



THE IMPACT OF ETHIOPIAN ANTI-TERRORISM  
LAW ON HUMAN RIGHTS DEFENDERS:

A DIFFICULT BALANCING ACT?

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## **List of Acronyms**

ACHPR	African Charter of Human and People's Rights
AI	Amnesty International
ATP	Anti-Terrorism Proclamation
CIVICUS	Global Alliance of Civil Society Organisations and Activists.
CPJ	Committee to Protect Journalists
CSO	Civil Societies Organization
EBC	Ethiopian Broadcast Corporation
EHAHRDP	East and Horn of Africa Human Rights Defenders Project (Defend Defenders)
EHRCO	Ethiopian Human Rights Council
EHRP	Ethiopian Human Rights Project
EJF	Ethiopian Journalist Forums
EU	European Union
FBC	Fana Broadcast Corporation
FDRE	Federal Democratic Republic of Ethiopia
FGD	Focused Group Discussion
FIDH	International Federation for Human Rights
HRD	Human Rights Defenders
HRW	Human Rights Watch
IACtHR	Inter-American commission for Human Rights
IBR	International Bill OF Rights
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
INSA	Information Network Security Agency
ISHR	International Service of Human Rights
LGBTI	Lesbian, Gay, Bisexual, Transsexual and Intersexed
MNC	Multi- National Company
MTA	Mecha Tulema Association
NGO	Non-Governmental Organization
NHRI	National Human Rights Institution
NSA	Non-State Actors
OFC	Oromo Federalist Congress
OHCHR	Office of Higher Commissioner for Human Rights
OLF	Oromo Liberation Front
OMCT	World Organizations Against Torture
ONLF	Ogaden National Liberation Front
OSCE	Office for Democratic Institutions and Human Rights
Para	Paragraphs
PBI	Peace Bridge International
PI	Protection International
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
USA	United States of America
WW II	World War Second

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## Dedication

This thesis dedicated to HRDs and Activists lost their lives at Irrecha Festival in Bishoftu, Oromia, Ethiopia, 2 October 2016.

“The hope of a secured and liveable world lies with disciplined nonconformists who are dedicated to justice, peace and brotherhood”

Martin Luther King, Jr.

## **Abstract**

This paper analyses the ongoing debate about national security and the protection of human rights (liberty) in general, but with a specific emphasis on impacts of Ethiopian anti-terrorism law on the rights and work of human rights defenders. The research explores the link between law and the situation of HRDs from the perspective of human rights and legal approach. In assessing these the study approaches qualitative research method. Data from primary and secondary sources are used. Data collection methods such as interview, focus group discussion and observation have been employed. Human rights defenders are subjected to several marginalization. HRDs face challenges because of their commitment to strive for the promotion and protection of human rights and fundamental freedoms incorporated in the Universal Declaration of Human Rights. In doing so, numerous actors have been involved in endangering their life, rights and work. The study reveals that Ethiopia's counter terrorism law has significantly undermined the rights of HRDs and affected their work. Moreover, the findings show that counter terrorism laws in the country have gradually eroded fundamental human rights enshrined in the country's constitution and international human rights treaties signed by the country.

## **Relevance to Development Studies**

The nexus between national security concern and the protection of human rights has attracted a lot of attention in contemporary development discourse. Counter-terrorism law has a substantial role to prevent terrorism, and instil peace, security and fundamental human rights. Human rights and security are indispensable for fostering sustainable development, specifically effective counter terrorism laws have significant effects on the promotion and protec-

tion of human rights and development process. According to Mary Robinson, ‘people will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights’ (Robinson 2012). This extends to HRDs that speak out for the promotion of socio-economic justice and equal distribution of resource. Human Rights Defenders work on sensitive area such as development and land are mostly exposed to worrisome trend of violations such as attacks and killings. Violations of HRD’s rights increase hopelessness, especially for poor people, land owners and marginalised groups engaged in grassroots development and change. Such processes often need the support and guidance of HRDs in their work to promote and protect socio-economic development and the fair distribution of resources, for ultimate realisation of the right to development.

**Keywords:** human rights defenders (HRDs), protection of human rights, Ethiopia, anti-terrorism laws, national security.

# **Chapter 1 Introducing the Research**

## **1.1 Background to the Topic**

The notion of modern human rights law was developed since the World War II. In 1948 the United Nation General Assembly adopted Universal Declaration of Human Rights (UDHR), as a milestone in the history of international human rights development system (Regassa, 2009:293). The subsequent adoption of human rights documents on Civil and Political Rights and on Economic, Social and Cultural Rights was gradually came to be the regime of the core International Bill of Rights (Regassa, 2009:294). These conventions produce legal obligation upon the states to respect and promote universally recognized rights of individuals and groups. So, in order to fulfil the legal duty states develop different legislative and other appropriate measures.

In 1995 the Federal Democratic Republic of Ethiopia's (FDRE) constitution incorporates almost all types of rights guaranteed under international human rights instruments (Abebe 2011:49). Constitution further elevates the horizon of human rights through reference to regional and international human rights instruments while interpreting the provisions of rights and freedoms. The acknowledgment of human rights protection in the constitution refers to setting the standards of vibrant human rights culture and commitments. It devotes more of its content on provisions on fundamental rights and freedoms by imposing duty to respect, promote and enforce human rights at all levels of the state organ and citizens (FDRE Constitution 1995, Art.13). Moreover, the 1995 FDRE constitution was characterized by prominent feature of human rights such as interrelatedness, inviolability and indivisibility principles, which applicable to all human beings on equal footing without any distinctions (Abebe, 2014:44).

In spite of the proliferation of national, regional and international legal instruments for the promotion and enforcement of human rights including the rights of human rights defenders, there is disparity between official proclamations and practice of human rights protection. Indeed, in the aftermath of September 11 attack on USA that leads to introduction of the so-called 'global war

on terror' and counter-terrorism laws were puts considerable risk on human rights, HRDs and their work throughout the world (Hoffman 2004:938). Consequently, the UN Security Council approved resolution no. 1373 (2001), which calls upon member states to 'implement a number of measures intended to enhance their legal and institutional ability for effective measure against terrorism'. But, the 1373 resolution does not refer to human rights nor define terrorism (Scheinin 2013: 14). This contributes for enactment of subjective definition of terrorism and give rise to its broad application including cases that are not related to terrorism (*ibid*). Later the absence of acceptable definition of terrorism amounts to varied counter-terrorism strategy among the states (Aston and Goodman 2012:383). It is a turning point for human rights advocacy when issue of security discourse prevail all. According to Hoffman (2004), the counter-terrorism law has led to violations of human rights and creation of defence environment to the rights abusive states in the name of fighting terrorism (2004:935).

Likewise, In Ethiopia the issue of HRDs has become a major concern in the aftermath of the 2009 Ethiopia's Anti-Terrorism Proclamation enactment, which accused of broad definition includes the legitimate act of HRDs (Oakland 2015:5). The national, regional and international human rights institution concerned that the definition of a 'terrorist act' and 'encouraging act' under ATP is broad and vague. Particularly Ethiopia Human Rights Council alarmed on the use of broad definition of the proclamation to silence political criticism and suspend due process of rights (EHRCO 2011:4). This report refers that the proclamation escalated abuses in criminalizing the rights and freedom of HRDs, who work and speak for others. However, the constitution and international human rights instruments impose legal obligation on organ of the state at all level to ensure the protection of human rights and fundamental freedoms provided under the bill of rights (FDRE Constitution 1995, Art. 9.2 & 4). According to this provision state has a negative obligation to not to interfere in the individuals and groups enjoyment of human rights. But, in practice journalists, HRDs, and oppositions were arbitrarily arrested, prosecuted, and illegally detained whereas others were killed by police excessive use of force for performing their regular work (HRCO 2011:5).

Following the enactment of anti-terrorism proclamation no. 652/2009, there is a serious debate between protection of human rights including the rights of HRDs and national security interest. The debate is backgrounded by the intensified human rights violation but attempted to justify in the name of countering terrorism. Hence, this research attempted to depict and answer how the anti-terrorism proclamation affects the rights and work of HRDs in the regime of fighting terrorism.

## **1.2 Research Problem and Significance of the Topic**

In contemporary times, the violations against HRDs continued to be inflicted upon their rights and work reflects much more needs to legitimize their role and protect them from harm (OHCHR 2004:28). This denotes defenders are particular groups that need specific protection since they are vulnerable to extensive violations and systematic marginalization. The importance of human rights instruments is to protect specific groups that exposed to human rights violation (Maiese 2004). Since the 1948 Universal Declaration of Human Rights the individual and group rights are developed and guaranteed through national and international law (Landman 2005:111). But, beyond the expansion of law the rights of HRDs have not drawn enough attention and matched by practice though there is a widespread consensus on their importance (Human rights house, 2004). Some study noted that the inadequacy in protection of human rights including the rights of HRDs comes from political interest or claim of norms, which imposes certain conditions to legitimize the complaints of fundamental rights and freedoms violations (Maiese 2004). Indeed, the campaign to protect the right to defend human rights became much more sensitive. Defenders were exposed to challenges such as constant intimidation, attacks and killings for vows to secure the enforcement of international bill of rights.

In the case of Ethiopia, the situation of human rights and the protection of HRDs has become serious field of debate between government, on one hand and other groups (journalists, HRDs, oppositions, and national and international human rights institutions), on the other hand. This debate was triggered and escalated after the enactment of 2009 ATP. The proclamation is

aimed to ‘fight terrorism’, but believed to be challenge to the rights and work of HRDs, journalists and oppositions (Oakland 2015:5).

In addressing the debates, there are two distinctive views between two sides based on the objective and effect of Ethiopian anti-terrorism proclamation on the protection of human rights and fundamental freedoms, particularly on the rights and safety of HRDs. On one hand, the government argues that having a strong Anti-terrorism law is the obligation of the state under international law to promote and protect citizen’s peace and security from ‘terrorist acts’. Government believe that the adopted resolution 1373 (2001) by UN Security Council has binding force, since Ethiopia is party to the UN Charter. This resolution empowered state members to develop their own counter-terrorism legislation. Subsequently in 2009 the Ethiopian Anti-Terrorism Proclamation (EATP) was designed to criminalize ‘terrorist act’ and in doing so, Ethiopia respond to international community to discharge its responsibility.

The government claim the intention and implementation of ATP is to ensure the rights of people to live in peace and security from the threat of terrorism. They explain the proclamation is necessitated to provide adequate legal provisions on terrorism and related crime since the existing laws are not sufficient to control terrorism. The government continued to argue the language and definition of terrorism in the proclamation is not unique and broader, if not narrower. They further defends the law pointing out that the proclamation is directly pulled from the countries advanced by legal system and democratic jurisdiction.

The ex-prime minister Meles Zeniwe has also justified the law by saying that it is a direct copy of Western Act particularly from United Kingdom, Canada, Australia and EU model counter-terrorism laws. This indicate that proclamation is copied word by word from world’s best country. Zenawi also had mentioned that the Anti-Terrorism Acts of those western countries were not only used as a reference but also as a direct guideline and mirror of what the international community deems to be appropriate to fight terrorism. He added that even our law is better since it is a collection of best model and ratify by parliament while they are not. This thinking was further propagated by Sashaleh Yalew (2013:1) who noted that, the proclamation was initiated to fight actual terrorism in line with international counter-terrorism policy rather than

to silence the voice of activists and HRDs. The proclamation is born out of the pressing needs of Ethiopian people and government necessitated to prevent terrorism (Yalew 2013:1). Moreover, they recite that there is a clear threat to peace in the Horn of Africa where terrorist groups are assumed to be active and be harboured by parts of the civilian population. This refers to the proclamation was not only designed to consider the situation of contemporary domestic matters but also regional (Horn) affairs.

On the other hand, the national and international human rights institutions have completely different positions on the debated issue. At national level, some members of the Parliament, domestic human rights institutions, HRDs, activists, journalists, oppositions, public servants and civil society organizations were claimed that, the proclamation is politically motivated, unconstitutional, vague and broad (Oakland 2015:5). Similarly, at regional and international level, the proclamation is condemned by the UN Commission for Human Rights and other four UN Special Rapporteurs, International Human Rights Institutions, the African Commission on Human and People's Rights, the governments of USA, UK and EU for the content and misuse implementation (Oakland 2015:5).

The accusation goes to the heart of violations of international human rights law, due process of law and modern criminal justice system. The groups strongly argue that the proclamation adversely affects the rights and people's freedoms particularly freedom of expression, privacy, assembly and protest. The group raise restriction of positive criticism. They further cite some provisions of Proclamation deems impeding such as definition and language, prolonged imprisonment, shift of the burden of proof, unprecedented power of the police and security service to arrest any person they suspect without a court warrant (ATP 2009, Art. 3, 6, and 13-24). The national, regional and international groups express their concern on the prosecutions of journalists, HRDs, oppositions and dissent groups under the proclamation. Here, several reports of international human rights groups confirmed the inconsistence of the proclamation with international normative law standards and resulted as a tool of repression (HRW 2016, OHCHR 2016). Thus, according to this group the proclamation is abused to criminalize the innocent people who dedicated to

make human rights offences public or work to end-impunities than actual terrorism.

In 2012 the UN High Commissioner for Human Rights, Navi Pillay criticised Ethiopian government for using a broad definition of terrorism that seriously limit and instil climate of intimidation against HRDs and journalists (OHCHR 18 July 2012). Patrick Griffith also said, the Ethiopian ATP is a broad and open to interpretations and has no due regard to the effective protection of human rights when compared to the definitions in other jurisdictions particularly with UK counter-terrorism and security act (Griffith 2013:2).

Thus, the research explores within a broad theme of an appraisal between possible tension for addressing national security and protection of fundamental human rights, but a narrow focus on the nexus between anti-terrorism proclamation and HRDs.

The study has relevance to helping the Ethiopian government provide proper protection of the rights of HRDs by handling human rights violation caused by the proclamation. Second, to create awareness within international community in general and Ethiopian government and people in particular about the nexus between ATP and the legitimate work of HRDs. Thirdly, the research portrays the current situation of human rights and fundamental freedoms in Ethiopia, particularly focusing on the effect of counter-terrorism legislation on the rights of HRDs. It will do so by assessing the national and international legal frameworks. Fourthly, it will point out potential future research areas on terrorism, anti-terrorism law, human rights and rights of HRDs. Finally, it will fill the gap in the literature particularly on the impact of Ethiopia's anti-terrorism law on promoting or eroding the rights of HRDs in the country. Therefore, studying how HRDs are affected by ATP from a perspective of human rights and the legal framework, it is very significant to depict the impact of the anti-terrorism proclamation on the activities of HRDs.

