft provided that carrying out one of the enumerated acts "with the intention of coercing or intimidating the government" was an act of terrorism.⁴³ The new draft changes this to "intending to influence the government."⁴⁴ There is some uncertainty as to whether this was a deliberate change or an issue of translation from the Amharic version of the draft law, which is not currently available to Human Rights Watch.
- Section 14 of the draft Proclamation now requires that surveillance and interception of communications requires a court warrant; the first draft did not. However as noted above most of the other search and seizure provisions in the draft remain without any kind of warrant requirement.

⁴⁰ *Ibid.*, art. 11.

⁴¹ *Ibid.*, art. 15.2.

⁴² ICCPR, art. 17.

⁴³ Draft Anti-Terrorism Proclamation (January 2009 draft), art. 3.

⁴⁴ Draft Anti-Terrorism Proclamation, art. 3.