## 1.3 Questions and objectives

The research mainly aimed to examine and assess the following questions.

### **How has the Anti -Terrorism Proclamation affected human rights defenders in Ethiopia?**

The study attempted to addresses the following sub-questions:

- i. How do domestic legal frameworks protect or restrict universally recognized rights of HRDs?
- ii. Which actors have been involved in violating or promoting the rights of HRDs?
- iii. How has the rights violations, threats and challenges against HRDs affected their rights and work?

The general objective of this study is to examine and assess the impact the anti-terrorism proclamation in Ethiopia has on citizen's human rights and fundamental freedoms. In attempting to fulfil its general objective, this research addresses the following three specific objectives.

- i. To examine domestic legislation that intended to promote or restrict the activities of HRDs.
- ii. To explore the role of actors involving in risking having HRDs on their land.
- iii. To assess specific situations, violations and challenges that HRDs face in Ethiopia today.

## 1.4 Organisation of the paper

This study is organized into six chapters. The preceding chapter provides the general introduction to the research, background, statement of problem, justification, objectives and research questions. Chapter two discusses the concep-

tual and theoretical framework including the concept of terrorism, counter-terrorism, human rights and HRDs as well as the link between terrorism, counter-terrorism and protection of human rights and freedoms. The methods of data collection to guide study in chapter three. The findings of the 1<sup>st</sup> research sub-question on assessment of legal guarantee/restriction to HRDs is presented in chapter four. Chapter five discussed the findings of the 2<sup>nd</sup> and 3<sup>rd</sup> research questions on the assessment of violations, challenges and the key actors perpetuating such violations. The last chapter provides conclusion and recommendations.

# **Chapter 2 Conceptual-Theoretical Framework**

## **2.1 Conceptual definitions**

This chapter provides definitions and theoretical frameworks for these concepts: terrorism, counter-terrorism, human rights and HRDs before assessing the way anti-terrorism proclamations affect human rights, safety and works of HRDs. This section clarify those concepts in relation with the promotion and protection of human rights, particularly in the context of HRDs; which strive for the full realization of international bill of rights. Finally, the research attempts to address the link between terrorism, counter-terrorism and protection of human rights and fundamental freedoms, which are basis for the activity of HRDs.

## **2.2 Terrorism**

The term ‘terrorism’ comes from the Latin word ‘terrere’, which means to fear or to tremble (Hoffman 2006:2-3). Terrorism is not a new phenomenon because ‘it has long been a method of violent action to achieve political goals’ (Ganor 2009:13). Accordingly, the word terrorism has been used since the early times of recorded history while there have been killings with or without political, religious and ideological relations at the time. Nowadays, it is seen internationally as a serious challenge for national security; not only in Ethiopia. As a turning point terrorism has been most widely discussed and focused by states, media and academics in post September 11 USA attacks (Golder and Williams 2004:270).

However, the definition of terrorism is controversial and scholars define the term differently (Golder and Williams 2004:270). For instance, for Enders and Sandler (2011:3) terrorism is ‘premeditated threat to use violence by individuals or subnational groups in order to obtain a political or social objective’. For, Hoffman Bruce, terrorism is an ‘organized act of violence perceived as directed against society to promote desired outcome by instilling fear in the

public at large' (Bruce 2006:1). For, USA State Department, terrorism is 'pre-meditated, politically motivated violence perpetrated against non-combatants targeted by subnational groups or clandestine agents, usually intended to influence an audience' (Department of State 2003: xiii). The UN General Assembly's Declaration on Measures to Eliminate International Terrorism, provided definition of terrorism as: 'criminal acts- intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes'.

The above four definitions of terrorism show that though the term is widely used and discussed there is no universally acceptable definition of terrorism. Yet, several attempts have been made at regional and international level to develop a comprehensive legal definition of terrorism but failed (Golder and Williams 2004:270). Despite various and inconsistent definition of terrorism, the most common definitions are characterized by three key elements: intention to inflict fear, serious acts of violence and compelling government to do or abstain from doing any act (Bantekas and Oette 2013:616). Accordingly, the existing regulations and resolutions relating to specific aspects of terrorism define certain acts and central elements. Each of these three core elements is intended to produce terror in its victims.

The failure to establish accepted definition of terrorism reflect more of political challenge than a legal or semantic challenge (Alston and Goodman 2012:383-4). States and international actors failed to achieve on consensus what constitutes terrorism for political interest. For instance, agreement on whether or not state ban the separatist or armed group or not as a terrorist. As one commentator noted: 'tell me what you think about terrorism and I will tell you who you are'; 'I know when I see it' (Noteboom 2002:553). Similarly, other controversy phrase captured as, 'one person's terrorist is another person's freedom fighter' (Hoffman 2004:934). This implies that being a terrorist and terrorism is a social construction and an action. In-deed, the powers of the state may extend very far and infringe upon fundamental rights and freedom of individuals.

Of course, the act of terrorism has devastating impacts on almost all sets of human rights, rule of law and social values (OHCHR 2008:7). Terrorism has a huge effect on the enjoyment of protected human rights and freedoms

whether it was committed by states or non-state actors. This obviously, includes the rights of HRDs. According to Protection International, HRDs were deliberately attacked by politically or religiously driven militants for a response to defender's work (PI 2015). In practice, defenders work for the defence of women, LGBTI, journalists, land and environment are more focused (*ibid*). They face a serious risk and planned attacks as a result of their legitimate work. For instance, terrorist attack on Charlie Hebdo's publication resulted in killings of journalists is a response to freedom of expression (FIDH 2015). This implies HRDs sometimes are directly exposed to terrorist attack by individuals or non-state actors, as a result of their commitment to defending the principles of the Universal Declaration of Human Rights. In order to combat such distractive act by private parastatal groups state has both rights and duty to protect its own citizens under international human rights law.

However, the response to terrorism must be reconcilable within basic standards of human rights and international law (Hoffman 2004:949). To remain within international human rights framework, states have both the international and regional duty to take necessary steps to punish perpetrators and to prevent terrorism based on measures adopted. The legal response is one of the modalities designed to prevent human rights violations arising from anti-terrorism (Wubie 2012:24-25).

Moreover, the absence of accepted legal definition of terrorism resulted in the enactment of restrictive approaches or broader interpretation of 'acts of terrorism' in domestic law than is desirable. This affects the debate around what exactly it is being countered through anti-terrorism measures.

## 2.3 Counter-terrorism Measures

Since 9/11 most states in the world have considered national and international terrorism as a grave threat to their national security. This condition pushed the states to enact, or strengthen their national legal framework or use military response to fight against terrorism (Walzer 2002:2-3). The strategy to counter-terrorism measures are widely different across the globe drawing on local political context and the perceived level of threats states face (Hoffman 2004:933).

As with terrorism itself, the term counter-terrorism is a controversial concept to define. Rineheart said, 'there is no universally applicable counter-terrorism policy or strategy' (2010:32).

Practically counter-terrorism has not been clearly defined and there are many 'confusions between empirical conditions on the ground and elusiveness of the phenomenon it seeks to describe' (Asresahegn 2011:39). This refers the invisible relation between the facts seen on the ground and the principles what the law intended and aimed while enacted. Counter-terrorism operation are also subject to change depending on the nature of the terrorism threat. Thus, Counter-terrorism was complicated due to the differentiation on practical enforcement and problem inherited from controversial definition of terrorism (Shimalis 2014:12). Indeed, both terrorism and counter-terrorism have been an almost inseparable nexus.

In a broad sense, counter-terrorism covers numerous policy areas. Several scholars and institutions have tried to define the concept of counter-terrorism based on the practical activities adopted by different organs. To cite some example, the U.S. Army Field Manual defined counter-terrorism as: 'operations that include the offensive measures taken to prevent, deter, preempt, and respond to terrorism' (Rineheart 2010: 32). This definition is short and more concrete, but includes broad term differentiates nothing with scope, nature and methods of response. This may affect the relevant aspect to be properly regarded for countering terrorism. Omelicheva (2010) delineates counter-terrorism as a 'strategy adopted to protect the public from the violent terrorist action' (2010:2). This definition also abhorred the system or approach applicable for effective measures against terrorism. Hence, terrorism protection strategy is not inclusive among the states. It indicates that there is no acceptable counter-terrorism method. The absence of comprehensive measure would result in impeding democracy and conceal the protection of human rights and fundamental freedoms.

The experts and scholars of terrorism acknowledged two distinctive approaches to combat terrorism: a military (war) model and a criminal justice system model (Schmid 2004:202, Wilkinson 2006). Their study shows a military model is tendency to struggle against terrorism at all level through warfare. It could respond either in individual states or military coalition on the basis of

selfdefense or prevention mechanism. According to this tactic terrorist attack was framed as an eminent threat to the world's people and peace, which can only be addressed by a military approach. This approach may involve national, organizational and international military coalitions of individual states and states to fight against terrorism, which later shifted to 'Global war on terror' policy to legitimize the counter-terrorism strategy via warfare (Mihr and Gibney 2014:229). Since war entails risk against civilians, this approach may result in wide-range of human and fundamental rights violation. Advocators of this strategy believe that, it is effective response to the terrorist act and threat.

On the other hand, the 'criminal justice approach- is a legalist framework necessitated to curb terrorism' (Schmid 2004:202, Wilkinson 2006). This placed with relevancies of law and policy. Criminal justice approach as counter-terrorism strategy- justified on the basis of national security laws (Moore and Turner 2005: xxxix). It is a model that could be applied with the basic principles of international law and requirement of Security Council resolutions related to counter-terrorism (Asresahegn 2011:40). The UN request states to modify developed legislation or enact new measures that comply with international human rights. Thus, the standardized rule of law and human rights principles coupled with effective counter-terrorism strategy has indispensable potential to eradicate terrorism (Hoffman 2004:954).

## **2.4 Human rights**

Human rights are commonly understood as being rights which people are entitled to by virtue of human dignity (Bantekas and Oette 2013:11). It is simply the rights that one has because one is a human being. In a broad sense, human rights are defined as 'universal values and legal guarantees that protect individuals and groups against actions and omissions primarily by state agents that interfere with fundamental freedoms, entitlements and human dignity' (OHCHR 2008:3). From the legal perspective Nowak (2005) defined human rights as the: 'sum of individual and collective rights recognized by the state and laid down in their constitutions and international law' (2005:1). This refers the role of human rights in defining the power structure between individuals and the state as well as community relationship with each other.

The concept of human rights is guided by the special features founded on the principle of equality, universality, inalienability, and underpinned by notions of solidarity (Donnelly 2013:10). These basic principles of human rights are often legally guaranteed by international human rights. Human rights are universal in a sense that they are common to all members of the human family by virtue of their humanity (Bantekas and Oette 2013:38). Universality principle is one of the central debates on human rights talk that calls for human rights affordability to everyone.

Since the end of World War II, the international community has experienced a dramatic expansion in the number of international human rights treaties, conventions and declarations (Mihr and Gibney 2014:71). The 1948 Universal Declaration of Human Rights is a 'foundational document for modern international human rights law' (Donnelly 2013:26). Following the birth of Universal Declaration of Human Rights, human rights have been started to express in the form of treaties, general principles, customary law and other sources of international law. The introduction of subsequent international conventions such as Civil and Political Rights and Convention on Economic, Social and Cultural Rights imposed an obligation on state party to act diligently and prohibits them from carrying out violent acts against their own nationals or those of other countries. Furthermore, these binding classic conventions are also proposed the notion of negative and positive rights to give due attention accordingly while enforcing.

Human rights law thus prioritizes the protection of individuals and groups against action, which interferes with fundamental rights and freedoms. It involves the full respect for, and protection of civil, political, cultural, economic, and social rights even the right to development. To advance these rights, the UN has played a leading role in defining and codifying human rights in various regional and international human rights instruments (Nowak 2005: 1), the most ratified treaties has been emerged as the only universally recognized value system (*ibid*).

In short, the introduction of human rights produces a new structure and power relation between individuals and states. The states were obliged to respect, promote and protect human rights, for not to interfere with their enjoyment. So, in order to fulfil their legal obligations under international law,

states adopt different legislative, administrative and other appropriate measures. Consequently, states have a right and duty to enact effective anti-terrorism legislation and other related law to deter the perpetrators, but it shall not be a basis for abusing human rights and fundamental freedoms. However, the practice of some states indicates that 'counter-terrorism operations pose challenges to the protection and promotion of human rights contrary to States' obligations under international law' (OHCHR 2008:9).

## 2.5 Human Rights Defenders

In 1998 the UN General Assembly adopted the landmarked declaration on HRDs (ISHR 2013:1). The declaration's full name is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. But it is commonly known as the declaration on HRDs. The establishment of this declaration enhances the protection of human rights history, because it was recognized in international law. To ensure the protection of HRDs, in 2000, the UN Commission on Human Rights established special mandate on the situation of HRDs known as the 'Special Rapporteur on Human Rights Defenders', to monitor and assess the enforcement of the declaration. However, despite the protection afforded by the declaration and formation of special mandate, the situation of HRDs is not better at all (Human rights house, 13 October 2004).

The HRDs Declaration defines a HRDs as 'anyone who, individually or in associations with others, work to promote and to strive for the protection and realization of human rights and fundamental freedoms' (UN Declaration on HRDs 1998, Art. 1). In accordance with this catch-all term, HRDs can be people who, individually or with group of persons work on or are committed to promote and protect human rights. They can strive for the realization of human rights - regardless of profession, gender, place, ages and other status. Thus, being a HRDs 'does not require possession of special prerequisites, nor formal qualification that may be granted or acquired' (Eaton 2016:5). They can carry out a human rights activity in individual or joint capacity, whether they are professional or volunteer. This extensive definition includes professional and non-professional: lawyers, journalists, medical professionals, students, staff

of National Human Rights Institutions (NHRIs), politicians, public servants and students, among others, can be example of HRDs (OSCE 2014:25).

However, in the UN Declaration on HRDs, two important conditions are required in order for someone to be considered a HRD: accepting or respecting the principle of human rights universalism and non-violence tactic (OHCHR 2004:9). Defenders are required to act in a peaceful manner as well as shall recognize the universality of human rights as laid out in the Universal Declaration of Human Rights. It is also important to note that HRDs are not only found within civil society and intergovernmental organizations but might also be government officials, civil servants or members of the private sector. Moreover, the key features that defines HRDs is ‘not who they are but what they do and the principles they stand for’ (OSCE 2014: 24). Hence, it is not necessary for a person to be known as a human rights activists to work for human rights organizations or related institutions, in order for them to be defined as a HRDs.

In fact, HRDs play a central role in promoting and realizing human rights. Yet, despite that ‘many HRDs are often the target of violations and abuses because of their activism’ (Soohoo and Hortsch 2010:984). Furthermore, according to Peace Bridge International, HRDs often face ‘wide range of threats when they work for the protection of either all or specific human rights issues but, not all defenders experienced similar discrimination or risk of rights abuses’ (PBI 2009:14). In this context some of them have been exposed to harassment, attacks and other abuse due to the specific nature of their work, sensitivity issues they are handling and location they operate. To cite some example, the LGBTI and women’s rights defenders face specific and increased risk in many cases because of the ‘nature of their work and/or their status as women’ (PBI 2009:14).

Most importantly, in 2004 the EU Guidelines on HRDs marked to ensure the protection of HRDs and to guide EU action regarding HRDs (ISHR 2010:1). The Guidelines encompasses the way how to provide a practical protective tools on the ground. This Guidelines also acknowledged several good practices to protect HRDs working in ‘third’ (non-EU) countries. The EU Guidelines identify five major practical ways towards the promotion and protection of HRDs in the so-called developing countries: monitoring, protection,

promotion, support for the special procedures and support through other EU programs (EU Guidelines on HRDs 2004). The EU Guidelines have an important role in providing support for HRDs to enhance their protection though not fully implemented (AI 2008:2). In Ethiopian some HRDs including zone 9 bloggers are supported and finally awarded a 2016 Martin Ennals Award Laureate for HRDs (HRW 2016).

Unlike the UN Declaration on HRDs, the EU Guidelines on HRDs is not a binding legal document on the non-EU countries, but represent strong political commitment to advance the work of HRDs (EU Guideline on HRDs 2004). Though the EU Guidelines on HRDs adopt the definition provided by the UN Declaration on HRDs, there is a difference in content and nature. The EU Guidelines definition on HRDs are broad and expansive that draws upon UN Declaration on HRDs, but the definition does not cover those who committed to propagate violence to impede the rights of others (ibid).

Legally, the rights of HRDs are protected in national, regional and international human rights instruments. At international level the Universal Declaration on Human Rights guaranteed the protection of HRDs under article 2 and International Convention on Civil and Political Rights under article 2 whereas at regional level the Inter-American Commission on Human Rights, European Commission on Human Rights and African Charter on Human and Peoples' Rights under article 1. At the national level, the 1995 Constitution also provides protection provisions under the chapter three.

Despite its recognition under national, regional and international law, the rights and work of HRDs in the declaration is not familiar in human rights discourse, even by the state and HRDs themselves in terms of its content and nature (ISHR 2013:2). This could resulted in dangerous challenge and risks against HRDs such as attacks, stigmatization and criminalization. As a result restrictive legislation enacted by the states to control NGO registration and terrorism is misused to criminalize HRDs under anti-terrorist legislation (PBI 2009:13).

## 2.6 Terrorism, anti-terrorism, protecting human rights

As seen above, terrorism can be seen as a serious danger to human rights, the rule of law and fundamental freedoms. It has a direct impact on the enjoyment of human rights and fundamental freedoms (OHCHR 2008:7). Terrorism jeopardize peace and security of the state. It also undermine a number of rights including the socio-economic rights and values. Having wide-range of detrac-tive implication, it has been resulted in recognition to combat at national, re-gional and international level.

In 2001 the UN Security Council responded to the terrorist attacks adopt-ing resolution no.1373 (2001), as strategy to fight against terrorism. Following this resolution there has been proliferation of enacting the anti-terrorism law throughout the world, but ‘much of which has an impact on human security and the enjoyment of human rights’ (OHCHR 2008:20). It refers lack of inter-national consensus on the strategy used to eradicate terrorism. Besides these, the way the legislative approach waged itself pose challenges on the protection of human rights and international human rights framework (Hoffman 2004:933). From these we can say both terrorism and counter-terrorism measures undermine the promotion and protection of human rights and free-doms including the rights of HRDs.

However, under regional and international human rights law, states have rights and ‘duty to protect individuals subject to their jurisdiction from the ter-rorist attacks’ (Hoffman 2004:949). This emanates from the general duty estab-lished under article 2 of the International Convention on Civil and Political Rights, provides rights and duty to protect individuals within their territory from the violence that undermine their enjoyment of human rights. Likewise states have the right and duty to take effective legal approach and criminal jus-tice system that match with international human rights standards to counter terrorism. These reveal a paradox between balancing human rights protection and national security.

In order to avoid the inconstancy between liberty and security, the UN Security Council has adopted resolution (1456/2003) and calls on state mem-bers to ensure ‘any measures taken to combat terrorism must comply with all their obligations under international human rights law, refugee law and human-

itarian law'. Resolution denotes the inseparable nexus between human rights and security as well as propose the essentiality of human rights framework for real human security. The respect for rule of law and human rights is the fundamental basis to fight actual terrorism that comply with international human rights law. Furthermore, states are obliged to adopt counter-terrorism measures that is in-line with core human rights principles and to act within the framework of human rights protection.

Conversely, the international human rights laws explicitly allow temporary suspension of some human rights enjoyment during the times of state of emergency, but in a very limited set of exceptional circumstances (Fitzpatrick, 1994:1), human rights maybe endangered during emergency declaration (*ibid*). The derogation of rights is recognized and justifiable only when there is serious condition that pose 'threats to the life of the nation and security' (Hoffman 2004:951-2), and satisfies various requirements. There are also a few non-derogable rights that states must respect and refrain from impeding them even at the time of state emergency (*ibid*). Some non-derogable rights are: right to life, prohibition against torture, slavery, non-retroactivity, equality and freedom of religion (ICCPR 1966, Art.4.2).

The international human rights law standard permits limitation of certain human rights with the view in mind to ensure public order at the time of crisis, but 'there are no grounds to abandon the framework altogether because of terrorist threats and attacks' (Hoffman 2004:952). In general, the international framework of human rights protection 'can accommodate the appropriate balance between liberty and security' without abandoning core human rights principles (*ibid*).

# **Chapter 3 Methodology and Methods of Data Collection**

## **3.1 Sources of evidence**

The most significant data for this study were collected from both primary and secondary sources. The primary data source includes findings from interview with human rights lawyers, HRDs, right advocates, journalists, bloggers, judges, public prosecutors, political activists, students, government officials and civil society coordinators (women's and teachers association) and other concerned bodies. Secondary sources contain academic books, articles, prior conducted study, internet, TV programs, documentaries, government office archives (trial charge), and reports of concerned national and international institutions.

## **3.2 Research techniques**

In the process of generating a response to the research questions, the study exclusively adopted a qualitative research approach for collecting and analysing data. Qualitative research techniques are preferred to assess and analyse the link between anti-terrorism law and the situation of human rights defenders in Ethiopia, which requires in-depth understanding. This method is characterized to understand the experience and attitudes of the society in a particular event, and 'its methods which (in general) generate words, rather than numbers, as data for analysis' (Bricki and Green 2007: 2).

Unlike quantitative method the qualitative techniques cannot be possibly measured or quantified, but it can be described or elaborated. As the study is about assessing the relation between ATP and the rights of HRDs, qualitative method fit the study. Because, these methods enable the researcher to explore individuals or group observations and practices on specific phenomenon to get detail information on the research area. Moreover, it is an approach that allows the researcher 'to examine people's experience in detail from the perspectives of research participants' (Hennink 2010:8-9).

In exploring the relation between ATP and HRDs, I attempted to see in a triangular form of (state-human right-individuals) relationships since human rights law governs the power structure between the state and individuals. Hence, I have attempted to conduct the research from the perspective of human rights including a human rights legal framework whereas the international human rights instruments are also part of these framework. This is to have good understanding of HRDs rights protection.

### **3.3 Data collection methods**

#### **3.3.1. Primary Data Collection Methods**

Field research was conducted in Ethiopia during the period of July to mid of August 2016. The researcher used main methods of primary data collection: Focused group discussions, observation and in-depth interviews with key informants.

##### **3.3.1.1 In-depth Interviews**

In-depth interviewing is one of the data collection method used in qualitative research techniques. Carolyn Boyce defined in-depth interview as a ‘qualitative research technique that involves conducting intensive individual interviews with respondents to explore their perspectives views, experiences and motivations on a particular situation’ (Boyce 2006:3).

In fact, in-depth interviews provide crucial conversations to find out detailed information about the picture of the event from the interviewee. This method provides a form of conversation to collect information. The technique enables the researcher to ask respondents open-ended questions that is relevant to interview. For Zina O’Leary in-depth interview is ‘a method of data collection that involves researchers asking respondents open ended questions’ (O’Leary 2004:162). Hence, for the study at hand open-ended interview questions were prepared and zoomed into the research participant’s particularly HRDs, journalists, activists and other concerned group works on the human rights activities.

During fieldwork, in-depth interviews were used to collect empirical data. I have interviewed a total of 18 key informants: Thirteen male and five female. Interviews were conducted with key informants in Afan Oromo and Amharic languages.

### **3.3.1.2 Focus Group Discussion (FGD)**

Focus group discussion is another significant method for collecting qualitative data. FGD is important to generate rich understanding of respondents' experiences and beliefs through reaction of many participants at once (O'Leary 2004: 165). Using FGD the researcher aimed to acquire information from discussants on the link between anti-terrorism law and HRDs from the perspective of human rights situation and practice in Ethiopia. The moderator plays an important role in facilitating discussion drawing on questions relevant to interview. This method helps to produce shared information and views from the group discussion.

In FGD mixed composition (heterogeneous groups) is significant from all angles: sex, ages and professional statuses of the participant as much as possible (Freitas and Popjoy 1998:12). To such end, I have conducted one FGD with the total of six participants: Four are male while two are female.

### **3.3.1.3 Observation**

Observation is a 'systematic description of behavior, events and artefacts in the social setting chosen for study' (Marshall and Rossman 1989:79). Researcher used observation methods to enhance other empirical data collected. It enables to describe the nature and content of the existing situation of human rights, safety of HRDs and implementation of counterterrorism law to support the relevant data.

I have observed how HRDs work to defend human rights using their rights to expression and protest. In particular, on August 6-7, 2016 I closely observed 'a grand rally' called by HRDs from within the country and from the Diaspora community. The aim of the rally was to demand respect for human rights and for constitutional provisions mainly related to land policy. I also witnessed response from the police against the protesters. These and other

personal observations assisted me in understanding the existing content and situation of the event around the researcher area.

### **3.3.2 Secondary Data**

Secondary data also reviewed in my study. Particularly, I considered legal frameworks focusing mainly on domestic laws (constitution, anti-terrorism proclamation and other related proclamations). Besides, international human rights instruments, HRDs Declaration and EU Guidelines on HRDs were given due consideration. The secondary data that I used include academic literature, books, journals, articles, trial charges, constitution, the ATP, other legislations, resolutions and reports from state/non-state human rights institutions, debates through TV channel and published work of government and non-governmental organizations. Thus, I took into account relevant and credible data sources that have been used by other researchers.

## **3.4 Sampling techniques and data analysis**

This study adopted a purposive sampling method in order to determine samples of informants. Because, it ‘enables the researcher to depend on his own judgment to select the respondents from the total study population’ (Tongco 2007:143). For, Teddlie and Yu, purposive sampling is a ‘method of selecting certain units or cases based on a specific purpose rather than randomly’ (2007:80). Sampling is necessitated to gather in-depth information from a smaller number of carefully selected participants (*ibid*). Accordingly, I have selected research participants on personal judgment. Participants who have particular knowledge of the phenomena under investigation were picked. Their experience or proximity with the study topic is backgrounded.

Thus, three human right lawyers, two public prosecutors, three judges (court officials), one land and environmental, one health professional and one member of the anti-corruption commission are interviewed. I have also conducted interviews with three journalists, two university students, two activists/analysts, and one expert of the EHRCO, two from teachers / women’s associations, and two opposition members and with one government official

from the justice office. Therefore, I have conduct interview with total of 24 respondents: Seven female and seventeen male participants.

The significant data obtained from the fieldwork was first recorded in a notebook and later transcribed. The source was analysed translating recorded note from Afan Oromo or Amharic language into English, by using thematic analysis techniques. Thematic is a ‘method that is often used to analyse data in primary qualitative research’ (Thomas and Harden 2008:1). It emphasis on identifying, coding and examining themes within data collected. Thus, I have tried to employ this analysis along with pinpointing, describing and coding, since these techniques allow to identify ideas within the data implicitly and explicitly.

### **3.5 Ethical considerations**

Dealing with ATP and protection of human rights, particularly on the situation of HRDs is a very sensitive matter. It is a risky and hard to access information from government officials and other concerned entities. Hence, I preferred to use teammate while working in justice office. The nature of topic sensitivity and contentiousness, makes ethical considerations very essential. Sensitivity for, Lee ‘study in which there are potential implications for the research participants’ (1993:3-4), whereas contentious is holding different views by different groups on particular matter (Harrison 2006:62-63).

Thus, researching on sensitive and contentious issue is a big challenge for the safety of the researcher and informants (Harrison 2006:62-63). So, to avoid such challenges, researcher treated respondents with the full reputation and dignity by informing all the interviewee about the purpose and nature of the study. Throughout the research process I approached the participants with respect and was careful to stress the voluntary nature of the interviews and discussions, including their right to stop being involved at any time if they wish.

Thus, as a researcher I have kept the identity and privacy of my research participants during and after the data collection confidential, in order to protect them from any potential harm. Apart from this, the sensitivity of the topic

was evident when participants declined to be recorded during interview due to fear of political repercussions.

### **3.6 Scope and limitations of the study**

Although anti-terrorism laws in Ethiopia have implications for human rights and fundamental freedoms of other specific groups, this study focuses only on the situation and rights of HRDs. This is because HRDs play a cornerstone role in promoting and bringing issues of human rights protection to people; HRDS support victims of human rights violations, persuade governments to ratify and comply with national and international treaties, end impunity and share value of rule of law and human rights (OHCHR 2004:3-5). Accordingly, rights deprivation or bad situation for HRDs can be a manifestation of weak rule of law in countries like Ethiopia. The study is limited to Ethiopian HRDs operating in the country.

There are challenges that could affect the result of this thesis negatively. First, it was not easy for the participants to speak openly and provide enough information related to their experience regarding issues related to the situation of HRDs and ATP. The second factor is time constraint. I carried out field-work for not more than thirty days during the month of mid-July to mid-August which is shorter than the time planned. During filed work the situation in Ethiopia was very insecure and restive due to anti-government protests in Oromia and Amhara region. It was not ideal time to do research. The third limitation is that some key informants and offices declined to be interviewed after demonstrating consent in previous encounters. Lastly, financial restraints inhibited the researcher from meeting some respondents who might have provided good data.

# **Chapter 4 Legal Protection for HRDs in Ethiopia**

## **4.1 Introduction**

Theoretically, Ethiopia's domestic legal system (including the constitution) provides solid ground for the protection and promotion of the rights of HRDs. The country has signed various regional and international human rights conventions and treaties. However, the country has passed various legislation which are very much criticized by observers for their alleged role in undermining and eroding the rights of HRDs enshrined both in domestic and international human rights treaties. This chapter looks at different provisions dealing with the protection and promotion of HRDs. First, it sheds light on the constitution. Second, it assess rights incorporated under international human rights conventions and treaties. Finally, it analyses on recent proclamations blamed for the erosion of human rights in the country.

## **4.2 Constitution of the Federal Republic of Ethiopia**

The Constitution of Ethiopia was adopted in 1995 following the downfall of the military rule in 1991. Two decades have passed since the constitution declared the country as the 'Federal Democratic Republic of Ethiopia' (FDRE Constitution, 1995:Art 1). The constitution establishes a Federal and Democratic State structure in the country (Regassa and Ababa, 2004:1). The document contains ten chapters and 106 articles.

The constitution contains many human rights discourses. It guarantees civil liberties of individual rights, socio-economic and cultural rights, as well as solidarity (group) rights. Thirty-one articles are dedicated to human rights and fundamental freedoms. The Constitution of Ethiopia devotes 'more than one third of its content to provisions on fundamental human and people's rights' (Abebe, 2011:43). Moreover, it recognizes basic principles of human rights such as universality, inviolability and inalienability. In this respect, under this

constitution, human rights are guaranteed for every Ethiopian citizens irrespective of his/her ethnic, gender or religious identity.

Bill of rights and international/regional human rights instruments ratified by Ethiopia are enshrined in the constitution. ‘All international agreements ratified by Ethiopia are an integral part of the law of the land’ (FDRE Constitution 1995, Art.9.4). The provision makes clear that international instruments are subordinate to the constitution since human rights treaties are also part of international agreements. The ratified instruments include ICCPR as of 1993, ICESCR as of 1993, CRC as of 1991, Convention against Torture (CAT) as of 1994, and African Charter on Human and People’s Rights (ACHPR) as of 1998 (Brems 2007:52). Article 13 (2) of the constitution requires that the fundamental rights and freedoms, ‘shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia’ (FDRE Constitution 1995, Art 13.2). That means ratified instruments become integral part of the constitution. This creates an opportunity to adopt proactive measures for the full realization of rights and freedoms. The constitution mandates that people’s rights and fundamental freedoms should be respected and protected. This of course includes the rights of HRDs at all levels. Accordingly, government officials have a duty to promote and enforce the bill of rights established under the constitution (FDRE Constitution 1995, Art.13.1).

The civil and political rights incorporated under the constitution are mostly adopted from the provisions of the UDHR. These civil and political rights include the right to life (art.15), the right to security of person and the right to liberty. The right to equality, prohibition of torture and right to privacy are part stipulated in the constitution. It guarantees freedom of religion, free expression, the right of assembly and freedom of association.

The constitution has been criticized for its lack of implementation. Most of what is on paper have little effect on the ground. A human rights lawyer informant told the researcher that,

Our constitution gives a special place for the promotion and protection of people's rights. Nevertheless, the practice does not conform what is in the constitution. In such case the constitution has very little to do with the reality (Informant 1: lawyer). He added that the constitution is far from practice when prevailed by other specific legislations.

The constitution envisages the operation of effective and independent institutions that work for promotion and realization of human rights, documentation and investigating human rights violations. To realize this the government formed at national level the Institution of Human Rights Commission and the Ombudsman in 2000 (Regassa and Ababa, 2004:5). However, their study show, the institution has not started operating our years after formation, not mandated and guided in accordance with the Paris Principles.<sup>1</sup> This shows how what is on paper fails to operate on the ground in Ethiopia (informant 2: lawyer and consultant). Also, the constitution is not properly enforced. The constructional rights are routinely violated (informant 2). Under such circumstances, it makes no sense to argue that the constitution protects and promotes rights of HRDs and their work effectively.

### **4.3 International Human Rights Provisions in defence of HRDs**

#### **4.3.1. Freedom of expression**

The rights to freedom of opinion and expression is one of the fundamental rights that HRDs enjoy. It is because of this rights that they get involved in defending human rights. This rights protects them against threat that comes either from state or non-state actors. The Inter-American Court of Human Rights underlines the importance of the rights to freedom of expression and has said, 'Freedom of expression is a cornerstone upon which the very existence of a democratic society rests' (Bertoni 2009:335).

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<sup>1</sup> See, UNGA Doc. A/RES/48/134, 85<sup>th</sup> plenary meeting, 20 December 1993.

These important rights are protected by a number of international and regional human rights instruments. Article 19 of the Universal Declaration of Human Rights (UDHR) says, ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’ (UDHR 1948, Art.19). Article 19 of the International Convention on Civil and Political Rights as well as Article 9 of the African Charter on Human and People’s Rights (ACHPR) have similar provisions.

All international and regional human rights conventions ratified by a country are binding. Ethiopia is a party to the ICCPR and ACHPR. That means it has accepted all most all major conventions and treaties dealing with the rights to freedom of opinion and expression. Therefore, the country is legally obliged to respect them as a rule of customary international law (Article 19 Law program, 2016:6). Moreover, the constitution fully recognizes freedom of expression and access to information. Article 29 of the FDRE constitution explains freedom of expression in the following manner:

Everyone has the right to freedom of expression without any interference...This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice...prohibition of any form of censorship...These rights can be limited only through prescribed laws.

The constitution does not only guarantee freedom of expression, but also gives explicit recognition to the role international norms and conventions play at national level. Under these rights, both individuals and groups enjoy legal protection. These laws promote peoples’ rights to access information without obstruction. It encourages freedom to access information and disseminate. Information consumption and dissemination are what is important for HRDs.

#### **4.3.2 Freedom of Assembly, Association and Protest**

Another essential right that protects HRDs and allow them do their work is freedom of assembly, association and demonstration. They are guaranteed under numerous international and regional instruments. This right gives citizens including HRDs the right to stage peaceful demonstrations to protest acts of human rights violations and mal-administration. The constitution of FDRE under article 30(1) provides explicit recognition to freedom of peaceful assembly and demonstration. It states, 'Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed' (FDRE Constitution 1995, Art.30.1). Moreover, Article 20 of the UDHR, article 21 of the ICCPR and at regional level, article 11 of the ACHPR, to which Ethiopia is party, guarantees freedom of peaceful assembly.

#### **4.3.2 Freedom from arbitrary arrest and detention**

Ethiopia is a signatory of international conventions such as ICCPR and the Convention against Torture (CAT), which impose the legal and moral obligation on states for the better treatment and protection of individual's security and liberty. These conventions prohibit arbitrary arrest and detention and other inhuman treatment. For instance, the ICCPR guaranteed the right to liberty, security of person, and not to be subject to arbitrary arrest and detention (ICCPR 1966, Art.9.1). The Ethiopian constitution also prohibits any arbitrary arrest and detention under the article 17(2) noting, 'No person may be subjected to arbitrary arrest, and no person may be detained without charge or conviction against him'.

Despite the constitutional acknowledgement of the prohibition of arbitrary arrest and arrest without warrant, the FDRE Criminal Procedure Code of 1961 art.49-62 notifies the principles, procedures and limitation of arrest with or without warrant. For instance, article 49 of the Criminal Procedure Code stipulate that, 'no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court' (FDRE Criminal procedure 1961, Art.49). Furthermore, the arrested person have the rights to be informed promptly the reason for arrest, right to be brought before a court within 48 hours, access to lawyers, shall not be compelled to make confession and the right to be released on bail (FDRE Constitution 1995, Art.19).

All laws legally binding in Ethiopia unequivocally state that arbitrary arrest and detention are prohibited in the country. For instance, article 49 of the criminal procedure code stipulate that, ‘no person may be arrested unless a warrant is issued and no person may be detained in custody except on an order by the court’ (FDRE Criminal procedure, 1961:art.49).

#### **4.3.3 Right to life and death threats**

The FDRE Constitution recognize the rights to life, the Security of Person and Liberty under the article 14 delineating that, ‘Every person has the inviolable and inalienable right to life, the security of person and liberty’ (FDRE constitution 1995, art.14). The constitution provides that an individual has the right to protection against bodily harm.

### **4.4 Laws restricting HRDs’ rights**

In Ethiopia, a number of laws and proclamations have been criticized for inhibiting the work and safety of HRDs and activists. They do this in a manner that is contrary to the constitution and international laws. These legislations include Civil Society Proclamation, Telecom Fraud Offence Proclamation, Computer Crime Proclamation and Anti-Terrorism Proclamation.

#### **4.4.1 The Civil Society Proclamation**

On January 06, 2009, the Proclamation on Charities and Societies, commonly known as the *Civil Society Proclamation No.621/2009*, was ratified by the parliament of Ethiopia (CSP 2009, Art.1). The proclamation is necessitated to aid and facilitate the role of charities and societies in Ethiopia (ibid, Preamble paras.2). Civil society refers to domestic and international charity or not-for-profit organizations. They mostly work to help vulnerable groups and provide aid to benefit needy people. They were also active in areas of human rights advocacy and democracy. Ethiopian domestic charity organizations usually financially supported by development agencies, donors and international charity organizations (HRW, 2012:6).

However, the proclamation of 2009 puts restrictions on what international charity organization can do and areas they can participate. It prohibits the international charity from working on issues such as human and democratic rights, justice and law enforcement services. After this proclamation, international charities are not allowed to work on disability and children's rights, promotion of equality of nation and conflict resolution issues (CSP 2009, Art.14/2(j-n)). But, the proclamation allows domestic charities to engage in human rights and other similar activities as far as the financial support they get from outside does not exceed 10% of their budget (CSP 2009, Art. 2.2). Domestic charities are heavily depend on foreign assistance. The proclamation technically prohibited domestic charities from promoting human rights by ceiling foreign financial assistance very crucial for their operation and sustainability. The CSP has significantly hampered 'the ability of Ethiopian NGOs to engage with the UN human rights mechanisms and resulted in many HRDs fled the country when the law was passed' (HRW, 2013). This way, works of human rights NGOs have been systematically undermined and many charities are paralyzed or forced to shut down (*ibid*).

#### **4.4.2 The Anti-Terrorism Proclamation**

On 28 August 2009, new law on terrorism commonly known as Anti-Terrorism Proclamation (ATP) was entered in to force, raising widespread concerns about the international human rights and freedoms, politics, right advocacy, as well as issue of national security. The law is found essential to 'adequately fight terrorism and threat of terrorism by securing peace and freedom' (ATP 2009, Preamble paras.1).

The proclamation has been accused of repressing the bill of rights enshrined by national constitution and international instruments. For instance, in a contrary to the rights of arrested person guaranteed in the constitution; the proclamation gives unprecedented new power to the, police and security services to arrest any suspect deemed terrorist without court warrant (ATP 2009, Art.19.1). It allows a police officer to make sudden search at any time, and seizure relevant documents (*ibid*, Art.16), the 'police officer can also request the

court for sufficient period on arrested person to complete investigation for a minimum of 28 days to a period of four months' (ATP 2009, art. 20.2 and 3). It further incorporate the concept of confession admissibility, shift of burden, non-retroactivity, duty to give samples and information, admissibility of intelligence report and hearsay evidence mechanism that contradict constitution and international human rights instruments.

The proclamation provides a broad and ambiguous definition of terrorist activity that could be used to criminalize non-violent dissent and various other activities that should not be deemed as terrorism (HRW, 2009). As a result, according to the Oakland institute analysis 'since the proclamation was passed, hundreds of peoples including journalists, HRDs, indigenous leaders, bloggers, land rights activists, students and government opponents in exile and domestic opposition figures have been charged and prosecuted under these law' (Oakland 2016). Furthermore, the proclamation was strongly condemned for violating the rights to freedom of expression, assembly, association, privacy and fair trial rights of individuals and groups charged under the law for exercising the legitimate rights and works (ibid). Vast majority of people charged under the anti-terrorism law had not accessed to medical treatment and legal representative during the investigation but few are entitled at the trial period (HRW, 2016).

#### **4.4.3 Proclamation on Telecom Fraud**

Ethiopia has passed the Proclamation on Telecom Fraud Offences on July 11, 2012. The proclamation creates new telecom use offences and increase sentences for already existing offences (Article 19 law program, 2012:2). According to Article 19 (2012), the proclamation contains ambiguous language. It is meant to limit freedom of expression and information, argues Article 19 (2012). It is an extension of the Anti-terrorism law and it allows government officials to overreaching power to crackdown on political dissents (CIVICUS, 2012). In practice, authorities misinterpret the proclamation to criminalize HRDs and independent media using counter-terrorism law for independent telecom use (Freedom House 2012:193-94).

#### **4.4.4 Proclamation on Computer Crime**

Recently, the country adopted Proclamation on Computer Crime. It has come into effect on 7 June 2016. This proclamation, just like the previous proclamations, creates a number of new criminal offences. The most noticeable ones are ‘inciting fear’, ‘stalking’ and ‘making threat’ online. The government argues that this proclamation is important to deal with illegal access to computer, disseminating spam and to combat child pornography. For critics this proclamation is yet another tool designed to tramp on human rights and civil liberties. According to Article 19 (2016:5), it curbs rights to freedom of expression. It also limits access to online materials.

Under this law, the main security agency of the country (Information Network Security Agency) is authorized to carry out surveillance on citizens. Moreover, the law makes online sudden searches legal. It is very intrusive law (CPJ, 2012). Human rights activists usually are very active online. The internet is their contemporary media for fighting human rights abuses and expose whenever abuses happen. Unfortunately, this kind of restrictive law discourage HRDs from actively using the internet. This way the law systematically silence HRDs from exercising their legitimate rights. The proclamation has far-reaching negative effect on the work of free press, journalists, bloggers and human rights activists. The law effectively erodes every international human rights treaties and conventions the country ratified (Article 19, 2016:5).

## 4.5 Conclusion

Ethiopian domestic laws and international human rights conventions and treaties that the country signed provide basic foundation for the protection and promotion of the rights of HRDs. In theory it is clear that the country passed very progressive constitution as far as protecting and promoting the rights of HRDs is concerned. However, over the past few years the country has passed various forms of legislation which contradict the constitution and international conventions the country has agreed to. It is very evident that series of legislation such as The Civil Society Proclamation, Anti-Terrorism Proclamation, Proclamation on Telecom Fraud, and Proclamation on Computer Crime have potential to negatively affect the rights and works of HRDs despite guarantee the constitution and international treaties provide.



# **Chapter 5 Assessing and Addressing threats to HDR: Evidence and Actors**

## **5.1 Introduction**

This section will address the specific human rights violations and challenges HRDs face in relation to anti-terrorism law. As highlighted in the preceded chapter the proclamations restrict the enjoyment of human rights though not possible to discuss in-depth analysis of all infringed rights in the context of anti-terrorism proclamation. The following rights and challenges were selected to be discussed depending on their pros and cons to the rights and work of HRDs.

## **5.2 Holding Various Actors Responsible**

Not everyone, or every institution, is responsible – or accountable - for the violation of citizens' and especially HDRs' rights in Ethiopia. There are some specific actors responsible for violations. Even the role of all concerned actors is not the same. This chapter assesses main actors responsible for suppressing rights of HRDs, their roles and explains how violations take place. Different actors are involved in and responsible for violation of the rights of HRDs. Challenges related to respect of human rights come mostly from state actors and non-state actors. In this study, I attempt to analyse the role both actors play.

### **5.2.1. Non-State Actors**

Non-state actors are responsible for human rights violation under international law, particularly human rights defenders rights are challenged and non-state actors threaten their work. The following are the major non-state entities carried violations against HRDs in the country, though they do not play equally role.

#### **5.2.1.1 Armed groups**

Armed groups are one of the key non-state actors that instil threats to human security including that of HRDs (Bruderlein, 2000:6). Armed groups include a

variety of actors such as insurgent movement, rebels, paramilitaries, mercenaries and pro-government militia. Through violence and attacks they violate rights and freedoms of people. In most cases, these groups have two main objectives: political interest and motivation for financial gains (Schmitz, 2014:354).

The armed groups commit violations against defenders not only at the time of political unrest and armed conflict but also during peaceful time (informants 7 and 12). The risk HRDs face from these groups is significantly high during war and political unrest. The Ethiopian Human Rights Council (EHRCO) report shows that over many years separatist groups have committed human rights violations at various places in different times (EHRCO, 2007 and 2008). Similarly respondents also reported that, armed groups commit violations such as killings, hostage taking, death threat, harassment and intimidation. An independent newspaper journalist describes the role armed groups play in violating in this way;

On April 15, 2016 armed groups attacked Gambella region (southwest of Ethiopia) and killed more than 200 people and kidnapped children and women. Next day we published on our weekly newspaper about the attack. After publishing the news, we received threat from unknown people who warned us that we should stop writing about kidnapped women and children. We are targeted both by the government and by armed militias. It is too dangerous reporting about separatist groups in this country (informant 12: journalist).

Journalists and activists who denounce violations committed by the act of armed groups and pro-government militias counter measures, face risks of physical integrity, harassment and consequently, work in a state of fear (AI, 2015/6). The situation become worse during the time of operation against armed groups. Amnesty report reveals that HRDs are one of the victims of rights violation whenever conflict intensifies.

Some studies show that non-state actors not only violate human rights but also engage in violent crime like burning people houses. The non-state armed groups in Ethiopia ‘sparked out as rebels had significant role in violating inter-

national civil and political rights of civilians' (Arero, 2014:34). In April 2007, Kadiro Arero claim, attack by the separatist group called the Ogaden National Liberation Front (ONLF), home to ethnic Ethiopian Somalis, killed sixty-five Ethiopians. During this attack, nine Chinese oil workers at oilfield were killed and seven other Chinese workers were taken captives. Armed groups by stirring unrest and directly involving in human rights violation, they threaten the rights and work of HRDs.

### **5.2.1.2 Multinational and National Corporations**

Multinational and National Corporations (MNCs) are 'businesses established in more than one country with the capacity to coordinate their operations in various ways and level' (Bantekas and Oette 2013:661). Under domestic and international law states have responsibility to protect its own people from the act of violence whether it is from state or non-state actors. Recently several scholars argue that corporations should have international responsibility to ensure human rights and fundamental freedoms drawing on the phrase in the UDHR preamble sets out that, 'every organ of the society' shall work to secure the basic rights and freedoms.

Contrary to national and international legal obligations, 'Private corporations have allegedly been impeding the activities of defenders working'.<sup>2</sup> The MNCs are so big and in some cases even bigger than the state in terms of resource they manage. Multinational and national companies can violate human rights in various ways. People working for MNCs can be subjected to bad working condition and exploitation. The MNCs may commit human rights violations against HRDs, particularly the rights of those who work on land, labour rights and union, mining-exploitation of natural resources, and those who defend the rights of indigenous people and minority groups. The companies violate defenders right in threatening to intimidate, attacks, killings, and legal suit and even in providing false information about him to officials. They do so, when they deem individuals are campaigning against the negative impact

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<sup>2</sup> See UNGA A/65/223, 65<sup>th</sup> session, 4 August 2010, paras.9.

of their corporation (informants 8 and 13). Interview with one Horn of African affairs analyst and researcher in Amsterdam told the researcher,

In Ethiopia the situation of HRDs-including civil society, students, journalists and oppositions who work to defend the environment and land rights denouncing the land grab policy and organize demonstrations are highly targeted by colluded security guards of private companies and the local politicians...always they were harassed, attacked and killed in the day lights or accused of alleging 'anti-development' or 'terrorist' (informant 13: Analyst).

The MNCs both interfere with HRDs work but directly threat them. One land and rights activist has this to say,

I received anonymous text messages and calls which says 'you started to arrange for protest against the company to do a damage our reputation. You will be killed before the demonstration day!' But, I refused to be threatened (FGD, participant 2).

According to Human Rights Watch (2016) HRDs and activists face risk when they advocate for rights or organize demonstrations that MNCs do not approve. In April 2016 human rights activist engineer Badhasaa Galchuu was killed by gunmen during the protests in Guji Zone, Oromia (HRW, 16 June 2016). He was killed because he raised concerns about gold and tantalum mining in Shakiso. The killers took his life to protect the MNCs interest. They suffer much for the rights of others requesting for constitutional rights realization such as land conservation and fair distribution of resources.

### **5.2.2 The state and state agents**

The right to defend human rights is derived from the Universal Declarations of Human Rights, which laid down state obligations under international law to promote, respect and protect human rights. In fact, article 2 of the ICCPR (1969) clearly stipulates, 'states should respect and ensure the rights to all individuals within its territory and subject to its jurisdiction without any discriminations'. Moreover, article 10 of the Declaration on HRDs, declares, 'No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms'. As party to the convention, Ethiopia laws

guarantee and explicitly delineate, 'All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the fundamental rights and freedom' (FDRE constitution 1995, art 13).

The constitution evidently shows that rights and freedoms of HRDs and other citizens are explicitly addressed. Moreover, the constitution requires all government bodies and other state actors to respect, protect and promote all human rights and fundamental freedoms. State actors, according the constitution and international bill of rights, have the responsibility to respect and enforce the rights of HRDs.

Nevertheless, in practice in many countries state actors rarely fully respect and promote human rights in general and that of HRDs in particular (informant 13). They are primarily blamed for primarily human rights violation. The Special Rapporteur on the situation of HRDs, Ms. Margaret Sekagya said, 'The police and security forces are the most visible state agent that affect the work of human rights defenders in arresting and committing physical violence' (OHCHR 2004:16). According to the special reporter the police officers arbitrarily arrests rights defenders. They commit illegal search and surveillance. Physical violence against peaceful demonstrators is also reported.

HRDs are targeted by state authorities because of the nature of their work. State agents strongly challenge the work of HRDs wishing to protect their vested interests in socio-economic and political power (IACHR 2006:47 paras.170). The officials use different tactics to halt or discredit the activities of rights defenders through smear campaign, illegal and successive searches and seizure, legal apparatus and criminal proceedings (informants 8 and 13).

The major state agents that involved in affecting the rights and work of HRDs are officials from: police and security service, military, executive bodies and justice sector (*ibid*). These public officials have a different role in limiting the promotion of human rights activities undertaken by HRDs. One defence lawyer has this to say:

After I represented my clients who were accused of terrorism in the Federal High Court the intelligence groups and police officers came

and said to me, 'If you don't want to live you come for the next court appointment'. I kept representing my clients and later they arrested and detained me for more than one month. They brought terrorism related allegation against me (informant 2).

There are concerns about the impartiality of judges who are dealing with HRDs. Because there is direct and indirect interference from the state with justice system to punish HRDs for engaging in legitimate work or defending human rights. In a country where the state interferes with the system to silence HRDs and dissent it is difficult to deliver justice to everybody irrespective of his/her political affiliation. One FGD participant states,

There is a pressure and interest from the external/ third party in case of HRDs accusation. This could ultimately affect the judicial impartiality on judgment rendering either directly or indirectly (FGD, participant 1).

Informants reveal that, in Ethiopia, police and security officers abuse the rights of individuals and groups using the power designated to them under the anti-terrorism law, which permits arrest without warrant. Besides, this law gives authorities power to decide whether a person is a terrorist or having link with terrorist groups. This of course leads to misuse and misinterpretation of the law.

Regarding to power abuse allegation and deliberate human rights violations, the government's position differs from what other say. A member of staff of one Regional Justice Bureau informs then researcher in this way. He says,

Our bureau provides training and other technical assistance to law enforcement bodies, in particular to public prosecutors, private lawyers and police officers to ensure the prevalence of rule of law in the country. We also training programs for all civil servants and public at all levels. Government officials especially police forces and prosecutors have particular responsibility to protect violation of the constitution. For instance, we have special command post team on counterterrorism measurers from all three justice sectors: court (judges), justice office

(prosecutors) and police, which trained very well and committed to the principles of rule of law (informant 9: Official).

## 5.3 Violations of Basic Freedoms

### 5.3.1 Violation of Freedom of expression

As discussed above Ethiopia recognizes, through both domestic laws and international treaties, the importance of freedom of expression and opinion. Theoretically, constitutional law of the country clearly guarantees freedom of expression (informant 2). However, despite strong constitutional guarantee, these rights are not respected and signed treaties are not honoured. They are routinely violated for various reasons (informants 1, 2, 8 and 12). Proclamations such as anti-terrorism law, civil society proclamation and others have eroded these rights enshrined in the constitution. This often times done under the pretext of national security. For instance, the Anti-terrorism proclamation criminalizes some activities that HRDs might engage in. This is the way it defines 'encouragement of terrorism' under article 6:

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.

This provision has several ambiguous and broad terminologies. For example what offences 'direct or indirect encouragement or other inducement' carries is not specified. The term encouragement is not defined. What has been stated as encouragement of terrorism does not 'make any distinction between acts of peaceful criticism and incitement to violence and/or violent opposition' (Tura, 2015:4). This kind of vague language leads to subjective or flawed interpretations that is based on perception. This provision criminalizes acts that do not involve direct incitement of violence (informants 2, 4 and 13). This lack of clarity might create a situation where HRDs can be criminalized for no crime or abstain from actively carrying out their duty due to fear of a repercussion.

Trying to take citizens' rights of expression and opinion under the pretext of national security has become a point of concern for many HRDs or organizations. The 'Johannesburg Principles' on the rights of expression and national security much more disagree with what is stated in Ethiopia's anti-terrorism proclamation. According to the Johannesburg Principles- restricting the rights to freedom of expression under the pretext of national security may only be allowed only if there is imminent danger of violence.<sup>3</sup> The International Covenant on Civil and Political Rights also permits restrictions under Article 19(3), to serve a genuine government interest and be narrowly vernacularized to address that interest. It further clarifies that non-violent expression and advocacy made against the government policy and program shall not be considered as a threat to national security or subject to any limitation. In an interview with one Ethiopian Broadcast Corporation (EBC) staff member, they said that:

The anti-terrorism proclamation was enacted to ensure the security of the people...it would never violate the rights of any groups who work legitimately either journalist or any rights activists but many people blame it to achieve their personal target, particularly private medias report is not balanced...they circulate false rumours (Informant 3:journalist).

One way through which Ethiopian anti-terrorism proclamation adversely affects critical journalists and HRDs or their work is by forcing them into self-censorship (informants 4 and 12). Fearing the consequence of the law, publishers and journalists in the country undergo serious measures of self-censorship. Even journals and reporters of state owned or state affiliated media are not immune to self-censorship (HRW, 2015:43). A radio journalist from Fana Broadcast Corporation (FBC), state affiliated, has told the researcher that,

We are told and forced to edit stories critical of the government. Further news are censored by the chief of the newsroom before airing...censorship is a daily activity in this office (Informant 4: journalist).

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<sup>3</sup> U.N. Doc. E/CN.4/1996/39, adopted on 1 October 1995, principle no.6

This suggests that they were required to make a considerable self-censorship by muting government related critics. Human Rights Watch claims that, Ethiopian ‘journalists were targeted and forced to practice self-censorship fearing the counter-terrorism law while journalism is not possible in the condition of fear’ (HRW 2015). Activists and journalists who write critical articles face regular and intense pressure from the police and security officials for questioning the government approach to human rights handling, development policy and corruption (informants 1, 8, 12 and 13). For instance, the *Tobia* newspaper and magazine deputy editor-in-chief Mr. Atnafu Alemayehu was arrested and beaten for inquiring residents compliant about the demolition of houses at Kara Kore, Oromia region. Human Rights Watch reports that,

Journalists and HRDs were intimidated, arrested and detained without charge for long time due for commenting and publishing critical articles about groups proscribed by the government as terrorist organization such as Oromo Liberation Front (OLF), Ogden National Liberation Front (ONLF) and Ginbot7 without an intention to encourage their activities and political agendas (HRW 2015:43).

This view is that HRDs in Ethiopia are systematically deprived of freedom of expression. They are also seen as shunned from exercising their legitimate rights. They are discouraged from wholeheartedly engaging in their primary activities- defending human rights.

### **5.3.2 Suppression of Freedom of Assembly, Association and Protest**

Different groups can organize assemblies for different purposes. Civil society organizations, oppositions groups, individuals and individual HRD can demonstrate against issues such as human rights violations, land grabbing, marginalization etc. In practice, contrary to the provision of the constitution and international instruments, the state infringes HRDs and other people’s rights. Student of Addis Ababa University has informed the researcher,

Rights to freedom of assembly and demonstration are the most violated rights. They are seriously subjected to restriction. As you see due to ongoing protest against land grabbing, hundreds were killed (most of them were students) and thousands were arrested. On March 08, 2016,

we arranged to demonstrate in front of the U.S Embassy in Addis Ababa but before leaving the university campus federal police came into the university compound and started beating, attacking and harassing us for planning to demonstrate in front of the embassy. Those students, who managed to stage demonstration, all arrested and ended up in jail. Finally, 20 students were charged with terrorism while others were released three months later (informant 5: AAU student).

The government of Ethiopia has been criticized for its handling of demonstrations. It is viewed as rarely allowing meaningful demonstration or protest to take place; unless they are organized by the government or pro government bodies (informant 1, 7 and 8). The US Department of State (2015:16) ascertains that the Ethiopian Authority always disregarded freedom of assembly and demonstration. HRW (2016) reports that: the government of Ethiopia cracked down violently on peaceful protest that have swept through Oromia region that voiced concern for the 'Integrated Development Master Plan'. Since November 2015, HRW claims, security forces are reported to have killed over 400 people and arrested thousands for protesting the government's decision to expand Addis Ababa into Oromia region. Under such circumstances, obviously, HRDs, journalists, students, teachers, and activists are the primary target and they are the ones who may a heavy price. To make things worse, arrested demonstrators can be charged under the Anti-Terrorism Proclamation.

Not only the government officials think demonstrations in Ethiopia are violent and that protestors and organisers deserve to be dealt with harshly. A public prosecutor also told the researcher,

In most cases the protesters are emotional and violent. Even if there is a problem of maladministration and corruption, they should have brought their case to a concerned body rather than damaging government offices, infrastructure, overrunning police station and free criminal detainees. This is really not non-violent protest in any standards (Informant 6: Prosecutor).

Whether it is peaceful or not, the government often seems to obstruct any attempt to stage demonstrations. From 2012-2013, for instance, the Muslim community of Ethiopia staged a nationwide peaceful protest calling for an end to the government's intervention in their internal and religious affairs. The Muslim community opposed the government's imposition of Al-Ahbash's Islamic sect teachings on the majority of Sunni Muslims and intervention in the Supreme Council's election (AI, 2013). The demonstration that took place for almost two years was largely peaceful. However, there were allegations of crackdown and excessive use of force by security forces on peaceful protesters. A person who took part in those demonstrations says,

The security forces frequently opened fire and used live ammunitions to disperse Muslim demonstrators. This resulted in many causalities: deaths and injuries. Thousands of protestors were arrested including leaders and activists of the Muslim community (informant 7: Activist).

Freedom of association is one of the freedoms severely curtailed HRDs rights and workers. In the country HRDs rights to make associations of their willing is systematically undermined. One HRD has informed the researcher about his concern to establish an association to advance protection of human rights and freedoms. He further explains,

It is a big challenge to work on human rights and related issue independently either as an individual HRDs or in collective dimension (NGOs) because of restricting legislation and administrative control (informant 8: HRD).

There is high degree of suspicion about the work of HRDs. That is why an effort made by HRDs to form an association usually faces tough questions from the government. Regarding HRDs motive to form an association, respondent from justice offices has this to say;

We have seen many individuals and association that vowed to work for the interest of the public, particularly on the issue of human rights, justice, development, and vulnerable groups. But, the reality on the ground is different. Their promise and purpose only works in order to register and get licence. After that they will engage on their hidden ob-

jective such as: intelligence, troublemaking and collaboration with terrorist groups to destabilize the country. Hence, controlling or bringing the law violators to justice in order to ensure the rule of law and constitution is our office's mission (informant 9: Official).

Those massive and widespread human rights violations are not hidden from domestic and international HRDs. The government of Ethiopia repeatedly uses excessive force, arbitrarily detention and beatings (HRW, 2014). Human Rights Watch report shows that in October 2012 arrested prominent Muslim Community leaders and rights activists, 'those who represent grievances of their community, were charged and sentenced from seven to twenty two years imprisonment under anti-terrorism law' (HRW, 2014). Similarly, HRW report shows that in June 2012 leaders, members and supporters of the Semayawi (Blue) party were arrested and harassed in Addis Ababa for participating in a peaceful demonstration.

In 2012 the UN Special Reporter on the freedom of peaceful assembly and association report stated, the enforcement of the CSO law provisions has a 'devastating impact on individuals' ability to form and operate associations effectively, particularly regarding the human rights advocacy'.

In 2014 the Ethiopian Journalists Forum (EJF) attempted to form an association with the aim of promoting, and defending the rights of journalists and freedom of expression, but denied permission for registration (HRW, 2016). This independent and civil society association was blamed on the state media as illegal and later the executive committee and members were accused of planning to commit terrorist act (ibid). Similarly, the Mecha Tulema Association (MTA), a prominent NGO founded 40 years ago for the promotion and protection of Oromo's rights is forced to cease after organizing demonstration in Addis Ababa. The US State Department, on its annual report underlined, the Ethiopian authority limit and not respecting the rights of assembly, association and protest (2015:16-17).

## **5.4 Threats and challenges HRDs face**

### **5.4.1 Arbitrary arrest and detention**

Since the counter-terrorism proclamation allows the police and security forces to arrest, detain and take similar activities without court warrant, arrested people can be held without any charge from maximum of four months (ATP 2009, Art. 20.3). Many research participants argue this law threatens people's rights and liberty. Moreover, it contradicts the constitution and international conventions the country signed.

Studies reveal that there are inadequacies in enforcement of various provisions that prohibit arbitrary arrest and detention. In Ethiopia, in clear violation of human rights provisions citizens, mostly HRDs, are routinely subjected to arbitrary arrest and detention (informants 7, 8, 10 and 12). The 'state's security forces have been arbitrarily arrested and detained tens of thousands of protesters throughout Oromia and Amhara region including numerous human rights activists, students, journalists, farmers, civil society, OFC opposition members and intellectuals since the protests began in mid-November' (HRW, 2016). The security forces have frequently carried out mass arrests, without regard to any unlawful action by individuals. A HRD physician who have been arbitrarily arrested and released from prison has this to say,

In November 2015...I was giving [medical] treatment to two students hit by live bullets during a protest. Hours later three members of the security forces came into my centre and asked me why I was treating 'terrorists'? They said that I was also one of them and started harassing injured students in front of me. After one week police arrested me without a warrant. I was detained. When I was in the detention centre there was no investigation or questioning. After one month, I was released on bail. The conditions in the detention centre were very poor. I was frequently mistreated by those in authority; including with beatings and torture (informant 10: Physician).

Several international and national human rights group condemned the act of arbitrary arrest and detention against rights defenders and other individuals in the country. Nonetheless, data analysis and reports show that arbitrary arrest and detention is common. On 15 March 2015, Ethiopia arrested Mr. Omot Agwa Okwoy, Ashinie Astin, and Jamal Oumar Hojele (all food, land, and HRDs) were arrested while traveling to attend food security and agricultural

workshop in Nairobi (Oakland, 15 March 2016). These HRDs were held in detention for months without any charge. Later on, the government brought ‘terrorism’ charge against all (Oakland, 15 March 2016).

On 22 January 2016, opposition leader and human rights campaigner Bekele Gerba and other 21 people were arrested without court warrant. Likewise, security forces arbitrarily arrested Yonathan Tesfaye (HRD), Fikadu Mirkana (state TV reporter) and Getachew Shiferaw (Editor-in-Chief, Neger Ethiopia online newspaper). Finally, all are charged under anti-terrorism law (Front Line, 13 June 2016). Similarly, ‘four members of the Human Rights Council (HRCO), Ethiopia’s most prominent human rights organizations were arrested and detained, for monitoring and documentation of the violence, since August 2016 in the Oromia and Amhara regions’ (HRW, 2016). Most of the time detainees are held incommunicado for months (Front Line, 13 June 2016; US State Department, 2016).

People under arrest usually do not know why they are arrested (informants 7 and 10). Another way through which detainees’ rights are violated by keeping them for long period of time and denying family visit (US State Department, 2016:8). According to the State Department’s report, arrested people are kept both in formal and informal centres. Charges are rarely brought against suspected political detainees.

The situation of human rights has been deteriorating from time to time in the country (informants 2, 7, 8 and 13). Various proclamations have even severed already worsening condition of human rights defenders (*ibid*). Following massive protests, arbitrary arrests and detentions have been escalated. Different informants have informed the investigator that human rights defenders, journalists, members of civil society and oppositions are targeted and punished with terrorism related charges simply for doing their job that is protected under the constitution.

Many of those HRDs, journalists and oppositions leaders were arrested for condemning government excessive use of forces against peaceful protesters. Some were arrested for posting on Facebook; and charged with inciting terrorism and masterminding the ongoing protest in Ethiopia (Front Line, 13

June 2016). Government always rejects these claims. It says these accusations are baseless and utter fabrication to tarnish the image of the country (AI 2016). It always refers to legal guarantees the constitution provides HRDs.

#### **5.4.2 Death Threats**

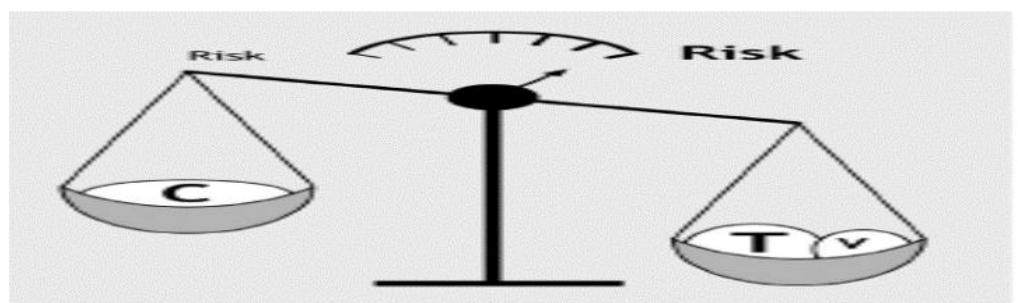
Death threats are one of the challenges that designed to intimidate HRDs to prevent from performing human rights activities (Soohoo and Hortsch 2010:994). In Ethiopia HRDs, despite having constitutional protection against death threat, receive death threats. According to Front Line Defenders, death threats against defenders are mostly carried out by the state actors, particularly police and security agents, though non-state actors are also involved (Front Line, 2015:3). Individuals receive death threats mostly from anonymously through phone calls, text message and email. By hiding their identity, agents harass HRDs and dissents. Sometimes threats come directly from security agents (informant 12). The government using various tactics, according to HRW, tries to intimidate and silence HRDs and critics. This pose serious challenge to what HRDs do and to their personal security. The research participant reported that through constant intimidation and harassment, the government force HRDs and activists to flee the country. Most of HRDs end up in exile.

One journalist who works for *Fact Magazine* told Human Rights Watch, that: 'Once he published a critical article about the government's development policy and its approach to foreign NGOs. Later he received warning calls from security officials: 'stop doing this action, you are an agent of a foreign enemy. Since you refused to stop next time you will see the result'. We will not take you to prison but you will see' (HRW 2015:15). What an informant told the researcher corroborates what HRW report shows. The informant says,

As a local rights defender once you received death threats and still continue working on human rights, then you are considered as the mouthpiece of terrorist organization. Security agents continuously intimidate, harass and threaten you with death for being activist (informant 8: HRD).

He told the researcher that he saw people were being killed for denouncing flagrant human rights violations and participating in anti-government demonstrations. Human rights defenders, according to him, are regularly kidnapped and sometimes found dead or disappear without any trace.

**Figure 1: A risk scale or risk-meter**



Source: Protection International.org (2012:36)

In relation to HRDs level of risk, this figure indicates how defenders threats and vulnerability on one box of the plates, and another box of the plate with their capacity shows the increased risk of HRDs face. This implies that the more (big) threats and vulnerability defenders have, the more risk they face. Another research participant from anti-corruption commission states,

When our experts started to register individual's property in order to combat corruption according to the applicable law; I started to receive emails and calls such as: "you and your experts' are doing evil things. I suggest you to stop on time if not your time is up (informant 11).

The government does not tolerate dissent and individuals or groups defending human rights (informant 7, 8 and 12). Those who get death threat usually for minors issues such as criticizing the way the government handles human rights. Supressing HRDs and stifling them is in direct contradiction with the country's constitution and international human rights treaties it signed.

### **5.4.3 Criminalizing of HRDs**

Criminalization is defined as the use of ‘restrictive legal frameworks, strategies and political and legal actions with the intention of treating the promotion and protection of human rights work as illegitimate and illegal’ (Protection International, 2015:4 Citing Echeverría, 2012). Another method of repression that governments use to HRDs and punish them is by using restrictive legislation that criminalizes their activities. The UN Special Rapporteur on the situation of HRDs has noted that, ‘states are resorting to oppressive law to justify rights violations: defenders are arbitrarily arrested and prosecute on false charges where as many others are detained without charge for prolonged time’ (Peace Bridge International, 2013:2). State and non-state actors use sophisticated approaches to silence HRDs. One of the most widely applied tactic is criminalizing legitimate work and rights of HRDs (PBI 2013).

Over years, Ethiopia has taken wrong direction by criminalizing what many countries and international organization consider as legitimate activities of HRDs (informants 2, 8 and 13). Several prominent international human rights experts and groups urged Ethiopia to stop using ‘anti-terrorism laws and judicial processes that fail to meet international human rights standards to harass and stifle dissent, targeting activists, human rights defenders, oppositions and journalists’ (ACHPR 2012, AI 2016, Front Line 2016, HRW 2016, OHCHR, 2016). The anti-terrorism law has repeatedly criticized for permitting four months of pre-trial detention, search and arrest without warrant. Above all, for its’ broad and ambiguous definition. In doing so, in 2016 more than a dozen of International Civil Society Institutions write ‘joint letter to UN Human Rights Council for escalating human rights crisis in the Ethiopia’ (Article 19 2016, HRW 2016).

According to Human Rights Watch (2015) report, ‘Ethiopian government has charged at least 38 journalists with various crime under anti-terrorism proclamation since the 2010 elections as well as different rights defenders particularly in relation to women and land rights campaigners.’ Moreover, CPJ’s (2015) annual report ranked Ethiopia the, ‘third-worst jailer of journalists in Africa, and list of top 10 most censored country in the world’. Numerous

HRDs, land rights activists and bloggers have been frequently prosecuted under the anti-terrorism proclamation. According to Oakland Institute (2015) in September 2011, Ethiopia arrested journalist and activist Eskinder Nega. He was arrested for writing article about Arab Spring and suggesting that Ethiopians also have the right to use non-violent peaceful struggle to bring changes people need. He also criticized the country's anti-terrorism law. Eskinder Nega was sentenced to 18 years in jail under the anti-terrorism law he criticized (Oakland 2015:7).

The government has literally criminalized blogging. It is difficult to post an article which question whatever the government does (informant 12). In April 2014, the Zone 9 (six bloggers) bloggers were arrested and charged with terrorism. They have been accused of having connection with outlawed groups and alleged financial support they got from international community (CPJ, 2015). These bloggers were acquitted after languishing in a prison for 18 months for crime they have not committed. Likewise, posting something on Facebook has been criminalized. In December 2015, Yonathan Taressa was arrested and charged for posting something what the government called 'incitement, conspiracy and attempt' to commit a terrorist act. In fact what Taressa posted was all about criticizing the government for failing to listen to people's grievances and rather resorting to deadly tactics to silence the protesters (AI, 2016). One Attorney –at-law told the research that:

I have attended a court-trial several times to follow the cases at which HRDs and rights activists were accused of terrorism or anti-development crime. In most cases, the charges against them is false and baseless persecution with unreliable evidence. I think it was designed and fabricated for the purpose of discrediting or impeding their activities (informant 2).

It has become very evident that the anti-terrorism proclamation entails provisions that limit the rights and legitimate work of HRDs and criminalize their acts. Under these proclamation activists and defenders were arrested, detained and prosecuted. The law permits arrest without warrant and prolonged detention, which has obviously affected the rights of HRDs. Unfortunately Ethiopia do not have effective administrative and legal measures in place to

protect HRDs. The justice system of the country discriminates against HRDs (OHCHR 2012). The criminalization of legitimate and international accepted activities is testimony to this.

# Chapter 6 Conclusions and Prospects

## 6.1 Conclusions

Since September 11, 2001 terrorism threat has got increased attention. Countries have been figuring out how to deal with it. Perhaps, the biggest dilemma countries are facing is how to deal with the threat without suppressing human rights and liberties. To address terrorism related challenges many states, including Ethiopia, put anti-terrorism laws in place. Nevertheless, these anti-terrorism measures are having far-reaching effects. Sometimes, they are misused to punish HRDs and political dissidents. This thesis has explored how the anti-terrorism proclamation affected HRDs in Ethiopia.

The significance of investigating the impact the ATP has on HRDs has become more evident as crackdowns on HRDs rights abuses became intensified. The nexus between national security and the protection of human rights has sparked intense debate. This study analyzes the impact anti-terrorism proclamations are having on human rights in general and the rights of HRDs in particular. The study relied on qualitative research approach and conducted from the perspective of human rights and legal framework. The assessment of legal frameworks has been done to understand how the state infringes or respects the rights and work of HRDs that are enshrined in the constitution and international law.

The findings show that the 1995 constitution is a general legal and political document that intended to protect and promote human rights. However, this human rights friendly document is not properly enforced and rights are violated including the rights and safety of HRDs. The study reveals that the ATP has eroded universal human rights and fundamental freedoms. Furthermore, the country lacks independent National Human Rights Institutions and specific domestic laws that explicitly guarantee the rights of HRDs reaffirmed in the UN Declaration on HRDs. The ATP, according to different literature and people interviewed, have very little effect on curbing terrorism rather the government has been using to silence dissents and civil society organizations.

The global emphasis on counterterrorism have exacerbated suppression of HRDs rights in several countries. In Ethiopia, almost half a dozen secondary laws enacted since 2005, as part of counterterrorism measures, have led to further deterioration of HRDs rights in the country. The proclamation has ambiguous terms and definitions, and as a result open for misinterpretation. In fact, under such circumstances HRDs are subjected to imprisonment for violating ambiguously defined provisions. Most often HRDs are afraid to freely speak and write; as a result they recourse to self-censorship to avoid repercussion. In general the ATP has been criticized for restricting rights and impairing activities of HRDs. It also give excessive and unprecedeted power to the police, and the security and intelligence agencies. Findings reveal, ATP is used as legal coverage to silence and criminalize dissents in the name of public security.

The findings indicate that the proclamation has placed restrictions on essential rights for the work of HRDs such as freedom of expression, assembly, demonstration and privacy rights have been restricted. Rights defenders lost the right to exercise these rights and freedoms because of fear of legislative and administrative consequences. The law has made unwarranted arrest and detention, which has a damaging effect on the work of HRDs. Consequently, extensive use of restrictive legislations, coupled with lack of capable institutions to enforce the rights the constitution provides, have significant adverse effect on rights of HRDs. The research participants argued that ATP has become incompatible with the constitution and international standards in restricting human rights advocacy.

Findings demonstrate that HRDs face numerous challenges in Ethiopia and government criminalizes legitimate duties and activities of HRDs. They face death threats for doing their job. The study materials and key informants have confirmed that in Ethiopia defenders work in unsafe environment with fear and high vulnerability. Those who speak loudly for the full realization of human rights are threatened with jail terms that range from 10 to 20 years; just for mere criticism.

There are different actors responsible for the violations and suppression of HRDs rights. The study has identified these major perpetrators: the state authorities, non-state actors and multi-national companies largely responsible for

challenges HRDs have been facing. Defenders were targeted by these actors for exposing injustices and human rights violations. These actors use different tactics to undermine HRDs rights and work.

Human rights in general and that of HRDs in particular has deteriorated from time to time. According to rights groups Ethiopia's situation of HRDs goes from bad to worse (OMCT and FIDH, 2006:1), similar with the common idiom of 'jumping from the frying pan into the fire'. Anti-terrorism proclamation and other similar repressive laws have been blamed for this dismal record of HRDs rights in the country. Therefore, it can be concluded that there is need to strike a right balance between guaranteeing security of the country and protecting the rights and liberty of HRDs. Commitment to international human rights laws can be a genuine strategy to fight terrorism while protecting and promoting the rights of HRDs.

## 6.2 Prospects

The anti-terrorism law is imperative to address challenges posed by the terrorists. Nevertheless, the law shall not be used to violate citizens' rights and freedoms. The law should be used only for the purpose it is intended for. Generally, the following recommendations are pertinent to this study:

- The country has to demonstrate its genuine commitment to protect and promote the rights of HRDs
- The state has to explicitly legitimize the rights and work of HRDs to ensure sustainable development.
- The state has to make sure that the law is used to punish terrorists not HRDs and political dissents
- Anti-terrorism law lacks clear and unambiguous definition. Lack of clarity and ambiguity left the room for misinterpretation. This requires revision to guarantee clear and concise definition of legal provisions
- The government has to put strong measures in place to make sure that the rule of law is observed.

- The government has to establish autonomous national human rights institutions and develop specific laws that govern and give full force to the international Declaration on HRDs at the national level.

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## APPENDCIES

### Appendix 1 Interview Guides

#### In- depth Interview with all key informants

Site name: \_\_\_\_\_ Date of interview: \_\_\_\_\_ Place: \_\_\_\_\_

Gender \_\_\_\_\_ Age \_\_\_\_\_ Educational level: \_\_\_\_\_ Time: \_\_\_\_\_

- 1) Can you tell me about the protection of human rights in Ethiopia?
- 2) To what extent do you think the rights of HRDs are protected?
- 3) Do you think the rights and work of HRDs are sufficiently guaranteed by domestic legal system? How? Which law?
- 4) What do you think about the ATP of Ethiopia?
- 5) Do you think the enactment of ATP has an impact on the promotion and protection of human rights? How? Why?
- 6) What is your impression about the situation of HRDs since the adoption of the ATP?
- 7) To what extent do you think the ATP affect the rights of HRDs working in Ethiopia?
- 8) Can you tell me the specific provisions that limit HRDs from human rights activity? How?
- 9) What is the motive and scope of the counterterrorism legislation?
- 10) How do you see the issue or question of national security in Ethiopia?
- 11) How the protection of human rights is balanced with the need for national security?
- 12) How the government respond to those who claim the proclamation is politically motivated to silence human rights movement and criticism against the government?
- 13) What are the specific challenges that HRDs face as a result of their work under the law?
- 14) Who are the main actors that involved in promoting or eroding the rights of HRDs?
- 15) How do you mention the role of those actors?

#### Interview Guide 2 with media and activists

- 1) What is your idea about anti-terrorism proclamation? How it works?
- 2) How do you see the anti-terrorism proclamation from the perspectives of rights and media?
- 3) What is the link between media work and human rights activism? Please elaborate more?
- 4) Can you tell me the working environment of journalists after the enactment of the law?
- 5) To what extant freedom of expression, opinion and information are exercised under the law?

- 6) Do you think that the ATP has the impact on the work of media and right advocacy? How?
- 7) Have you experienced to any censorship or abstain from reporting the event considering the law?
- 8) Which area of event or subject is become phobia and sensitive to the proclamation? Why?
- 9) Have you experienced to imprisonment? If yes, why?
- 10) Can you tell me if in case some journalists or human rights campaigners are arrested, accused or serving the sentences in jail because of the law? Explain the case?

## Appendix 2: Background of Participants

**Table 1: Background of Research Participants**

No	Name of Respondent	sex	Edu-catio-nal level	Name of institution/office	Position	Date of interview	Time of inter-view	Place of interview
1.	Informant 1	M	LLB	Pvt Office	Human right Lawyer	18/07/16	14:12	His Office, Shashamane
2.	Informant 2	M	LLM	Pvt Office	Lawyer/Attorney	10/08/16	11:07	His Office, Mexico, AA
3.	Informant 3	M	BA	EBC-Office	Journalism	13/08/16	17:55	Cafeteria, Legahar, AA
4.	Informant 4	F	BA	FBC-Office	Journalism	20/07/16	10:35	Office, Shashamane
5.	Informant 5	M	-	AAU	Student	15/08/16	15:23	Cafeteria, 6kilo, AA
6.	Informant 6	F	LLB	Justice Of-fice	Public Prose-cutor	19/07/16	16:40	Her Office, Shashamane

7.	Informant 7	M	-	Pvt	Activist	12/08/16	10:05	Cafeteria, Kolfe, AA
8.	Informant 8	M	BA	Pvt	HRD	29/07/16	11:20	His Office, Shashamane
9.	Informant 9	M	LLB	Oromia Justice office	Deputy chair-person	9/08/16	16:38	His Office, Kirkos, AA
10.	Informant 10	M	BSC	Pvt	Physician	25/07/16	15:07	His Office, Shashamane
11.	Informant 11	M	LLB	Anti-corruption commission	Coordinator	25/07/16	17:20	His Office, Shashamane
12.	Informant 12	M	BA	Pvt	Journalism	11/08/16	9:55	His Office, Arada, AA
13.	Informant 13	M	PhD	United Academy	Researcher	15/09/16	15:35	Cafeteria, Guovenheld, Amsterdam

## FGD Participants

**Table 2: Background of FGD Participant**

No	Name of participant	Sex	Educa-tional level	Institu-tion/O ffice	Posi-tion	Date of discus-sion	Time	Place	No.of par-ipant
1	Participant 1	F	LLB	Court	Judge	26/07/16	15:45	Court Hall, Shashamane	6
2	Participant 2	M	BA	Pvt	HRD	26/07/16	15:45	Court Hall, Shashamane	6

### **Appendix 3: ACHPR 218 resolution on the human rights situation in Ethiopia**

**218: Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia**  
***The African Commission on Human and Peoples' Rights (the African Commission), meeting at its 51<sup>st</sup> ordinary Session held in Banjul, The Gambia from 18 April to 2 May 2012***

**Recalling** its mandate to promote and protect human and peoples' rights in Africa pursuant to the African Charter on Human and Peoples' Rights (the African Charter);

**Considering** Article 1 of the African Charter which calls on Member States to adopt legislative or other measures to give effect to the rights and freedoms enshrined therein;

**Recalling** the obligations of States Parties to the African Charter under Articles 5, 6, 7, and 9 of the African Charter as elaborated by the African Commission's *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines); Declaration of Principles on Freedom of Expression in Africa; and Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa;*

**Deeply Concerned** at the frequent allegations of the use of torture in pre-trial detention in Ethiopia, particularly in the Federal Police Crime Investigation and Forensic Department of Maikelawi in Addis Ababa, where political prisoners are detained, interrogated and frequently subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment;

**Further Concerned** with the difficulties encountered by independent monitors, legal representatives and family members to visit prisoners and to access places of detention in Ethiopia, which increases the risk of being subjected to torture and other forms of ill-treatment;

**Deeply concerned** at the reported use of unofficial and ungazetted places of detention in Ethiopia, including military camps and private buildings, wherein torture is reported to take place, and the unofficial nature of which also increases the risk that detainees will be subjected to torture or other forms of ill-treatment;

**Gravely alarmed** by the arrests and prosecutions of journalists and political opposition members, charged with terrorism and other offences including treason, for exercising their peaceful and legitimate rights to freedom of expression and freedom of association;

**Condemning** the excessive restrictions placed on human rights work by the Charities and Societies Proclamation, denying human rights organizations access to essential funding, endowing the Charities and Societies Agency with excessive powers of interference in human rights organizations, further endangering victims of human rights violations by contravening principles of confidentiality;

**CALLS ON** the Government of Ethiopia to:

- i. Allow access to prisons and other places of detention to independent monitors, and grant all detainees and prisoners access to their families and legal counsel, and provide any medical treatment they may require, in accordance with Article 16 of the Charter;
- ii. Immediately move any detainees currently held in unofficial places of detention to a recognized detention center; and charge all of them with a recognizable criminal offence, and try them in a timely manner in trials which meet international standards of fair trial, or immediately and unconditionally release them;
- iii. Adopt strategies with a view to providing continuous training for the judiciary and prison administration on regional and international instruments for the promotion and protection of human rights, with particular focus on the rights to fair trial and the human rights of detainees, including the Robben Island Guidelines;
- iv. Amend the Charities and Civil Societies Proclamation in accordance with the UN Declaration on Human Rights Defenders;

Remove restrictions on freedom of expression imposed on the Mass Media by the Access to Information Proclamation (2008) and the Anti-terrorism Proclamation (2009) that do not conform to rights of freedom of expression provided in international human rights law.

Done in Banjul, The Gambia, 2 May 2012

#### **Appendix 4: Relevant provisions for HRDs from Ethiopia's Constitution**

## **CHAPTER THREE**

### **FUNDAMENTAL RIGHTS AND FREEDOMS**

#### **Article 13**

##### **Scope of Application and Interpretation**

1. All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter.
2. The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.

#### **PART ONE**

#### **HUMAN RIGHTS**

#### **Article 14**

##### **Rights to life, the Security of Person and Liberty**

Every person has the inviolable and inalienable right to life the security of person and liberty.

#### **Article 15**

##### **Right to Life**

Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by law.

#### **Article 16**

##### **The Right of the Security of Person**

Every one has the right to protection against bodily harm.

#### **Article 17**

##### **Right to Liberty**

1. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.
2. No person may be subjected to arbitrary arrest, and no person may be detained without a charge or conviction against him.

#### **Article 18**

##### **Prohibition against Inhuman Treatment**

1. Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.
2. No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.
3. No one shall be required to perform forced or compulsory labour.
4. For the purpose of sub-Article 3 of this Article the phrase "forced or compulsory labour" shall not include:
  - a. Any work or service normally required of a person who is under detention in consequence of a lawful order, or of a person during conditional release from such detention;
  - b. In the case of conscientious objectors, any service exacted in lieu of compulsory military service;
  - c. Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
  - d. Any economic and social development activity voluntarily performed by a community within its locality.

#### **Article 19**

##### **Right of Persons Arrested**

1. Persons arrested have the right to be informed promptly, in a language they understand, of the reasons for their arrest and of any charge against them.
2. Persons arrested have the right to remain silent. Upon arrest, they have the right to be informed promptly, in a language they understand, that any statement they make may be used as evidence against them in court.
3. 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.
4. All persons have an inalienable right to petition the court to order their physical release where the arresting police officer or the law enforcer fails to bring them before a court within the prescribed time and to provide reasons for their arrest. 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

## **Article 30**

### **The Right of Assembly, Demonstration and Petition**

1. Everyone has the right to assemble and to demonstrate together with others peaceably and unarmed, and to petition. Appropriate regulations may be made in the interest of public convenience relating to the location of open-air meetings and the route of movement of demonstrators or, for the protection of democratic rights, public morality and peace during such a meeting or demonstration.
2. This right does not exempt from liability under laws enacted to protect the well-being of the youth or the honour and reputation of individuals, and laws prohibiting any propaganda for war and any public expression of opinions intended to injure human dignity.

## **Article 31**

### **Freedom of Association**

Every person has the right to freedom of association for any cause or purpose. Organizations formed, in violation of appropriate laws, or to illegally subvert the constitutional order, or which promote such activities are prohibited.

## **Article 32**

### **Freedom of Movement**

1. Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to.
2. Any Ethiopian national has the right to return to his country.

## **Appendix 5: Relevant provisions of ATP**

### **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.

#### **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.

**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.

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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.

**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;

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 statute of limitations.

**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.

**Appendix6: Relevant provisions from UN Declaration on HRDs**

## RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY

*[on the report of the Third Committee (A/53/625/Add.2)]*

### 53/144. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

#### *Article 1*

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

#### *Article 2*

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

#### *Article 3*

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

#### *Article 4*

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the

#### *Article 5*

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

#### *Article 6*

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

#### *Article 7*

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

## Appendix 7: Relevant provisions from EU Guidelines on HRDs

### **Ensuring protection – European Union Guidelines on Human Rights Defenders**

#### **I. PURPOSE**

1. Support for human rights defenders is already a long-established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means of supporting and assisting human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Human Rights Council, including the UN Special Rapporteur on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While the primary purpose of the Guidelines is to address specific concerns regarding human rights defenders, they also contribute to reinforcing the EU's human rights policy in general.

#### **II. DEFINITION**

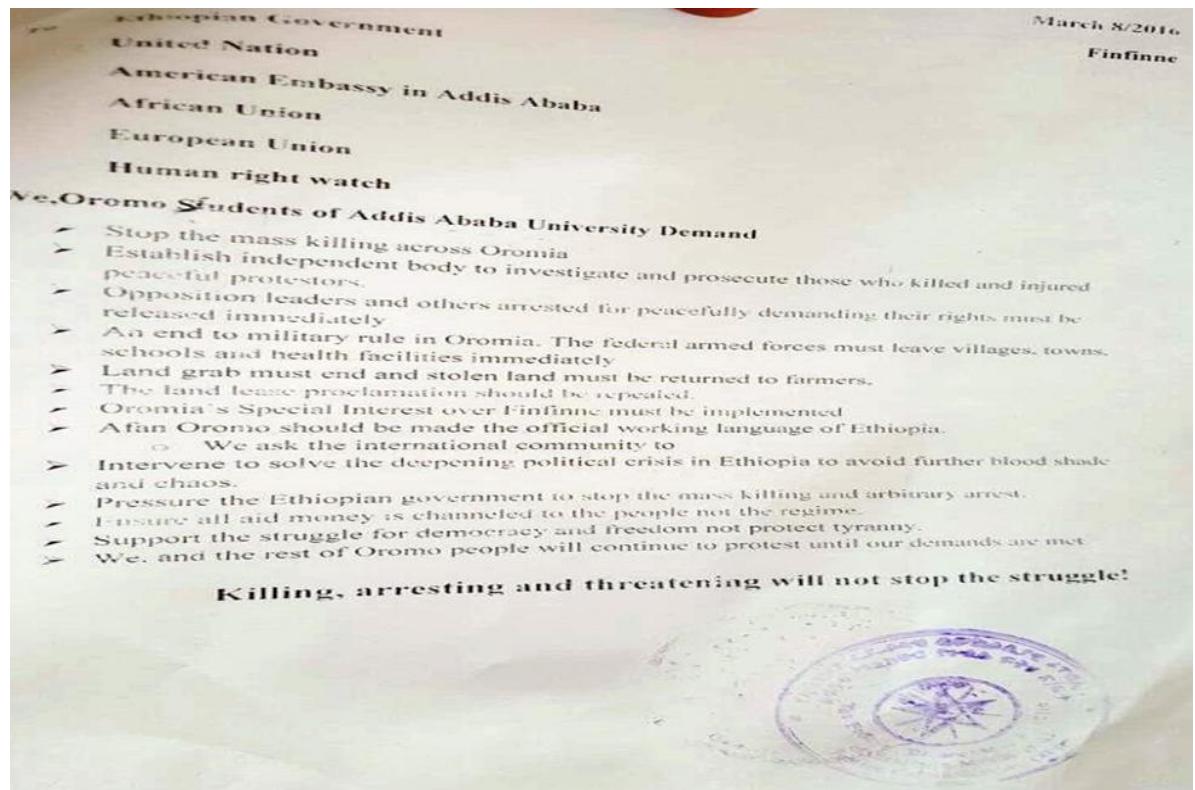
2. The definition of human rights defenders, for the purpose of these Guidelines, draws upon operative paragraph 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (see Annex I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels".

#### **III. INTRODUCTION**

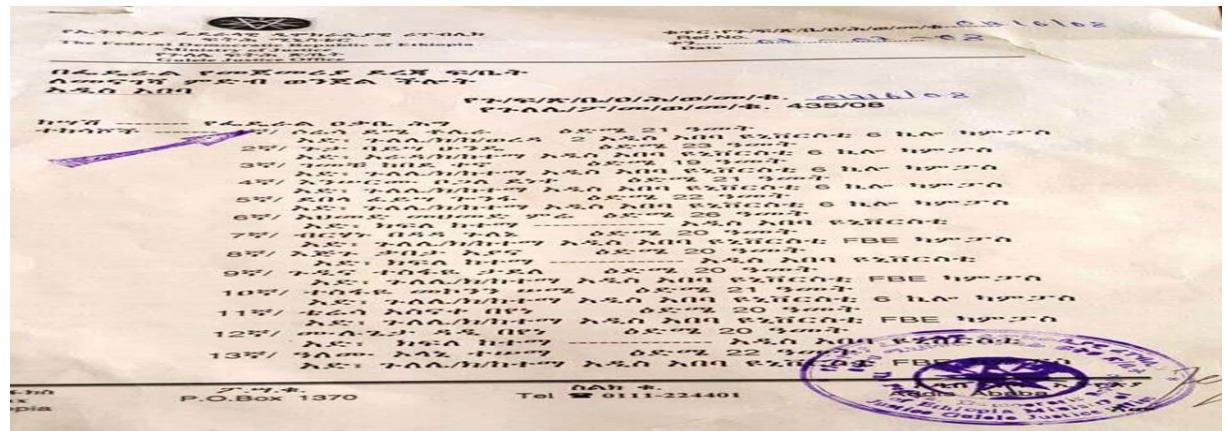
4. The EU supports the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with States, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

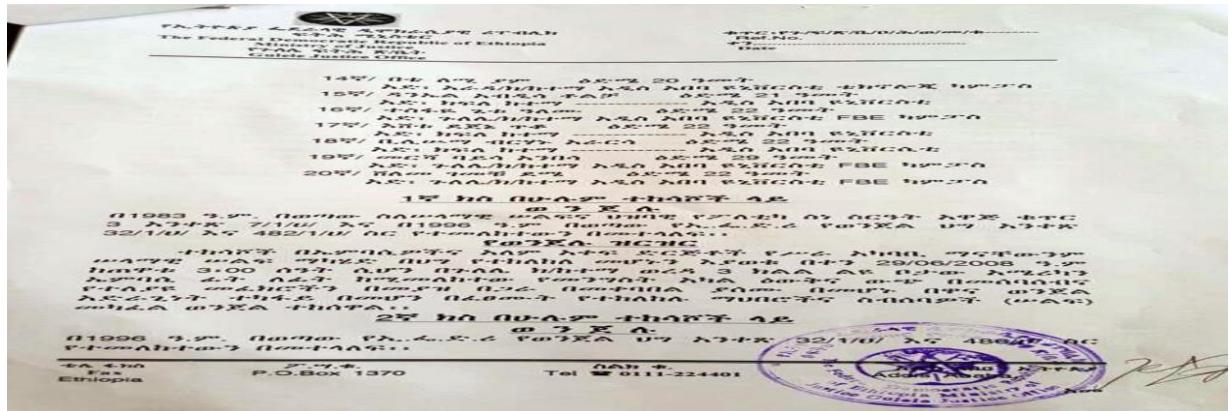
- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms; and
- mainstreaming human rights culture and information on human rights defenders at national, regional and international level.

## Appendix8: Statements that AAU Students hold during demonstrate in front of USA Embassy in Addis Ababa

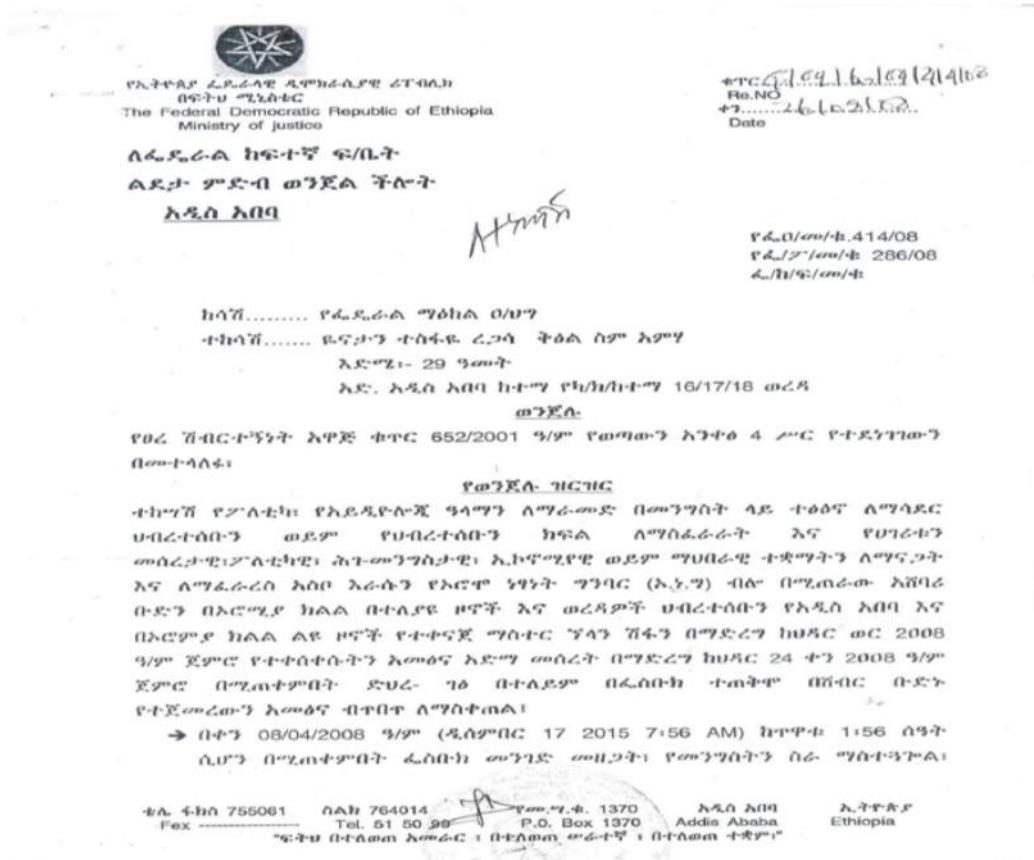


20 AAU students charged both under ATP and Criminal Code with different crimes.





## Appendix 9- Yonathan Tesfaye, a prominent HRD charged with ATP for posting on Facebook page (AI 2016, HRW 2016).





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The Federal Democratic Republic of Ethiopia  
Ministry of justice

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